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ENGROSSED SUBSTITUTE HOUSE BILL 1138

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State of Washington

61st Legislature

2009 Regular Session

By House Judiciary (originally sponsored by Representatives Lias, Clibborn, Moeller, Green, Cody, Driscoll, Morrell, and Pedersen)

READ FIRST TIME 02/11/09.

1 AN ACT Relating to allowing persons with certain medical conditions  
2 to access the restroom in a retail establishment; adding a new section  
3 to chapter 70.54 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.54 RCW  
6 to read as follows:

7 (1) A retail establishment that has a restroom facility for its  
8 employees must allow a customer to use that facility during normal  
9 business hours if all of the following conditions are met:

10 (a) The customer requesting the use of the employee restroom  
11 facility has been diagnosed with an eligible medical condition or uses  
12 an ostomy device, and provides evidence of the existence of the  
13 eligible medical condition or device in writing in the form of either:

14 (i) A signed statement by the customer's health care provider that  
15 shall be on a form that has been prepared by the department of health  
16 under subsection (4) of this section; or

17 (ii) An identification card that is issued by a nonprofit  
18 organization whose purpose includes serving individuals who suffer from  
19 an eligible medical condition or use an ostomy device;

1 (b) Three or more employees of the retail establishment are working  
2 at the time the customer requests use of the employee restroom  
3 facility;

4 (c) The retail establishment does not normally make a restroom  
5 available to the public;

6 (d) The restroom facility itself is reasonably safe and is not  
7 located in an area where providing access would create an obvious  
8 health or safety risk to the customer; and

9 (e) Allowing the customer to access the restroom facility does not  
10 pose a security risk to the retail establishment or its employees.

11 (2) For a first violation of this section, the city or county  
12 attorney shall issue a warning letter to the retail establishment and  
13 employee informing the establishment and employee of the requirements  
14 of this section. A retail establishment or an employee of a retail  
15 establishment that violates this section after receiving a warning  
16 letter is guilty of a civil infraction. The fine for a first  
17 infraction must not exceed one hundred dollars.

18 (3) A retail establishment is not required to make any physical  
19 changes to an employee restroom facility under this section and may  
20 require that an employee accompany the customer to the employee  
21 restroom facility.

22 (4) The department of health shall develop a standard electronic  
23 form that may be signed by a health care provider as evidence of the  
24 existence of an eligible medical condition or use of an ostomy device  
25 as required by subsection (1)(a) of this section. The form shall  
26 include a brief description of a customer's rights under this section  
27 and shall be made available for a customer or his or her health care  
28 provider to access by computer. Nothing in this section requires the  
29 department to distribute printed versions of the form.

30 (5) A retail establishment or an employee of a retail establishment  
31 is not civilly liable for any act or omission in allowing a customer  
32 who has an eligible medical condition or uses an ostomy device to use  
33 an employee restroom facility that is not a public restroom if the act  
34 or omission meets all of the following:

35 (a) It is not willful or grossly negligent;

36 (b) It occurs in an area of the retail establishment that is not  
37 accessible to the public; and

1 (c) It results in an injury to or death of the customer or any  
2 individual other than an employee accompanying the customer.

3 (6) For purposes of this section:

4 (a) "Customer" means an individual who is lawfully on the premises  
5 of a retail establishment.

6 (b) "Eligible medical condition" means Crohn's disease, ulcerative  
7 colitis, any other inflammatory bowel disease, irritable bowel  
8 syndrome, or any other permanent or temporary medical condition that  
9 requires immediate access to a restroom facility.

10 (c) "Health care provider" means an advanced registered nurse  
11 practitioner licensed under chapter 18.79 RCW, an osteopathic physician  
12 or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians  
13 assistant licensed under chapter 18.57A RCW, a physician or surgeon  
14 licensed under chapter 18.71 RCW, or a physician assistant licensed  
15 under chapter 18.71A RCW.

16 (d) "Retail establishment" means a place of business open to the  
17 general public for the sale of goods or services. Retail establishment  
18 does not include any structure such as a filling station, service  
19 station, or restaurant of eight hundred square feet or less that has an  
20 employee restroom facility located within that structure.

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