

HOUSE No. 1481**The Commonwealth of Massachusetts**

PRESENTED BY:

Kimberly N. Ferguson

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the misrepresentation of a service animal.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------------|-----------------------|------------------|
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> | <i>1/6/2023</i> |
| <i>Donald H. Wong</i> | <i>9th Essex</i> | <i>1/26/2023</i> |
| <i>Angelo L. D'Emilia</i> | <i>8th Plymouth</i> | <i>1/27/2023</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | <i>1/27/2023</i> |
| <i>Hannah Kane</i> | <i>11th Worcester</i> | <i>1/27/2023</i> |
| <i>Meghan Kilcoyne</i> | <i>12th Worcester</i> | <i>1/27/2023</i> |
| <i>Jessica Ann Giannino</i> | <i>16th Suffolk</i> | <i>1/27/2023</i> |
| <i>Susannah M. Whipps</i> | <i>2nd Franklin</i> | <i>1/27/2023</i> |
| <i>Marcus S. Vaughn</i> | <i>9th Norfolk</i> | <i>1/27/2023</i> |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>1/27/2023</i> |
| <i>Joseph D. McKenna</i> | <i>18th Worcester</i> | <i>1/27/2023</i> |
| <i>David F. DeCoste</i> | <i>5th Plymouth</i> | <i>1/27/2023</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>1/28/2023</i> |
| <i>Brian W. Murray</i> | <i>10th Worcester</i> | <i>1/29/2023</i> |
| <i>Lenny Mirra</i> | <i>2nd Essex</i> | <i>1/30/2023</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> | <i>1/30/2023</i> |
| <i>F. Jay Barrows</i> | <i>1st Bristol</i> | <i>1/30/2023</i> |
| <i>Alan Silvia</i> | <i>7th Bristol</i> | <i>1/30/2023</i> |

| | | |
|-------------------------------------|-----------------------------------|------------------|
| <i>Michael J. Soter</i> | <i>8th Worcester</i> | <i>1/30/2023</i> |
| <i>Christopher Hendricks</i> | <i>11th Bristol</i> | <i>1/30/2023</i> |
| <i>Susan Williams Gifford</i> | <i>2nd Plymouth</i> | <i>1/30/2023</i> |
| <i>Kelly W. Pease</i> | <i>4th Hampden</i> | <i>1/31/2023</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | <i>1/31/2023</i> |
| <i>Paul K. Frost</i> | <i>7th Worcester</i> | <i>1/31/2023</i> |
| <i>Edward R. Philips</i> | <i>8th Norfolk</i> | <i>1/31/2023</i> |
| <i>Anne M. Gobi</i> | <i>Worcester and Hampshire</i> | <i>1/31/2023</i> |
| <i>Steven Owens</i> | <i>29th Middlesex</i> | <i>1/31/2023</i> |
| <i>Steven George Xiarhos</i> | <i>5th Barnstable</i> | <i>2/1/2023</i> |
| <i>Thomas P. Walsh</i> | <i>12th Essex</i> | <i>2/1/2023</i> |
| <i>Vanna Howard</i> | <i>17th Middlesex</i> | <i>2/1/2023</i> |
| <i>Todd M. Smola</i> | <i>1st Hampden</i> | <i>2/2/2023</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>2/2/2023</i> |
| <i>David K. Muradian, Jr.</i> | <i>9th Worcester</i> | <i>2/6/2023</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/7/2023</i> |
| <i>Patrick M. O'Connor</i> | <i>First Plymouth and Norfolk</i> | <i>2/8/2023</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> | <i>2/9/2023</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> | <i>2/9/2023</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> | <i>2/9/2023</i> |
| <i>Alyson M. Sullivan-Almeida</i> | <i>7th Plymouth</i> | <i>2/9/2023</i> |
| <i>William C. Galvin</i> | <i>6th Norfolk</i> | <i>2/13/2023</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> | <i>2/17/2023</i> |
| <i>Christopher Richard Flanagan</i> | <i>1st Barnstable</i> | <i>2/23/2023</i> |
| <i>Kate Lipper-Garabedian</i> | <i>32nd Middlesex</i> | <i>3/4/2023</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> | <i>3/15/2023</i> |

HOUSE No. 1481

By Representative Ferguson of Holden, a petition (accompanied by bill, House, No. 1481) of Kimberly N. Ferguson and others relative to the misrepresentation of a service animal. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1565 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to the misrepresentation of a service animal.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 272 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 98A the following:-

3 Section 98A ½ . (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Disability” has the same meaning as set forth in the deferral “Americans with
6 Disabilities Act of 1990”, 42 U.S.C. Sec. 12101 et seq., and its related amendments
7 implementing regulations.

8 “Service dog” has the same meaning as set forth in the implementing regulations of Title
9 II and Title III of the federal “Americans with Disabilities Act of 1990”, 42 U.S.C. Sec. 12101 et
10 seq.

11 “Service-dog-in-training” means a dog or puppy that has been selected for service dog
12 work and is being handled by a service-dog trainer .

13 “Service-dog trainer” means a competent dog trainer who is providing individual training
14 of a dog or puppy with the intention of having the dog or puppy become a working service dog
15 that will perform tasks for a disabled person.

16 (b) Business owners and individuals will continue to be protected under the Americans
17 with Disabilities Act of 1990.

18 (c) Within 6 months of enactment, the Executive Office of Health and Human Services
19 (or designee), in conjunction with a member of a nationally accredited service dog organization,
20 a member of an association advocating for the interests of restaurant owners, and a member of an
21 association advocating for the interests of business owners shall prepare and make available to
22 businesses upon request, (i) a decal suitable for posting in a front window or door, stating that
23 service dogs are welcome and that misrepresentation of a service dog is a violation of
24 Massachusetts law, (ii) a brochure detailing permissible questions a business owner may ask in
25 order to determine whether a dog is a service dog, proper answers to those questions, and
26 guidelines defining unacceptable behavior.

27 (d) Within 6 months of enactment, the Executive Office of Health and Human Services
28 (or designee), in conjunction with a member of a nationally accredited service dog organization,
29 a member of law enforcement appointed by the Massachusetts Chiefs of Police Association, and

a member appointed by the Commissioner of the Municipal Police Training Committee shall develop training and guidelines for law enforcement and animal control personnel regarding implementation and enforcement of this law.

(e) (1) An individual (i) who expressly or impliedly represents that a dog in his or her possession is a service dog or a service-dog-in-training for the purpose of obtaining any rights or privileges afforded to a person with a disability requiring the assistance of a service dog and (ii) who knew or should have known that the dog in his or her possession was not a service dog or service-dog-in-training, shall have committed a civil infraction, punishable: (i) for a first offense, by 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months, or by a civil fine of not more than \$500, or both such community service and fine; and (ii) for any subsequent offenses, by 60 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months, or by a civil fine of not more than \$1,000, or both such community service and fine.

(2) An individual who takes a dog, which the individual knows not to be a service dog or service-dog-in-training, into a place of public accommodation where pets are not permitted, and the dog is wearing a cape, vest, special leash, or other form of identification that states or implies that the dog is a service dog entitled to be present, even if the individual makes no affirmative statements, shall be considered to have violated this subsection.

(3) Any police or animal control officer may investigate and enforce this section by making inquiry of the individual accompanied by the dog in question and issuing a civil citation.

Refusal by the individual to answer the permissible questions shall create a presumption that the dog is not a service dog and the officer may issue the citation and require the individual to remove the dog from the place of public accommodation.

(f) (1) A violator who receives a citation requiring the payment of a civil fine pursuant to subsection (e) shall within 20 days: (i) pay the civil fine to the municipality in which the violation took place; or (ii) contest responsibility for the violation by sending a signed request for a noncriminal hearing, together with a copy of the citation, a verification of the violator's mailing address and a \$25 court filing fee, to the clerk-magistrate of the district court for the judicial district in which the violation occurred. The citation shall notify the violator of these obligations and provide detailed instructions on how to pay the civil fine or contest responsibility, including the address where payment is to be submitted and the address where a request for a noncriminal hearing is to be submitted. If payment is not made within 20 days, the clerk of the municipality in which the violation took place shall notify the magistrate of the district court that payment of the civil fine was not made.

(2) A violator who receives a citation requiring the violator to complete community service shall within 20 days: (i) submit, by mail or in person, a signed letter to the clerk of the municipality in which the violation occurred and a signed letter to the clerk-magistrate of the district court for the judicial district in which the violation occurred verifying the violator's intention to complete such community service and identifying the name of the organization for which the violator would like to complete the community service; or (ii) contest responsibility for the violation by sending a signed request for a noncriminal hearing, together with a copy of the citation, a verification of the violator's mailing address and a \$25 court filing fee, to the clerk-magistrate. The citation shall notify the violator of these obligations and provide the

violator with instructions, including the addresses where the letters are to be submitted and the address where a request for a noncriminal hearing is to be submitted. If a citation requires the violator to complete community service and pay a fine, the violator need only send 1 signed request for a noncriminal hearing to contest responsibility under this paragraph and paragraph (1).

Upon receiving a signed letter pursuant to clause (i) of the preceding paragraph, the clerk-magistrate shall mail to the violator written instructions and a form to be completed and sent back to the clerk-magistrate to verify the completion of the required community service.

(3) Upon receiving a timely request for a noncriminal hearing pursuant to this subsection, the clerk-magistrate shall mail a copy of the request to the municipality in which the violation occurred and schedule a hearing to be held before a magistrate or justice of the district court. The clerk-magistrate shall promptly notify the police agency concerned and the violator of the date and time of the hearing.

A violator who does not, within 20 days of the date of the citation, request a noncriminal hearing shall not thereafter be given such a hearing, unless the clerk-magistrate determines that the failure to make such a timely request was for good cause that was not within the control of the violator. The clerk-magistrate's determination of such issue shall be final.

If the hearing is conducted by a magistrate other than a justice, either the violator or the police agency concerned may appeal the decision of the magistrate to a justice, who shall hear the case de novo. Any violator so appealing the decision of a magistrate shall be responsible for paying a fee of \$50 prior to the scheduling of the appeal hearing before a justice. There shall be no right of jury trial for a violation of this section.

97 In any such hearing before a magistrate or justice, the citation shall be admissible and
98 shall be prima facie evidence of the facts stated therein. Compulsory process for witnesses may
99 be had by either party in the same manner as in criminal cases. On a showing of need in advance
100 of such hearing, the magistrate or justice may direct that the violator be permitted to inspect
101 specific written documents or materials in the possession of the police officer or agency
102 concerned that are essential to the violator's defense.

103 At the conclusion of the hearing, the magistrate or justice shall announce a finding of
104 responsible or not responsible. The magistrate or justice shall enter a finding of responsible if it
105 was shown by a preponderance of the credible evidence that the violator committed the
106 infraction alleged; otherwise the magistrate or justice shall enter a finding of not responsible.

107 (4) If the violator is found responsible after a noncriminal hearing pursuant to paragraph
108 (3), the magistrate or justice shall order the violator to pay any fine that was directed by the
109 citation within 20 days of the order and complete any community service that was directed by the
110 citation within 180 days of the order.

111 (5) A violator who: (i) fails, pursuant to paragraph (1), to either pay the full amount of the
112 civil fine to the municipality within 20 days of the date of the citation or to request a noncriminal
113 hearing within 20 days of the date of the citation plus such grace period as the clerk-magistrate
114 may allow; (ii) fails, pursuant to paragraph (2), to either submit the signed letters within 20 days
115 of the date of the citation or request a noncriminal hearing within 20 days of the date of the
116 citation plus such grace period as the clerk-magistrate may allow; (iii) fails to complete required
117 community service in a timely manner; (iv) fails to appear for a noncriminal hearing before a
118 magistrate or a justice at the time required after having been given notice of such hearing either

119 personally or by first class mail directed to such violator's mail address as reported by the
120 violator; or (v) fails to comply with an order issued pursuant to paragraph 4, shall be punished by
121 a criminal fine of not more than \$1,000, imprisonment in a jail or house of correction for not
122 more than 6 months, or both such fine and imprisonment.