

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1138

Chapter 438, Laws of 2009

61st Legislature
2009 Regular Session

RETAIL RESTROOM ACCESS--CUSTOMERS WITH MEDICAL CONDITIONS

EFFECTIVE DATE: 07/26/09

Passed by the House April 24, 2009
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 22, 2009
Yeas 33 Nays 12

BRAD OWEN

President of the Senate

Approved May 11, 2009, 2:45 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1138** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1138

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

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) For purposes of this section:

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

10 (b) "Eligible medical condition" means:

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

13 (ii) Irritable bowel syndrome;

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

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

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

1 (d) "Health care provider" means an advanced registered nurse
2 practitioner licensed under chapter 18.79 RCW, an osteopathic physician
3 or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians
4 assistant licensed under chapter 18.57A RCW, a physician or surgeon
5 licensed under chapter 18.71 RCW, or a physician assistant licensed
6 under chapter 18.71A RCW.

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

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

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

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

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

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

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

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

29 (3) A retail establishment that has an employee restroom must allow
30 a customer to use that employee restroom during normal business hours
31 if:

32 (a)(i) Three or more employees of the retail establishment are
33 working at the time the customer requests use of the employee restroom;
34 and

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

37 (b)(i) The employee restroom is reasonably safe and is not located

1 in an area where providing access would create an obvious health or
2 safety risk to the customer; or

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

5 (4) The department of health shall develop a standard electronic
6 form that may be signed by a health care provider as evidence of the
7 existence of an eligible medical condition as required by subsection
8 (2) of this section. The form shall include a brief description of a
9 customer's rights under this section and shall be made available for a
10 customer or his or her health care provider to access by computer.
11 Nothing in this section requires the department to distribute printed
12 versions of the form.

13 (5) Fraudulent use of a form as evidence of the existence of an
14 eligible medical condition is a misdemeanor punishable under RCW
15 9A.20.010.

16 (6) For a first violation of this section, the city or county
17 attorney shall issue a warning letter to the owner or operator of the
18 retail establishment, and to any employee of a retail establishment who
19 denies access to an employee restroom in violation of this section,
20 informing the owner or operator of the establishment and employee of
21 the requirements of this section. A retail establishment or an
22 employee of a retail establishment that violates this section after
23 receiving a warning letter is guilty of a class 2 civil infraction
24 under chapter 7.80 RCW.

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

29 (8) A retail establishment or an employee of a retail establishment
30 is not civilly liable for any act or omission in allowing a customer or
31 a customer with an eligible medical condition to use an employee
32 restroom if the act 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 the
37 customer with an eligible medical condition or any individual other

1 than an employee accompanying the customer or the customer with an
2 eligible medical condition.

Passed by the House April 24, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 11, 2009.

Filed in Office of Secretary of State May 11, 2009.