

HOUSE No. 3657

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:
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>

<i>Donald H. Wong</i>	<i>9th Essex</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Peter J. Durant</i>	<i>6th Worcester</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>

<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James M. Kelcourse</i>	<i>1st Essex</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>

HOUSE No. 3657

By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 3657) of Kimberly N. Ferguson and others relative to the misrepresentation of a service animal. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Chapter 272 of the General Laws, as appearing in the 2016 Official Edition, is hereby
2 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) The Massachusetts Office on Disability shall prepare and make available to
19 businesses upon request, (i) a decal suitable for posting in a front window or door, stating that
20 service dogs are welcome and that misrepresentation of a service dog is a violation of
21 Massachusetts law, (ii) a brochure detailing permissible questions a business owner may ask in
22 order to determine whether a dog is a service dog, proper answers to those questions, and
23 guidelines defining unacceptable behavior.

24 (d) The Massachusetts Office on Disability in conjunction with a nationally accredited
25 service dog organization will develop training and guidelines for law enforcement and animal
26 control personnel regarding implementation and enforcement of this law.

27 (e) (1) An individual (i) who expressly or impliedly represents that a dog in his or her
28 possession is a service dog or a service-dog-in-training for the purpose of obtaining any rights or
29 privileges afforded to a person with a disability requiring the assistance of a service dog and (ii)
30 who knew or should have known that the dog in his or her possession was not a service dog or
31 service-dog-in-training, shall have committed a civil infraction, punishable: (i) for a first offense,
32 by 30 hours of community service for an organization that serves individuals with disabilities, or
33 for another entity or organization at the discretion of the court, to be completed in not more than
34 6 months, or by a civil fine of not more than \$500, or both such community service and fine; and

35 (ii) for any subsequent offenses, by 60 hours of community service for an organization that
36 serves individuals with disabilities, or for another entity or organization at the discretion of the
37 court, to be completed in not more than 6 months, or by a civil fine of not more than \$1,000, or
38 both such community service and fine.

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

44 (3) Any police or animal control officer may investigate and enforce this section by
45 making inquiry of the individual accompanied by the dog in question and issuing a civil citation.
46 Refusal by the individual to answer the permissible questions shall create a presumption that the
47 dog is not a service dog and the officer may issue the citation and require the individual to
48 remove the dog from the place of public accommodation.

49 (f) (1) A violator who receives a citation requiring the payment of a civil fine pursuant to
50 subsection (e) shall within 20 days: (i) pay the civil fine to the municipality in which the
51 violation took place; or (ii) contest responsibility for the violation by sending a signed request for
52 a noncriminal hearing, together with a copy of the citation, a verification of the violator's
53 mailing address and a \$25 court filing fee, to the clerk-magistrate of the district court for the
54 judicial district in which the violation occurred. The citation shall notify the violator of these
55 obligations and provide detailed instructions on how to pay the civil fine or contest
56 responsibility, including the address where payment is to be submitted and the address where a

57 request for a noncriminal hearing is to be submitted. If payment is not made within 20 days, the
58 clerk of the municipality in which the violation took place shall notify the magistrate of the
59 district court that payment of the civil fine was not made.

60 (2) A violator who receives a citation requiring the violator to complete community
61 service shall within 20 days: (i) submit, by mail or in person, a signed letter to the clerk of the
62 municipality in which the violation occurred and a signed letter to the clerk-magistrate of the
63 district court for the judicial district in which the violation occurred verifying the violator's
64 intention to complete such community service and identifying the name of the organization for
65 which the violator would like to complete the community service; or (ii) contest responsibility
66 for the violation by sending a signed request for a noncriminal hearing, together with a copy of
67 the citation, a verification of the violator's mailing address and a \$25 court filing fee, to the
68 clerk-magistrate. The citation shall notify the violator of these obligations and provide the
69 violator with instructions, including the addresses where the letters are to be submitted and the
70 address where a request for a noncriminal hearing is to be submitted. If a citation requires the
71 violator to complete community service and pay a fine, the violator need only send 1 signed
72 request for a noncriminal hearing to contest responsibility under this paragraph and paragraph
73 (1).

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

77 (3) Upon receiving a timely request for a noncriminal hearing pursuant to this subsection,
78 the clerk-magistrate shall mail a copy of the request to the municipality in which the violation

79 occurred and schedule a hearing to be held before a magistrate or justice of the district court.
80 The clerk-magistrate shall promptly notify the police agency concerned and the violator of the
81 date and time of the hearing.

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

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

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

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

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

105 (5) A violator who: (i) fails, pursuant to paragraph (1), to either pay the full amount of the
106 civil fine to the municipality within 20 days of the date of the citation or to request a noncriminal
107 hearing within 20 days of the date of the citation plus such grace period as the clerk-magistrate
108 may allow; (ii) fails, pursuant to paragraph (2), to either submit the signed letters within 20 days
109 of the date of the citation or request a noncriminal hearing within 20 days of the date of the
110 citation plus such grace period as the clerk-magistrate may allow; (iii) fails to complete required
111 community service in a timely manner; (iv) fails to appear for a noncriminal hearing before a
112 magistrate or a justice at the time required after having been given notice of such hearing either
113 personally or by first class mail directed to such violator's mail address as reported by the
114 violator; or (v) fails to comply with an order issued pursuant to paragraph 4, shall be punished by
115 a criminal fine of not more than \$1,000, imprisonment in a jail or house of correction for not
116 more than 6 months, or both such fine and imprisonment.

117