

SENATE BILL REPORT

SB 5429

As Reported by Senate Committee On:
Labor & Commerce, January 31, 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: Senators Stanford, MacEwen, Kuderer, Shewmake, Valdez and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/26/23, 1/31/23 [DPS].

Brief Summary of First Substitute 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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5429 be substituted therefor, and the substitute bill do pass.

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)

Background: Washington Industrial Safety and Health Act. Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free

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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.

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.

Summary of Bill (First Substitute): 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 that is 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 notice of correction to a shipper or consignee for a first violation. A shipper or consignee that violates these provisions after receiving a notice of correction is subject to a civil penalty of \$250.

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 that is intended for use by customers or employees of the shipper or consignee.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Changes the term of receiver to consignee.
- Removes the Department of Labor and Industries from the enforcement provisions.
- Modifies the Department of Health enforcement provisions.
- Specifies that the civil penalty amount is \$250 when the violation occurs after a notice of correction is received.

Appropriation: None.

Fiscal Note: Requested on January 23, 2023.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Last year's bill was narrowly focused on ports and drayage drivers. We are still having trouble with trucker's access to restrooms. Most businesses are doing the right thing and allowing access to truck drivers. This bill is a common sense approach. If you already have a restroom required by law, you must allow reasonable access to restrooms by truck drivers. If you have security, health, or safety concerns, you do not have to allow access. It allows some liability protection for businesses. We hope you can help the needs of those who bring us everything we need in our daily activities.

Business groups discriminate against bathrooms use that they cannot do for anyone else. Truck drivers meet the definition of customers. Everyone can have bathroom rights and public accommodations, except truck drivers.

There is amendment language narrowing down the enforcement to just DOH.

OTHER: We support the concept of truck drivers use of restrooms. There are some technical concerns. The sponsor has worked with us on language to address the concerns.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Jeff DeVere, Washington Trucking Associations; Ryan Johnson.

OTHER: Mike Ennis, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: No one.