

ESHB 1138 - S COMM AMD  
By Committee on Judiciary

ADOPTED 04/14/2009

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) A retail establishment that has a restroom facility for its  
6 employees must allow a customer to use that facility during normal  
7 business hours if the customer requesting the use of the employee  
8 restroom facility has been diagnosed with an eligible medical condition  
9 or uses an ostomy device, and provides evidence of the existence of the  
10 eligible medical condition or device in writing in the form of either:

11 (a) A signed statement by the customer's health care provider that  
12 shall be on a form that has been prepared by the department of health  
13 under subsection (2) of this section; or

14 (b) An identification card that is issued by a nonprofit  
15 organization whose purpose includes serving individuals who suffer from  
16 an eligible medical condition or use an ostomy device.

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

25 (3) Use of a fraudulent form as evidence of the existence of an  
26 eligible medical condition or use of an ostomy device is a misdemeanor  
27 punishable under RCW 9A.20.010.

28 (4) A retail establishment that has a restroom facility for its  
29 employees must allow a customer to use that facility during normal  
30 business hours if all of the following conditions are met:

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

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

11 (5) 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 (6) 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 (7) A retail establishment or an employee of a retail establishment  
23 is not civilly liable for any act or omission in allowing a customer to  
24 use an employee restroom facility that is not a public restroom if the  
25 act or omission meets all of the following:

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

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

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

31 (8) For purposes of this section:

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

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

1 (c) "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 (d) "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 facility located within that structure."

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12 On page 1, line 2 of the title, after "establishment;" strike the  
13 remainder of the title and insert "adding a new section to chapter  
14 70.54 RCW; and prescribing penalties."

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