1	Senate Bill No. 341
2	(By Senators Stollings and Foster)
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4	[Introduced January 18, 2012; referred to the Committee on Health
5	and Human Resources; and then to the Committee on Government
6	Organization.]
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11	A BILL to amend the Code of West Virginia, 1931, as amended, by
12	adding thereto a new article, designated \$16-44-1, \$16-44-2,
13	\$16-44-3, $$16-44-4$ and $$16-44-5$ , all relating to access to
14	nonpublic restrooms by individuals with certain medical
15	conditions and under specified circumstances; and providing
16	criminal penalty for violation.
17	Be it enacted by the Legislature of West Virginia:
18	That the Code of West Virginia, 1931, as amended, be amended
19	by adding thereto a new article, designated $$16-44-1$ , $$16-44-2$ ,
20	\$16-44-3, $$16-44-4$ and $$16-44-5$ , all to read as follows:
21	ARTICLE 16. PUBLIC HEALTH.
22	§16-44-1. Short title.
23	This article shall be known as the Restroom Access Act.

## 1 §16-44-2. Definitions.

- 2 As used in this article:
- 3 (1) "Customer" means a person or individual who is lawfully 4 on the premises of a retail establishment;
- 5 (2) "Eligible medical condition" means any medical condition
- 6 that requires immediate access to a toilet facility as determined
- 7 by a health care provider. These conditions include, but are not
- 8 limited to, Crohn's disease, ulcerative colitis, any inflammatory
- 9 bowel disease or irritable bowel syndrom;
- 10 (3) "Retail establishment" means a place of business open to
- 11 the general public for the sale of goods or services to an ultimate
- 12 consumer. A retail establishment includes, but is not limited to,
- 13 a grocery store, mercantile, delicatessen or any place where
- 14 merchandise is displayed, held or offered for sale.
- 15 §16-44-3. Customer access to restroom facility; retail
- 16 establishment.
- 17 A retail establishment which has a toilet facility for its
- 18 employees that is not open to the general public shall allow a
- 19 customer to use that toilet facility during normal business hours
- 20 if the following conditions are met:
- 21 (1) The customer requesting the use of the toilet facility
- 22 suffers from an eligible medical condition or uses an ostomy
- 23 device;
- 24 (2) Three or more employees of the retail establishment are

- 1 working at the time the customer requests use of the employee
- 2 toilet facility;
- 3 (3) The retail establishment does not normally make a restroom 4 available to the public;
- 5 (4) The employee toilet facility is not located in an area 6 where providing access would create an obvious health or safety 7 risk to the customer or an obvious security risk to the retail 8 establishment; and
- 9 (5) A public restroom is not immediately accessible to the 10 customer.

## 11 §16-44-4. Limitation of liability.

- 12 (a) A retail establishment or an employee of a retail
  13 establishment is not civilly liable for any action or omission in
  14 allowing a customer that has an eligible medical condition to use
  15 an employee toilet facility that is not a public restroom if the
  16 act or omission:
- 17 (1) Is not willful or grossly negligent;
- 18 (2) Occurs in an area of the retail establishment that is not 19 accessible to the public; and
- 20 (3) Results in an injury or death to the customer, or any 21 individual other than an employee accompanying the customer.
- 22 (b) A retail establishment is not required to make any 23 physical changes to an employee toilet facility under this article.
- 24 §16-44-5. Penalties for violations.

- 1 A retail establishment or an employee of a retail
- 2 establishment that violates the provisions of this article is
- 3 guilty of a misdemeanor and, upon conviction thereof, shall be
- 4 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.