

**ESHB 1138** - S AMD 465

By Senators Kline, Hargrove, McCaslin

ADOPTED 04/22/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 70.54 RCW  
4 to read as follows:

5 (1) For purposes of this section:

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

8 (b) "Eligible medical condition" means:

9 (i) Crohn's disease, ulcerative colitis, or any other inflammatory  
10 bowel disease;

11 (ii) Irritable bowel syndrome;

12 (iii) Any condition requiring use of an ostomy device; or

13 (iv) Any permanent or temporary medical condition that requires  
14 immediate access to a restroom.

15 (c) "Employee restroom" means a restroom intended for employees  
16 only in a retail facility and not intended for customers.

17 (d) "Health care provider" means an advanced registered nurse  
18 practitioner licensed under chapter 18.79 RCW, an osteopathic physician  
19 or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians  
20 assistant licensed under chapter 18.57A RCW, a physician or surgeon  
21 licensed under chapter 18.71 RCW, or a physician assistant licensed  
22 under chapter 18.71A RCW.

23 (e) "Retail establishment" means a place of business open to the  
24 general public for the sale of goods or services. Retail establishment  
25 does not include any structure such as a filling station, service  
26 station, or restaurant of eight hundred square feet or less that has an  
27 employee restroom located within that structure.

28 (2) A retail establishment that has an employee restroom must allow  
29 a customer with an eligible medical condition to use that employee  
30 restroom during normal business hours if:

1 (a) The customer requesting the use of the employee restroom  
2 provides in writing either:

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

6 (ii) An identification card that is issued by a nonprofit  
7 organization whose purpose includes serving individuals who suffer from  
8 an eligible medical condition; and

9 (b) One of the following conditions are met:

10 (i) The employee restroom is reasonably safe and is not located in  
11 an area where providing access would create an obvious health or safety  
12 risk to the customer; or

13 (ii) Allowing the customer to access the restroom facility does not  
14 pose a security risk to the retail establishment or its employees.

15 (3) A retail establishment that has an employee restroom must allow  
16 a customer to use that employee restroom during normal business hours  
17 if:

18 (a)(i) Three or more employees of the retail establishment are  
19 working at the time the customer requests use of the employee restroom;  
20 and

21 (ii) The retail establishment does not normally make a restroom  
22 available to the public; and

23 (b)(i) The employee restroom is reasonably safe and is not located  
24 in an area where providing access would create an obvious health or  
25 safety risk to the customer; or

26 (ii) Allowing the customer to access the employee restroom does not  
27 pose a security risk to the retail establishment or its employees.

28 (4) The department of health shall develop a standard electronic  
29 form that may be signed by a health care provider as evidence of the  
30 existence of an eligible medical condition as required by subsection  
31 (2) of this section. The form shall include a brief description of a  
32 customer's rights under this section and shall be made available for a  
33 customer or his or her health care provider to access by computer.  
34 Nothing in this section requires the department to distribute printed  
35 versions of the form.

36 (5) Fraudulent use of a form as evidence of the existence of an  
37 eligible medical condition is a misdemeanor punishable under RCW  
38 9A.20.010.

1 (6) For a first violation of this section, the city or county  
2 attorney shall issue a warning letter to the owner or operator of the  
3 retail establishment, and to any employee of a retail establishment who  
4 denies access to an employee restroom in violation of this section,  
5 informing the owner or operator of the establishment and employee of  
6 the requirements of this section. A retail establishment or an  
7 employee of a retail establishment that violates this section after  
8 receiving a warning letter is guilty of a class 2 civil infraction  
9 under chapter 7.80 RCW.

10 (7) A retail establishment is not required to make any physical  
11 changes to an employee restroom under this section and may require that  
12 an employee accompany a customer or a customer with an eligible medical  
13 condition to the employee restroom.

14 (8) A retail establishment or an employee of a retail establishment  
15 is not civilly liable for any act or omission in allowing a customer or  
16 a customer with an eligible medical condition to use an employee  
17 restroom if the act or omission meets all of the following:

- 18 (a) It is not willful or grossly negligent;
- 19 (b) It occurs in an area of the retail establishment that is not  
20 accessible to the public; and
- 21 (c) It results in an injury to or death of the customer or the  
22 customer with an eligible medical condition or any individual other  
23 than an employee accompanying the customer or the customer with an  
24 eligible medical condition."

**ESHB 1138** - S AMD  
By Senators Kline, Hargrove, McCaslin

**ADOPTED 04/22/2009**

25 On page 1, line 2 of the title, after "establishment;" strike the  
26 remainder of the title and insert "adding a new section to chapter  
27 70.54 RCW; and prescribing penalties."

--- END ---