

Governor DeSantis Signs Bill Defining Emotional Support Animals and Criminalizing Their Falsification

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On the heels of the U.S. Department of Housing and Urban Development (HUD) issuing new guidance as to what it considers to be the best practices for housing providers when they are presented with requests for “emotional support animals,” Governor DeSantis approved a bill that defined emotional support animals for the first time. The statute amends Florida Fair Housing Act (Florida FHA) to prohibit housing providers from denying housing to a person who requires an emotional support animal. The statute, which became effective July 1, 2020, defines an emotional support animal to be an animal who provides support to alleviate one or more symptoms or effects of a person’s disability. The emotional support animal does not have to be specially trained.

As with the Federal Fair Housing Act (FHA), the amended Florida FHA prohibits housing providers from charging its residents a “pet” deposit for emotional support animals. The Florida FHA does, however, allow housing providers to deny a request for an emotional support animal if the animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others, but only if that threat cannot be reduced or eliminated by another reasonable accommodation. The amended statute does not provide further guidance of what will be necessary for a housing provider to determine that the emotional support animal poses such a direct threat as to authorize the denial of the request.

Under the amended Florida FHA, if the resident’s disability is not readily apparent, the housing provider can request written information to support the disability. This information can be provided by:

- Any federal, state or local government agency
- Certain healthcare practitioners
- Telehealth providers
- Out-of-state practitioners who has provided in-person care or services to the tenant on at least one occasion

Similarly, if the reason why the emotional support animal is needed to alleviate a symptom of the disability is not readily apparent, the housing provider can request similar additional information as it can request to determine that the resident does, in fact, have a disability. The Florida FHA, however, prohibits housing providers from requiring information that discloses the diagnosis or severity of a person's disability or any other medical records relating to the disability.

Under the amended Florida FHA, the resident is liable for any damage done to the premises or to another person on the premises by their emotional support animal.

Finally, the new legislation creates a new cause for disciplinary action against a healthcare practitioner's license if the practitioner provides supporting information for an emotional support animal without having a personal knowledge of the patient's disability or their disability-related need for the emotional support animal. The legislation also created the misdemeanor crime of providing false or fraudulent emotional support information or documentation. Anyone found guilty of this misdemeanor will be required to perform 30 hours of community service for an organization serving persons with disabilities or any other entity or organization the court determines to be appropriate. This legislation is the first time that there may be consequences for those individuals who are abusing the protections provided by the FHA for persons with disabilities.