

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: AB 468

VERSION: AMENDED JULY 1, 2021

AUTHOR: FRIEDMAN

SPONSOR:

- **GUIDE DOGS FOR THE BLIND**
- **CANINE COMPANIONS FOR INDEPENDENCE**

RECOMMENDED POSITION: NONE

SUBJECT: EMOTIONAL SUPPORT DOGS

Summary: This bill would require a health care practitioner who provides documentation about an individual's need for an emotional support dog to comply with certain requirements.

Existing Law:

Federal Law:

1. Defines a "service animal" under the ADA as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. States that the work or tasks performed by a service animal must be directly related to the individual's disability. Specifies that other species of animals, whether wild or domestic, trained or untrained, are not considered service animals (Code of Federal Regulations (CFR) Title 28 Section 35.104)

State Law:

1. Defines a "guide dog" as a guide dog or Seeing Eye dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or that meets the definitional criteria under federal regulations adopted to implement Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336). (Penal Code (PC) §365.5(d))
2. Defines a "signal dog" as any dog trained to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds. (PC §365.5(e))
3. Defines a "service dog" as any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. (PC §365.5(f))

4. Defines “support animal” for the purposes of the California Fair Employment and Housing Act. In this context, a “support animal” is defined as animals that provide emotional, cognitive, or other similar support to an individual with a disability, and does not need to be trained or certified. (California Code of Regulations (CCR) Title 2 §12005(d)(2))

This Bill:

1. Requires that a seller or provider of an emotional support dog must provide the buyer or recipient with a written notice stating that the dog does not have the special training required to qualify as a guide, signal, or service dog and is not entitled to the rights and privileges accorded by law to guide, signal, or service dogs. The notice must also state that knowingly and fraudulently representing yourself as the owner or trainer of a licensed, qualified, or identified guide, signal or service dog is a misdemeanor violation. (Health and Safety Code (HSC) §122317(a))
2. Requires that a seller or provider of a certificate, I.D., tag, vest, leash, or harness for an emotional support dog must provide a written notice to the buyer or recipient stating that the item does not entitle the emotional support dog the rights and privileges of guide, signal, or service dogs. The notice must also state that knowingly and fraudulently representing yourself as the owner or trainer of a licensed, qualified, or identified guide, signal or service dog is a misdemeanor violation. (HSC §122317(b))
3. Defines a “health care practitioner” as a person who is licensed and regulated under Division 2 of the Business and Professions Code (which includes licensees of this Board), who is acting within the scope of practice of their license or certificate. (HSC §122318(b))
4. Prohibits a health care practitioner from providing documentation relating to an individual’s need for an emotional support dog unless they comply with all of the following criteria (HSC §122318(a)):
 - a. Have a valid, active license, and includes the license’s effective date, license number, jurisdiction, and type of professional license in the documentation;
 - b. Is licensed to provide professional services within the scope of the license in the jurisdiction in which the documentation is provided;
 - c. Has established a client-provider relationship with the individual for at least 30 days before providing the documentation regarding the individual’s need for an emotional support dog; and
 - d. Completes a clinical evaluation of the individual regarding the need for an emotional support dog.

e. Note: the author would like feedback regarding this provision: Provides verbal or written notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed, qualified, or identified as a guide, signal, or service dog is a misdemeanor violation.

5. States that if a health care practitioner violates any of the provisions listed in Item 4 above, they may be subject to discipline from their licensing board. (HSC §122318(c))
6. States that a person knowingly and fraudulently representing, selling, offering for sale, or attempting to represent, sell, or offer for sale an emotional support dog as being entitled to the rights and privileges accorded by law to a guide, signal, or service dog, or violating the written notice requirements, is subject to the following civil penalties, brought by the Attorney General, a district attorney, a county counsel, or a city attorney (HSC §122319(a):
 - a. \$500 for the first violation;
 - b. \$1,000 for the second violation;
 - c. \$2,500 for the third and subsequent violations.
7. Defines an “emotional support dog” as a dog intended to provide comfort or emotional support and does not meet the definition of a guide, signal, or service dog. (HSC §122319(b)(1))

Comment:

1) Author’s Intent.

According to the author, individuals have taken advantage of the Americans with Disabilities Act (ADA) to seek privileged access in public spaces for untrained emotional support dogs that are not protected under law. This bill is intended to curtail the misrepresentation of buying and selling emotional support dogs and their identifying equipment as having equal access rights as trained service dogs. The author argues this will create safer public spaces, especially for people with disabilities who rely on task-trained service dogs for independence.

2) Complaints Received by the Board.

The Board occasionally receives complaints about its licensees providing emotional support dog certifications. Typically, the complaints come from landlords whose tenants have an emotional support animal. In most cases, the Board is unable to take enforcement action, because review of the records requires the consent of the client.

Staff believes some of the clarifications offered by the draft amendments in the proposal would be helpful, as follows:

- The amendments clarify that certain violations subject the licensee to discipline by their licensing board. Right now, the board can take disciplinary action, but only if unprofessional conduct such as fraud or gross negligence can be demonstrated.
- The amendments clarify that certain specified violations related to the sale and representation of an emotional support dog subjects the violator to civil penalties by the Attorney General, a district attorney, a county counsel, or a city attorney. This may be helpful to the Board's enforcement unit if it receives a complaint about an emotional support dog that does not fall in its jurisdiction, because the Board can then direct the complainant to the appropriate entity to file their complaint.

3) Board of Behavioral Sciences – Case Example.

In one 2019 case, the Board took action against a licensee who had been issuing emotional support animal letters. The Board found the licensee had violated its laws due to unlicensed practice (providing services outside of California in jurisdictions where not licensed) and had committed dishonest and fraudulent acts, violating its unprofessional conduct statute for several reasons. These included issuing letters without properly assessing the patient's mental health, and not informing patients of potential risks, consequences, and benefits.

The Board placed this licensee on three years' probation with several terms and conditions, including taking law and ethics coursework, and being restricted from practicing via telehealth.

4) Board of Psychology – Case Example.

The Board of Psychology filed an accusation against one of its licensees in 2020 based on issuance of an emotional support animal letter.

In that case, the licensee issued an emotional support animal letter to a client. The Board of Psychology found that the licensee had committed gross negligence for several reasons, including failure to follow standard clinical intake protocols, failing to meet with the client using a HIPAA-compliant virtual portal, failing to conduct an appropriate risk assessment of the client, failure to confirm whether the client had been formally diagnosed with a DSM-V diagnosis, and failure to confirm the client's identity.

5) Additional Language.

The author's office has requested feedback about the language shown in HSC §122318(a)(5).

6) Support and Opposition.

Support:

- Guide Dogs for the Blind (Sponsor)
- Canine Companions for Independence (Sponsor)
- California Apartment Association
- California Assisted Living Association
- California Council of The Blind
- Golden State Guide Dog Handlers, Inc.
- Humane Society of the United States
- Western Manufactured Housing Communities Association

Opposition:

- None at this time.

7) History.

2021

- 07/01/21 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
- 06/30/21 From committee: Do pass and re-refer to Com. on JUD. (Ayes 13. Noes 0.) (June 30). Re-referred to Com. on JU
- 06/14/21 In committee: Hearing postponed by committee.
- 06/08/21 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B., P. & E.D.
- 05/27/21 Referred to Coms. on B., P. & E.D. and JUD.
- 05/13/21 In Senate. Read first time. To Com. on RLS. for assignment.
- 05/13/21 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0.)
- 05/06/21 Read second time. Ordered to Consent Calendar.
- 05/05/21 From committee: Do pass. To Consent Calendar. (Ayes 16. Noes 0.) (May 5).
- 04/14/21 From committee: Do pass and re-refer to Com. on APPR. (Ayes 18. Noes 0.) (April 13). Re-referred to Com. on APPR.
- 04/07/21 Re-referred to Com. on B. & P.
- 04/06/21 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
- 03/25/21 Re-referred to Com. on B. & P. pursuant to Assembly Rule 96.
- 03/23/21 In committee: Hearing postponed by committee.
- 03/23/21 Re-referred to Com. on PUB. S.
- 03/22/21 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
- 02/18/21 Referred to Coms. on PUB. S. and B. & P.
- 02/09/21 From printer. May be heard in committee March 11.
- 02/08/21 Read first time. To print.

AMENDED IN SENATE JULY 1, 2021
AMENDED IN SENATE JUNE 8, 2021
AMENDED IN ASSEMBLY APRIL 6, 2021
AMENDED IN ASSEMBLY MARCH 22, 2021
california legislature—2021–22 regular session

ASSEMBLY BILL

No. 468

Introduced by Assembly Member Friedman

February 8, 2021

An act to add Article 4 (commencing with Section 122317) to Chapter 5 of Part 6 of Division 105 of the Health and Safety Code, relating to support dogs.

legislative counsel's digest

AB 468, as amended, Friedman. Emotional support dogs.

Existing law regulates the sale of dogs and cats. Existing law also makes a person who knowingly and fraudulently represents, through verbal or written notice, the person to be the owner or trainer of a canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog, as defined, guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would require a person or business that sells or provides a dog *for use* as an emotional support dog to provide an explicit disclosure form to the potential receiver dog, as defined, to provide a written notice to the buyer or recipient of the dog stating that the dog does not have the special training required of to qualify as a guide, signal, or service dog and is not entitled to the rights and privileges accorded by law to

a guide, signal, or service ~~dog~~, *dog, and that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor.* The bill would require a person or business that ~~offers to sell or provide~~ *sells or provides* a certificate, identification, tag, vest, leash, or harness for an emotional support dog to provide ~~an explicit disclosure form,~~ *a written notice*, as specified, to the buyer or potential buyer, and would prohibit that person or business that offers to sell or provide a certification or registration, or both, for an emotional support dog from implying that there is a government validation or endorsement of the certification or registry. *recipient.* The bill would also prohibit a health care practitioner from providing documentation relating to an individual's need for an emotional support dog unless the health care practitioner complies with specified requirements, including holding a valid license, establishing a client-provider relationship with the individual for at least 30 days prior to providing the documentation, and completing a clinical evaluation of the individual regarding the need for an emotional support dog. The bill would make a ~~person or business who fails to comply with these~~ *violation of the written notice* requirements or ~~who knowingly and fraudulently represents, sells, or offers representing, selling, or offering for sale, or attempts attempting~~ *to represent, sell, or offer for sale, an emotional support dog as being entitled to the rights and privileges accorded by law to a guide, signal, or service dog, subject to a fine or civil penalty. civil penalty, as specified.* The bill would state that this provision is not to be construed to restrict or change existing federal and state law related to a person's rights for reasonable accommodation and equal access to housing, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 4 (commencing with Section 122317) is
- 2 added to Chapter 5 of Part 6 of Division 105 of the Health and
- 3 Safety Code, to read:

Article 4. Emotional Support Dogs

122317. (a) A person or business that sells or provides a dog for use as an emotional support dog shall provide ~~an explicit disclosure form to the potential receiver of the dog stating that the~~ a written notice to the buyer or recipient of the dog that states all of the following:

(1) The dog does not have the special training required ~~of to~~ qualify as a guide, signal, or service ~~dog and~~ dog.

(2) The dog is not entitled to the rights and privileges accorded by law to a guide, signal, or service dog.

(3) Knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor violation of Section 365.7 of the Penal Code.

(b) A person or business that ~~offers to sell or provide~~ sells or provides a certificate, identification, tag, vest, leash, or harness for an emotional support dog shall provide ~~an explicit disclosure form to the buyer or potential buyer stating that the material a~~ written notice to the buyer or recipient that states all of the following:

(1) The item does not entitle an emotional support dog to the rights and privileges accorded by law to a guide, signal, or service dog.

~~(c) A person or business that offers to sell or provide a certification or registration, or both, for an emotional support dog shall not imply that there is a government validation or endorsement of the certification or registry.~~

(2) Knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor violation of Section 365.7 of the Penal Code.

(c) The written notices described in subdivisions (a) and (b) shall be made in at least 12-point bold type, and shall be provided on the receipt for the emotional support dog or the product described in subdivision (b), or on a separate piece of paper.

122318. (a) A health care practitioner shall not provide documentation relating to an individual's need for an emotional support dog unless the health care practitioner complies with all of the following criteria:

1 (1) Possesses a valid, active license and includes the effective
 2 date, license number, jurisdiction, and type of professional license
 3 in the documentation.

4 (2) Is licensed to provide professional services within the scope
 5 of the license in the jurisdiction in which the documentation is
 6 provided.

7 (3) Establishes a client-provider relationship with the individual
 8 for at least 30 days prior to providing the documentation requested
 9 regarding the individual's need for an emotional support dog.

10 (4) Completes a clinical evaluation of the individual regarding
 11 the need for an emotional support dog.

12 (5) *Provides a verbal or written notice to the individual that*
 13 *knowingly and fraudulently representing oneself to be the owner*
 14 *or trainer of any canine licensed as, to be qualified as, or identified*
 15 *as, a guide, signal, or service dog is a misdemeanor violation of*
 16 *Section 365.7 of the Penal Code.*

17 (b) For purposes of this section, "health care practitioner" means
 18 a person who is licensed and regulated pursuant to Division 2
 19 (commencing with Section 500) of the Business and Professions
 20 Code, who is acting within the scope of practice of the person's
 21 license or certificate.

22 (c) *A health care practitioner may be subject to discipline from*
 23 *the health care practitioner's licensing board for a violation of*
 24 *this section.*

25 ~~122319. (a) A person who does either of the following may~~
 26 ~~be punished by a fine or civil penalty:~~

27 ~~(1) Knowingly and fraudulently represents, sells, or offers for~~
 28 ~~sale, or attempts to represent, sell, or offer for sale, an emotional~~
 29 ~~support dog as being entitled to the rights and privileges accorded~~
 30 ~~by law to a guide, signal, or service dog.~~

31 ~~(2) Violates the provisions of this article.~~

32 *122319. (a) (1) A violation of either of the following shall be*
 33 *subject to a civil penalty of five hundred dollars (\$500) for the*
 34 *first violation, one thousand dollars (\$1,000) for the second*
 35 *violation, and two thousand five hundred dollars (\$2,500) for the*
 36 *third and any subsequent violation:*

37 *(A) Knowingly and fraudulently representing, selling, or offering*
 38 *for sale, or attempting to represent, sell, or offer for sale, an*
 39 *emotional support dog as being entitled to the rights and privileges*
 40 *accorded by law to a guide, signal, or service dog.*

1 (B) *Violating the written notice requirements specified in Section*
2 *122317.*

3 (2) *An action for civil penalties under this section may be*
4 *brought by the Attorney General, a district attorney, a county*
5 *counsel, or a city attorney.*

6 (b) (1) *As used in this article, “emotional support dog” means*
7 *a dog that is intended to provide comfort or emotional support*
8 *and that does not meet the definition of a guide, signal, or service*
9 *dog.*

10 ~~(b)~~

11 (2) *As used in this article, “guide, signal, or service dog” has*
12 *the meaning set forth in subdivisions (d), (e), and (f) of Section*
13 *365.5 of the Penal Code, and paragraph (6) of subdivision (b) of*
14 *Section 54.1 of the Civil Code.*

15 (c) *Nothing in this section shall be construed to restrict or change*
16 *existing federal and state law related to a person’s rights for*
17 *reasonable accommodation and equal access to housing, including,*
18 *but not limited to, rights afforded under the California Fair*
19 *Employment and Housing Act (Chapter 1 (commencing with*
20 *Section 12900) of Part 2.8 of Division 3 of Title 2 of the*
21 *Government Code), the Unruh Civil Rights Act (Section 51 of the*
22 *Civil Code), and the Disabled Persons Act (Part 2.5 (commencing*
23 *with Section 54) of Division 1 of the Civil Code).*

O