

HOUSE BILL REPORT

ESHB 1138

As Passed House:

March 3, 2009

Title: An act relating to allowing persons with certain medical conditions to access the restroom in a retail establishment.

Brief Description: Concerning access to employee restrooms in retail stores.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Liias, Clibborn, Moeller, Green, Cody, Driscoll, Morrell and Pedersen).

Brief History:

Committee Activity:

Judiciary: 1/29/09, 2/9/09 [DPS].

Floor Activity

Passed House: 3/3/09, 90-7.

Brief Summary of Engrossed Substitute Bill

- Requires, under certain conditions, a retail establishment with a restroom facility to provide a customer with a qualifying medical condition access to that facility.
- Prescribes civil penalties for violations.
- Directs the Department of Health to develop a standard electronic form to be used as evidence of the existence of an eligible medical condition or the use of an ostomy device.
- Provides the retail establishment or employee some immunity from civil liability where a qualifying customer has been permitted to use a restroom that is ordinarily reserved for employees.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kyle Gotchy (786-7119)

Background:

Inflammatory bowel disease (IBD) encompasses a group of conditions of the small and large intestine. The two main categories of IBD are ulcerative colitis and Crohn's disease, both of which typically cause patients to experience diarrhea and abdominal pain, among other symptoms. There is no known cure for IBD. Although a person with IBD may achieve remission through treatment, he or she will likely experience the occasional, acute resurgence of the original symptoms. When a person suffers a resurgence episode, he or she will often require the use of a restroom in order to alleviate his or her discomfort.

Severe IBD may require surgery, including a temporary or permanent colostomy or ileostomy. An ostomy refers to a surgically created opening in the body for the discharge of body wastes. An ostomy device is a receptacle used to collect the diverted waste.

Under current public accommodation laws, a retail establishment is not explicitly required to allow a customer access to a non-public restroom. The Human Rights Commission has adopted rules prohibiting a person in the operation of a place of public accommodation from failing to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when ordinary service would prevent the person from fully enjoying the place of public accommodation. Whether an accommodation is "reasonable" is determined on a case-by-case basis. Thus, depending on the unique context of a contemplated retail establishment, it may or may not be reasonable for that establishment to provide safe access to an employee restroom.

Several states, including Illinois, Minnesota, Texas and Maryland, have enacted legislation that requires retail establishments and their employees to grant persons with IBD access to a restroom facility ordinarily reserved for employees.

Summary of Engrossed Substitute Bill:

A retail establishment that has a restroom facility for its employees must allow a customer to use that facility during normal business hours if the restroom facility is reasonably safe and all of the following conditions are met:

1. The customer making the request has an eligible medical condition or uses an ostomy device, and provides evidence of the existence of the medical condition or device in writing.
2. Three or more employees are working at the time of the request.
3. The retail establishment does not normally make a restroom available to the public.

A retail establishment may require that an employee accompany a qualifying customer to an employee restroom facility. However, a retail establishment is not required to make any physical changes to an employee restroom facility in order to comply with this section.

Eligible Medical Condition.

An eligible medical condition includes Crohn's disease, ulcerative colitis, any other IBD, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a restroom facility.

Written Evidence.

Written evidence of a qualifying medical condition or device must be either: (1) in the form of a signed statement by the customer's health care provider on a form prepared by the Department of Health (DOH); or (2) an identification card issued by a nonprofit organization whose purpose includes serving persons suffering from the medical condition or using an ostomy device. The DOH is required to develop the standard electronic form but is not required to distribute printed versions of the form.

Violations.

For a first violation, the retail establishment and employee(s) will receive a warning letter providing information about the access requirements from the city or county. For a subsequent violation, the retail establishment or employee(s) will be guilty of a civil infraction not to exceed \$100.

Protection from Liability and Exclusions.

A retail establishment or an employee is not civilly liable for any act or omission where a qualifying customer has been permitted to use a restroom that is ordinarily reserved for employees, where the act or omission meets the following:

1. It is not willful or grossly negligent.
2. It occurs in an area of the retail establishment that is not accessible to the public.
3. It results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

A retail establishment is not required to grant qualifying customers access to an employee restroom facility in either of the following instances:

1. The restroom facility is located in an area where providing access would create an obvious health or safety risk to the customer.
2. Allowing the customer to access the restroom facility poses a security risk to the retail establishment or employee.

"Retail establishment" does not include a structure of 800 square-feet or less.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) For many people, the simple act of using the restroom can become an excruciating experience. Many people who suffer from IBD are forced to stay home rather than enjoy the products and services that retailers offer because they are afraid of public embarrassment. This bill is about raising awareness and extending compassion to certain Washington residents who suffer from certain medical conditions.

(With concerns) Financial institutions often do not offer public restroom facilities. Such institutions could, under the definition of this bill, be considered retail establishments. The restrooms in financial institutions tend to be located in secure areas. If such institutions are compelled to allow members of the public into secure areas, an escort would be necessary. A law requiring financial institutions to grant members of the public access to employee restrooms would subject financial institutions to an unfair burden and perhaps frivolous lawsuits. The easiest fix would be to exclude financial institutions from the definition of a retail establishment or make certain exceptions for restrooms located in secure areas. Additionally, it would be much more convenient for retailers if the signed statement be required to be on the form provided by the DOH. Finally, smaller establishments should be granted some flexibility where granting access to an employee restroom presents safety concerns.

Persons Testifying: (In support) Representative Liias, prime sponsor; Rob Menaul, Lois Fink, and Mike McCready, Crohn's and Colitis Foundation of America.

(With concerns) Gary Gardner, United Financial Lobby; Kristopher Tefft, Association of Washington Businesses; Mark Johnson, Washington Retail Association; Troy Nichols, National Federation of Independent Businesses; and Michael Transue, Washington Restaurant Association.

Persons Signed In To Testify But Not Testifying: None.