

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 341**

4 (By Senators Stollings and Foster)

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6 [Originating in the Committee on Health and Human Resources;
7 reported February 10, 2012.]

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-44-1, §16-44-2,
12 §16-44-3, §16-44-4 and §16-44-5, all relating to access to
13 nonpublic restrooms by individuals with certain medical
14 conditions and under specified circumstances; and providing
15 criminal penalty for violation.

16 *Be it enacted by the Legislature of West Virginia:*

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new article, designated §16-44-1, §16-44-2,
19 §16-44-3, §16-44-4 and §16-44-5, all to read as follows:

20 **ARTICLE 16. PUBLIC HEALTH.**

21 **ARTICLE 44. RESTROOM ACCESS ACT.**

22 **§16-44-1. Short title.**

23 This article shall be known as the Restroom Access Act.

24 **§16-44-2. Definitions.**

25 As used in this article:

1 (1) "Customer" means a person or individual who is lawfully
2 on the premises of a retail establishment;

3 (2) "Eligible medical condition" means any medical condition
4 that requires immediate access to a toilet facility as determined
5 by a health care provider. These conditions include, but are not
6 limited to, Crohn's disease, ulcerative colitis, any inflammatory
7 bowel disease or irritable bowel syndrom;

8 (3) "Retail establishment" means a place of business open to
9 the general public for the sale of goods or services to an ultimate
10 consumer. A retail establishment includes, but is not limited to,
11 a grocery store, mercantile, delicatessen or any place where
12 merchandise is displayed, held or offered for sale.

13 (4) "Medical alert restroom access card" means a card provided
14 by the Foundation for Clinical Research in Inflammatory Bowel
15 Disease or other nationally recognized organization indicating that
16 the carrier has an eligible medical condition and needs immediate
17 access to a toilet facility.

18 **§16-44-3. Customer access to restroom facility; retail**
19 **establishment.**

20 (a) A retail establishment which has a toilet facility for its
21 employees that is not open to the general public shall allow a
22 customer to use that toilet facility during normal business hours
23 if the following conditions are met:

24 (1) The customer requesting the use of the toilet facility
25 suffers from an eligible medical condition or uses an ostomy

1 device;

2 (2) The customer requesting access presents a medical alert
3 restroom access card which contains language that states the holder
4 has an eligible medical condition as defined in section two of this
5 article and requires immediate access to a toilet facility.

6 (3) Three or more employees of the retail establishment are
7 working at the time the customer requests use of the employee
8 toilet facility;

9 (4) The retail establishment does not normally make a restroom
10 available to the public;

11 (5) The employee toilet facility is not located in an area
12 where providing access would create an obvious health or safety
13 risk to the customer or an obvious security risk to the retail
14 establishment; and

15 (6) A public restroom is not immediately accessible to the
16 customer.

17 (b) Nothing in this article shall be construed to require a
18 retail establishment to open an employee only restroom to the
19 general public. The restroom shall remain a private, employee only
20 restroom.

21 **§16-44-4. Limitation of liability.**

22 (a) A retail establishment or an employee of a retail
23 establishment is not civilly liable for any action or omission in
24 allowing a customer that has an eligible medical condition to use
25 an employee toilet facility that is not a public restroom if the

1 act or omission:

2 (1) Is not willful or grossly negligent;

3 (2) Occurs in an area of the retail establishment that is not
4 accessible to the public; and

5 (3) Results in an injury or death to the customer, or any
6 individual other than an employee accompanying the customer.

7 (b) A retail establishment is not required to make any
8 physical changes to an employee toilet facility under this article.

9 **§16-44-5. Penalties for violations.**

10 A retail establishment or an employee of a retail
11 establishment that violates the provisions of this article is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 fined not more than \$100.

NOTE: The purpose of this bill is to provide access to private
employee restrooms for persons with certain eligible medical
conditions.

This article is new; therefore, strike-throughs and
underscoring have been omitted.

