
SUBSTITUTE HOUSE BILL 1138

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.

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

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

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

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

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

38 (6) For purposes of this section:

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

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

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

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

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