

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 774 (Hertzberg) – As Amended August 29, 2022

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** Pets and veterinary services: emotional support dogs

**SUMMARY:** SB 774 exempts individuals who are verified to be homeless from the existing requirement that individuals must have a 30-day existing relationship with a health care practitioner before being able to obtain an Emotional Support Animal (ESA) certification.

**EXISTING LAW:**

- 1) Defines a “guide dog” as a dog that has been trained or is being trained to assist blind or visually impaired individuals. (Business and Professions Code (BPC) Section 7201)
- 2) Defines a “signal dog” as a dog trained to alert an individual who is deaf or hard of hearing to intruders or sounds (Penal Code Section 365.5(e) and Civil Code Section 54.1(b)(6)(B)(ii))
- 3) Defines a “service dog” as a dog trained 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 (Penal Code section 365.5(f) and Civil Code Section 54.1(b)(6)(B)(ii))
- 4) Defines a “guide dog instructor” as a person who instructs or trains persons who are blind or visually impaired in the use of guide dogs or who engages in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired. (BPC Section 7201(a))
- 5) Prohibits a person from advertising or presenting themselves as a “guide dog instructor,” “certified guide dog instructor,” or any related terms without having knowledge of the special problems of persons who are blind or visually impaired and being able to teach them, being able to demonstrate the ability to train guide dogs with which persons who are blind or visually impaired would be safe under various traffic conditions, or being employed by a guide dog school certified by the International Guide Dog Federation. (BPC Section 7200)
- 6) States that any person who knowingly and fraudulently represents themselves to be the owner or trainer of a guide, signal, or service dog is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding six months, by a fine not exceeding \$1,000, or by both that fine and imprisonment. (Penal Code Section 365.7)
- 7) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, which regulates the breeding and sale of dogs. (Health and Safety Code, Section 122045 et seq.)

- 8) Establishes the California fair Employment and Housing Act (FEHA) which, broadly, provides discrimination protections in employment and housing. (Government Code Section 12900 et seq.)
- 9) Interprets “support animals” for the purposes of the FEHA, as animals that provide emotional, cognitive, or other support to an individual with a disability. Clarifies that a support animal does not need to be trained or certified. States that support animals are also known as comfort animals or emotional support animals. (2 California Code of Regulations (CCR) Section 12005(d)(2))

**THIS BILL:**

- 1) Create an exemption to the requirement that a health care practitioner establish a client-provider relationship with an individual seeking documentation for an emotional support dog when that individual is verified to be homeless.
- 2) Provide for any of the following methods for verifying an individual’s homelessness status:
  - a) Identification through the local Homeless Management Information System.
  - b) Via a continuum of care, or a homeless services provider that is contracting with a continuum of care.
  - c) Visual confirmation by a homeless services provider of individuals dwelling in a homeless shelter, homeless encampment, outdoor makeshift shelter, or vehicle.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author:

“On any given night in California, at least 161,000 people are without a home. Many of these individuals refuse housing and services if doing so requires them to abandon their most treasured belonging – their pet. SB 774 removes barriers to shelter for homeless individuals, by exempting them from an existing requirement that prevents a health practitioner from issuing an Emotional Support Animal (ESA) certification unless they have a 30-day relationship with the patient. Since many interim housing placements require an ESA certification to permit an animal companion into shelter, SB 774 ensures homeless individuals can more quickly access shelter by being exempt from the 30-day rule.”

**Background.**

*Service Animals vs. Emotional Support Animals.* In recent years, a new category of assistance animals has emerged, often referred to as “emotional support animals” (ESAs). ESAs are legally different from service animals. As previously referenced, service animals are defined under federal and California law as a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. An ESA is a dog (or other animal) that is not trained to perform specific acts related to a person’s disability. Instead, the owner of an ESA derives a

sense of well-being, fulfillment, companionship, or lessened anxiety with the presence of the animal. Of note, ESAs do not enjoy the same legal privileges as trained service dogs: for example, while service dogs must be allowed to accompany their human partner in public places, ESAs do not have to be accommodated.

*Notable Privileges for ESAs.* While ESAs do not have the same rights and privileges as service dogs, there are few, notable exceptions, particularly in housing statutes. Under federal and California laws, individuals with a disability may request to keep an assistance animal as a reasonable accommodation to a housing provider's pet restrictions. In the context of housing, an assistance animal includes both service dogs and any animals that provides emotional support. Generally, reasonable accommodation requests involve a request to allow the animal to live in a property with a no-pets policy, or a request to waive a pet deposit fee. In specified instances, the housing provider may request disability-related information, such as documentation from a health care provider, if the disability and the disability-related need for the animal were not apparent. In order to respect these existing privileges, this bill clarifies that its provisions shall not 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.

*Documentation issued by health care or mental health providers.* Letters from health care and mental health providers are sometimes requested to show that an animal provides a disability-related benefit to an individual. In some instances, ESAs can provide legitimate therapeutic benefits and play an important role in supplementing mental health. However, documentation from a provider may be required to bolster the legitimacy of an ESA, particularly in the context of housing and travel. As a result, it has become increasingly common for individuals to request a health care or mental health provider to provide such documentation. Providers who may issue such documentation may include physicians, psychiatrists, psychologists, licensed marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors.

In order to ensure legitimacy and prevent fraudulent issuing of such documentations, AB 468 enacted specific criteria that must be met before a health care practitioner can issue documentation related to an individual's need for an ESA. Specifically, the provider must (1) have a valid, active license and include the effective date, license number, jurisdiction, and type of professional license in the documentation; (2) have jurisdiction in which the documentation is provided; (3) establish a client-provider relationship with the individual for at least 30 days prior to providing the documentation requested the individual's need for an emotional support dog and (4) completes an in-person clinical evaluation of the individual regarding the need for an emotional support dog.

In 2021, the Legislature passed and the Governor signed into law AB 468 (Friedman, Chapter 168, Statutes of 2021) in an effort to prevent fraudulent practices and misuse of labeling Emotional Support Animals (ESA) as Service Animals. AB 468 also prohibited a health care practitioner from certifying an ESA unless the health care practitioner has an existing relationship with their client for at least 30 days.

The requirements outlined in AB 468 relating to certification of ESA became effective January 1, 2022. As an unintended result, local homeless services agencies, such as the Los Angeles Homeless Services Authority (LAHSA) and numerous nonprofit providers, began to experience challenges moving people into shelter. Emergency housing programs like Project Roomkey

required unhoused individuals to have an Emotional Support Animal (ESA) certification for their animal companions. As these opportunities require fast turnaround, homeless service providers typically reach out to health care practitioners for help to provide day-of certifications. After the passage of AB 468, health care practitioners could no longer sign off on individuals' ESA certification without working with these clients for at least 30 days prior. Homeless service agencies are then forced to scramble to find alternative housing placements, which is not often possible.

As homeless service agencies prepare for additional state funding for housing programs, such as State Encampment Resolution Grants, Project Homekey, and other initiatives), unsheltered Californians will need quick access to ESA certifications in order to move indoors with their animal companions. The inability to bring animal companions into shelter is one of the biggest reasons unsheltered individuals choose not to partake in interim housing programs. Obtaining an ESA certification from a health care practitioner is already a barrier to unhoused individuals from securing housing, and requiring a 30-day existing relationship with practitioners will further delay shelter placements.

SB 774 exempts individuals who are verified to be homeless from the existing requirement that individuals must have a 30-day existing relationship with a health care practitioner before being able to obtain an ESA certification. This will help house homeless individuals more quickly since many interim housing placements require an ESA certification in order to bring an animal companion into shelter.

**Prior Related Legislation.** AB 468 (Friedman, Chapter 168, Statutes of 2021): Requires sellers and providers of emotional support dogs and related equipment to provide a written notice that emotional support dogs are not entitled to the rights and privileges of a service dog, as defined, and put limits on when a medical professional may recommend that a patient acquire an emotional support dog.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

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