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September 21, 2020

Sen. Aric Nesbitt
Chair, Regulatory Reform Committee
Michigan Senate

Via email, Mike Sitkauskas, Committee Clerk, ofcsccl@senate.michigan.gov

**Re: Oppose HB 4910 and HB 4911, Senate Regulatory Reform Committee Meeting,
September 22, 2020**

Dear Senator Nesbitt and Committee Members:

Thank you for the opportunity to provide information to the committee. Attorneys for Animals, Inc. (AFA) is a Michigan non-profit and 501(c)(3) organization of legal professionals and animal advocates. The organization's Board of Directors voted to oppose HBs 4910 and 4911.

This bill package creates a new statute, the "Misrepresentation of Emotional Support Animals Act" (HR 4910) and amends the Summary Proceedings to Recover Possession of Premises Act ("Summary Proceedings Act") (HR 4911).

As animal advocates, we oppose these bills because of the harm they would cause to blameless animals. We testified in opposition in House Committee in late 2019. We remain opposed and further assert that now is not the time to pass them.

Life is different now. This Committee must consider the changed circumstances since these bills were introduced, regardless of one's position on their merits. We are aware that the pandemic is used as an excuse for action or inaction in all areas of life, including the legislative process. We do not make this claim lightly or frivolously.

However, this committee would be remiss if it did not analyze these bills in light of the pandemic. COVID 19 has altered the impact they would have in two significant ways.

- First, HB 4910 and 4911 would not touch the main culprit – i.e., the companies that see disabled people as an easy mark – but would be an efficient vehicle to severely disadvantage the easier target – i.e., the renters who truly need the assistance of an Emotional Support Animal. This need has been magnified by the pandemic and making reliance on support animals more palpable than ever.¹ We noted before the likelihood that these bills would add to the homelessness crisis, a potential that is even more salient in September 2020 than it was in late 2019 when the committee hearings were held and even mid-March when the bills passed the House.

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- Second, it has wreaked havoc on the economy generally and renters, the housing market, landlords and the court system specifically. Courts, already coping with a growing docket of eviction cases as they determine the impact of state and now federal moratoriumsⁱⁱ, would face additional hurdles in applying a newly revised Summary Proceedings Act. Now is not the time to create a new cause for eviction thereby changing one of our bedrock statutes, during a time when the courts are overwhelmed with these cases, and when any unintended consequences of that change would be amplified.

Our opposition to the bill pre-dates the pandemic:

We oppose this bill and believe it to be an over-reaction to an issue that recently has garnered much attention nationwide, most often in the context of a service animal being taken aboard an airplane. In response, this bill package and a similar package in the Senate (SBs 608-610) have been introduced, which do not (nor cannot) regulate animals aboard aircraft, and which omit any regulation of those online entities that provide instant, low cost ESA certificates and thus significantly contribute to the problem the legislation seeks to address.

Our opposition is based on its negative impact on the animals, who risk being deprived of home and human companion, and who truly are blameless victims in the proposed legislative scheme. We also oppose because the package does not recognize the human-animal bond. By setting up many roadblocks to getting an Emotional Support Animal (ESA), the bills have the potential of harming powerless people who in fact legitimately have a need for these animals; and of harming the animals who may be left homeless.

The sensational stories of alleged abuses of the need for ESAs offer good “click bait” but ignore the reality: most people who seek these animals sincerely and legitimately need their assistance and often simply their presence in order to function in their daily lives. The American Veterinary Medical Association recognizes the legitimacy of ESAs, and its Emotional Support Animals policy states: “Emotional support animals provide therapeutic benefits that alleviate one or more identified symptoms or effects of an individual’s disability, or emotional support to a disabled individual who has a disability-related need for such support. An emotional support animal may be a dog, a cat, or many other kinds of animal.”ⁱⁱⁱ

The bill package under-regulates in that it does not address the companies who have sprung up to provide “services”; for those individuals seeking ESA (and health care providers) it is punitive and over-reaching. It assumes that all individuals who turn to these online entities are doing so for fraudulent reasons. On the other hand, it provides a powerful weapons against persons requiring an ESA by (1) revising the Summary Proceedings Act to authorize evictions based on attempts to obtain a support animal that do not meet the letter of the law; and (2) providing criminal penalties.

Notably, HB 4910’s requirement that the health care provider must maintain a physical office space “where patients are regularly treated and where the individual seeking certification of the need for an emotional support animal has been examined and treated,” (page 4, lines 4-7) is at odds with the “new normal” of telemedicine, and will be increasingly limiting as time goes by and fewer and fewer individuals are treated in a physical office space.

In short, it has the very real potential of adding to the homeless crisis, for both people and animals.

As a final indignity, it requires the Michigan Civil Rights Commission to take complaints against individuals alleged to falsely represent he/she is in possession of a service animal. The MCRC may refer complaints to law enforcement for investigation^{iv}. This would involve an agency that was created by the 1963 Constitution to “carry out the guarantees against discrimination articulated in Article I, Section 2^v. “As further stated in Article V, Section 29, the state constitution directs the Commission **to investigate alleged discrimination against any person** because of religion, race, color or national origin and to ‘secure the equal protection of such civil rights without such discrimination’ ... and subsequent amendments adding sex, age, marital status, height, weight, arrest record, **and physical and mental disabilities** to the original four protected categories.”^{vi}

We believe there are better ways to address this concern that are more compassionate and just. This is the wrong solution for these times.

We urge the Committee to not report these bills.

Very Truly Yours,



Beatrice M. Friedlander, JD
President

ⁱ Scientists and veterinarians have noted this phenomenon, see, e.g. <https://scienceblog.com/516593/during-a-pandemic-dogs-are-essential-citizens/> and <https://now.tufts.edu/articles/how-animals-help-us-during-covid-19-pandemic>

ⁱⁱ The Michigan Supreme Court recently issued a 4-page memorandum advising District Court Judges, Administrators and Clerks how to apply the eviction moratorium imposed by the federal Centers for Disease Control https://courts.michigan.gov/News-Events/covid19-resources/Documents/CDC_Eviction_Moratorium_FAQ_9-3-20.pdf

ⁱⁱⁱ <https://www.avma.org/policies/emotional-support-animals>

^{iv} HB 4910, Sec. 7, page 6, lines 17 through page 8, line 1, <https://www.legislature.mi.gov/documents/2019-2020/billengrossed/House/pdf/2019-HEBH-4910.pdf>. It also requires MCRC to take complaints against health care providers; as an afterthought, the bill passed by the House added “tenant or prospective tenant” as a category of complainant.

^v The original constitutional provision reads: “No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.” Physical and mental disabilities, inter alia, were later added. <http://legislature.mi.gov/doc.aspx?mcl-Article-I-2>

^{vi} <https://www.michigan.gov/mdcr/0,4613,7-138-47782---,00.html#:~:targetText=About%20The%20Commission&targetText=As%20further%20stated%20in%20Article,civil%20Rights%20without%20such%20discrimination%22!>; <http://legislature.mi.gov/doc.aspx?mcl-Article-V-29>. (*emphasis added, citations omitted*)