



Colorado Legislative Council Staff

REVISED FISCAL NOTE

(replaces fiscal note dated April 15, 2016)

FISCAL IMPACT: [X] State [X] Local [ ] Statutory Public Entity [ ] Conditional [ ] No Fiscal Impact

Drafting Number: LLS 16-1159 Date: May 5, 2016
Prime Sponsor(s): Rep. Primavera; Willett Bill Status: Senate SVMA
Sen. Tate; Jahn Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: INTENTIONAL MISREPRESENTATION ASSISTANCE ANIMAL

Table with 3 columns: Fiscal Impact Summary, FY 2016-2017, FY 2017-2018. Rows include State Revenue, Cash Funds, State Expenditures, TABOR Impact, Appropriation Required, and Future Year Impacts.

Summary of Legislation

The reengrossed bill creates a class 2 petty offense for the intentional misrepresentation of entitlement to an assistance animal, for purposes of obtaining a reasonable accommodation in housing or for the misrepresentation of a service animal or service animal in training for purposes of obtaining a reasonable accommodation in:

- any place of employment, housing, or public accommodation;
any programs, services, or activities conducted by a public entity;
any public transportation service; or
any other place open to the public.

The offense and corresponding fine for each violation for the intentional misrepresentation of entitlement to an assistance animal or service animal is as follows:

- a class 2 petty offense with a fine of \$50 for a first offense unless the violation endangered one or more third parties, in which case the person is guilty of an unclassified misdemeanor with a fine of \$350 to \$1,000;
an unclassified misdemeanor with a fine of \$600 to \$1,000 for a second offense; and
a class 3 misdemeanor with a fine of \$1,000 to \$5,000 and up to 10 hours of community service for a third or subsequent offense.

Prior to a charge of a class 2 petty offense for the intentional misrepresentation of entitlement to an assistance animal, service animal, or service animal in training, the person will be given a written or verbal warning about the offense. A written finding that the need for an assistance animal is related to a disability is an affirmative defense. No comparable provision is included for service animals.

The bill allows for a person who has a single conviction to petition the court to have his or her record sealed if he or she has not committed an offense in the prior three years. The filing fee may be waived in cases of financial hardship.

This bill requires certain medical professionals, when approached in person or via telemedicine by a patient seeking an assistance animal as a reasonable accommodation in housing, to make a written finding. This finding should indicate that the patient has a disability as defined by the federal Americans with Disabilities Act of 1990 (ADA) or that there is insufficient information available to make a determination regarding the patient's disability or disability-related need for the animal. If a disability is found, the medical professional must make a separate written finding regarding whether the need for an assistance animal is related to the disability. The medical professionals covered by the bill include:

- physicians and physician assistants;
- anesthesiologist assistants;
- nurses;
- psychologists;
- social workers and clinical social workers;
- marriage and family therapists; and
- licensed professional counselors and addiction counselors.

The bill authorizes the Civil Rights Division in the Department of Regulatory Agencies to educate the public and law enforcement officers about the definitions of assistance and service animals and the rights that accompany people with disabilities who use those animals.

## **Background**

The ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities. It includes a person who has a history or record of such an impairment or who is perceived by others as having such an impairment.

Housing providers are required under federal law to provide an exception to a "no pets" policy if a person with a disability makes a request for a reasonable accommodation to live with an assistance animal, and has a disability-related need for the assistance animal. Federal regulations refer to an animal that provides assistance or emotional support to a person with a disability as an assistance animal to avoid confusion with the ADA definition of service animal. A request for a reasonable accommodation can be denied if:

- allowing the animal imposes an undue financial and administrative burden on the housing provider;
- the specific animal poses a direct threat to the health or safety of others; or
- the specific animal would cause substantial physical damage to the property of others.

A service animal is defined under the ADA as a dog or miniature horse that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the service animal must be directly related to the person's disability. An individual with a disability, or a trainer of a service animal, has the right to be accompanied by a service animal, or a service animal in training, without being required to pay an extra charge for the service animal.

### **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense.

The bill creates the crime of intentional misrepresentation of entitlement to an assistance animal. The Judicial Department reported that for violating laws related to reserved parking for persons with disabilities, 44 sentences were imposed between January 1, 2014, and March 18, 2016. Of these crimes, 18 were committed by males (17 Caucasian, 1 Hispanic) and 13 by females (10 Caucasian, 1 Hispanic, 1 American Indian, 1 Unknown), but the gender was not identified on the remaining 13 individuals. The fiscal note assumes that this group of crimes serves as a reasonable proxy for the new petty offense created under this bill and that court filings will be approximately 20 per year. The fiscal note assumes that people convicted of this misdemeanor are not likely to commit a further offense.

### **State Revenue**

This bill is expected to increase state revenue by less than \$10,000 per year beginning in FY 2016-17 to the Fines Collection Cash Fund in the Judicial Department. Each person convicted of a class 2 petty offense under this bill is required to pay a fine specified in the bill. Because the courts have discretion in the amount of fine levied, the increase in revenue is estimated as less than \$10,000 each year.

**Sealing arrest and criminal records.** A person convicted of a petty offense under this bill in FY 2016-17 may apply for sealing beginning in FY 2019-20 resulting in an increase in revenue for sealing conviction records. To petition a district court for sealing criminal conviction records, a fee of at least \$424 is payable to the Judicial Department's Judicial Stabilization Cash Fund. In addition, to the extent that any offenders take the extra step of petitioning to seal arrest and criminal records, a fee of at least \$224 is payable to the Judicial Stabilization Cash Fund. The Department of Public Safety (DPS) also charges a fee of \$27.98 to seal arrest records paid to the CBI Identification Unit Cash Fund. Based on the low number of requests to seal all criminal conviction records, and assuming that cases of misrepresentation of service animal offenses comprise only a small portion of these requests, the fiscal note assumes any revenue increase is minimal.

### **TABOR Impact**

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. No TABOR impact is expected in FY 2016-17.

## **State Expenditures**

This bill will increase workload for multiple state agencies as explained below.

***Division of Professions and Occupations (DPO).*** The DPO, in the Department of Regulatory Agencies (DORA), regulates all of the medical professionals covered by the bill. The DPO will conduct education and outreach to make medical professionals aware of the requirements of the bill and respond to complaints from individuals who disagree with the findings of medical professionals. This is expected to be a minimal increase in workload that can be accomplished within existing appropriations.

***Colorado Civil Rights Division (CCRD).*** The CCRD in DORA enforces the state's anti-discrimination laws in employment, housing, and public accommodations, so it may receive inquiries and complaints about the interpretation of the law. The CCRD will have an increase in workload to provide public education on assistance animals and service animals. This is expected to be a minimal increase in workload that can be accomplished within existing appropriations.

***Trial courts.*** The workload for trial courts in the Judicial Department will increase beginning in FY 2016-17 to try cases charged under the new petty offense. As noted in the Comparable Crime section, the number of cases is expected to be approximately 20 per year, which can be accomplished within the current trial court appropriations.

***Office of the State Public Defender and Office of Alternate Defense Counsel.*** The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

***Sealing arrest and criminal records.*** Beginning in FY 2019-20, there may be a minimal increase in workload for the Judicial Department to seal conviction records and for the DPS to seal associated arrest and criminal records.

## **Local Government Impact**

This bill will increase workload at the local level as explained below.

***Prosecution of offenses in county courts.*** The bill will increase workload for district attorneys to prosecute any new offenses under the bill.

***Denver County Court.*** The court will try any cases under the bill of misrepresentation of a service animal. The bill results in an increase in workload and revenue for the Denver County Court, managed and funded by the City and County of Denver.

***Local law enforcement agencies.*** Denver County Court and other custodians of records will have increased workload to seal records as directed by the court under this bill. This increased workload will not occur before FY 2019-20 and is assumed to be minimal.

## **Effective Date**

The bill takes effect January 1, 2017, if no referendum petition is filed.

**State and Local Government Contacts**

Counties  
Judicial  
Regulatory Agencies

District Attorneys  
Municipalities  
Sheriffs

Information Technology  
Public Safety