

# SENATE BILL REPORT

## SHB 1457

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As of March 21, 2023

**Title:** An act relating to a motor carrier's ability to access restroom facilities required by rules authorized under chapter 49.17 RCW.

**Brief Description:** Concerning a motor carrier's ability to access restroom facilities required by rules authorized under chapter 49.17 RCW.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Robertson, Berry, Santos, Reed and Fosse).

**Brief History:** Passed House: 3/1/23, 96-0.

**Committee Activity:** Labor & Commerce: 3/14/23 [DP-WM].

Ways & Means: 3/21/23.

### Brief Summary of Bill

- Requires a shipper or consignee to allow a motor carrier delivering goods to, or picking goods up from a shipper or consignee to use restrooms during normal business hours under certain circumstances.
- The Department of Health may enforce these requirements.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler and Stanford.

**Staff:** Susan Jones (786-7404)

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### SENATE COMMITTEE ON WAYS & MEANS

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

**Staff:** Monica Fontaine (786-7341)

**Background:** Washington Industrial Safety and Health Act. Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (L&I) administers WISHA. L&I has adopted general health and safety standards, pursuant to WISHA, that apply to most industries, and has safety standards that apply only to specific industries, many of which include requirements regarding the provision of restroom facilities. Employers must generally provide bathrooms with the appropriate number of toilets for employees at every workplace, except mobile crews or work locations not normally attended by employees.

Customer Access to Retail Establishment Employee Restrooms. A retail establishment with an employee restroom must allow a customer with certain medical conditions to use that employee restroom during normal business hours if:

- the customer requesting the use of the employee restroom provides in writing either:
  1. a signed statement by the customer's health care provider on a form that has been prepared by the Department of Health (DOH); or
  2. an identification card issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition; and
- one of the following conditions are met:
  1. the employee restroom is reasonably safe, and is not located in an area where providing access would create an obvious health or safety risk to the customer; or
  2. allowing the customer to access the restroom facility does not pose a security risk to the retail establishment or its employees.

A retail establishment that has an employee restroom must allow a customer to use that employee restroom during normal business hours if:

- three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom, and the establishment does not normally make a restroom available to the public; and
- the employee restroom is reasonably safe, and is not located in an area where providing access would create an obvious health or safety risk to the customer, or allowing the customer to access the employee restroom does not pose a security risk to the retail establishment or its employees.

For a first violation of the laws related to customer access to restrooms, the city or county attorney must issue a warning letter to the owner or operator of the retail establishment, and to any employee of a retail establishment who denies access to an employee restroom, informing the owner or operator of the establishment and employee of the requirements. After the warning letter, a retail establishment or an employee of a retail establishment that violates the laws is guilty of a class 2 civil infraction.

Drayage Truck Operator Access to Terminal Restrooms. A terminal operator must provide a sufficient number of restrooms for use by drayage truck operators in areas of the terminal that drayage truck operators typically have access to, such as inside the gate and truck queuing lots. Restrooms may include fixed bathrooms with flush toilets or portable chemical toilets. At least one restroom provided by the terminal operator must be a private space suitable for and dedicated to expressing breast milk.

A terminal operator is deemed in compliance with this section if the terminal operator:

- allows drayage truck operators access to existing restrooms while the drayage truck operators are on port property in areas of the terminal that drayage truck operators typically have access to and when access does not pose an obvious safety risk to the drayage truck operators and other workers in the area and does not violate federal terminal security requirements;
- when necessary, provides additional restrooms at locations where there is the most need; and
- has a policy that allows drayage truck operators to leave their vehicles at reasonable times and locations for purposes of accessing restrooms.

Restrooms for drayage truck operators must be located in areas where access would not pose an obvious health or safety risk to the drayage truck operators or other workers in the area.

Drayage truck operator means the driver of any in-use on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading, or transporting cargo, including containerized, bulk, or break-bulk goods.

The Department of Health (DOH) and L&I are granted jurisdiction to enforce the restroom requirements for port district terminal operators. The DOH is allowed to issue a warning for a first violation of the requirements and a class 2 civil infraction for subsequent violations. Failure to comply with the restroom requirement is a violation of WISHA.

The current penalty for a class 2 civil infraction is \$125.

**Summary of Bill:** Restroom Access for Motor Carriers. A shipper or consignee required to provide a restroom by rules authorized under the state safety and health laws must allow a motor carrier delivering goods to, or picking goods up from a shipper or consignee to use that restroom during normal business hours if:

- the restroom is located in an area where providing access would not create an obvious health or safety risk to the motor carrier; and
- allowing the motor carrier access the restroom does not pose an obvious security, health, or safety risk to the shipper, consignee, or its employees.

A shipper or consignee is not required to make any physical changes to a restroom and may

require that an employee accompany a motor carrier to the restroom. A shipper or consignee, or an employee of a shipper or consignee, is not civilly liable for any act or omission in allowing a motor carrier to use a restroom if (1) the act or omission is not willful or grossly negligent, (2) occurs in an area of the shipper or consignee facility not accessible to the public, and (3) results in an injury to, or death of the motor carrier, or any individual other than an employee accompanying the motor carrier.

Enforcement. DOH and L&I have jurisdiction. DOH may issue a warning letter to a shipper or consignee for a first violation. A shipper or consignee that violates these provisions after receiving a warning letter is guilty of a class 2 civil infraction.

Definitions. Motor carrier includes common carrier, contract carrier, and private carrier. Consignee means a person or business who takes delivery of property, cargo, or materials transported in interstate or intrastate commerce from a motor carrier. Shipper means a person or business who tenders property, cargo, or materials to a motor carrier for transportation in interstate or intrastate commerce. Restroom means a bathroom facility as required by L&I rules, located on the premises of, and operated by, a shipper or consignee and intended for use by customers or employees of the shipper or consignee.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Labor & Commerce):** No public hearing was held.

**Persons Testifying (Labor & Commerce):** N/A

**Persons Signed In To Testify But Not Testifying (Labor & Commerce):** N/A

**Staff Summary of Public Testimony (Ways & Means):** PRO: After passage of Substitute House Bill 1706, drivers continued to face issues accessing restrooms in other locations. This bill doesn't create new requirements, but requires businesses to provide reasonable access to truck drivers. It is about access, not enforcement.

**Persons Testifying (Ways & Means):** PRO: Jeff DeVere, Washington Trucking Associations.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.