

COMMITTEE SUBSTITUTE

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Senate Bill No. 341

(By Senators Stollings and Foster)

[Originating in the Committee on Government Organization;
reported February 16, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-44-1, §16-44-2, §16-44-3, §16-44-4 and §16-44-5, all relating to creating the Restroom Access Act; requiring access to employee-only restrooms by individuals with certain medical conditions who present a valid medical alert restroom access card under specified circumstances; limiting liability to the establishment; and providing criminal penalty for violation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. PUBLIC HEALTH.

ARTICLE 44. RESTROOM ACCESS ACT.

§16-44-1. Short title.

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

§16-44-2. Definitions.

1 As used in this article:

2 (1) “Customer” means a person or individual who is
3 lawfully on the premises of a retail establishment.

4 (2) “Eligible medical condition” means any medical
5 condition that requires immediate access to a restroom as
6 determined by a health care provider. These conditions
7 include, but are not limited to, Crohn’s disease, ulcerative
8 colitis, any inflammatory bowel disease or irritable bowel
9 syndrome.

10 (3) “Medical alert restroom access card” means a card
11 provided by the Foundation for Clinical Research in Inflam-
12 matory Bowel Disease or other nationally recognized
13 organization indicating that the carrier has an eligible
14 medical condition and needs immediate access to a restroom.

15 (4) “Restroom” means a toilet facility.

16 (5) “Retail establishment” means a place of business
17 open to the general public for the sale of goods or services to
18 an ultimate consumer. A retail establishment includes, but is
19 not limited to, a grocery store, mercantile, delicatessen or
20 any place where merchandise is displayed, held or offered for
21 sale.

§16-44-3. Customer access to employee-only restroom facility.

1 (a) A retail establishment which has a restroom for its
2 employees that is not open to the general public shall allow
3 a customer to use the employee-only restroom during normal
4 business hours if the following conditions are met:

5 (1) The customer requesting the use of the restroom
6 suffers from an eligible medical condition or uses an ostomy
7 device;

8 (2) The customer requesting access to an employee-only
9 restroom presents a valid medical alert restroom access card
10 which contains language that states the holder has an
11 eligible medical condition and requires immediate access to
12 a restroom;

13 (3) The retail establishment does not normally make a
14 restroom available to the public;

15 (4) The restroom is not located in an area where provid-
16 ing access would create an obvious health or safety risk to
17 the customer or an obvious security risk to the retail estab-
18 lishment; and

19 (5) A public restroom is not immediately accessible to the
20 customer.

21 (b) Nothing in this article shall be construed to require
22 a retail establishment to open an employee-only restroom to
23 the general public. The employee-only restroom shall remain
24 private.

§16-44-4. Limitation of liability.

1 (a) A retail establishment or an employee of a retail
2 establishment is not civilly liable for any act or omission for
3 allowing a customer that has an eligible medical condition
4 and presents a valid medical alert restroom access card to
5 use an employee-only restroom, if the act or omission:

6 (1) Is not willful or grossly negligent;

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

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

12 (b) A retail establishment is not required to make any
13 physical changes to an employee-only restroom under this
14 article.

§16-44-5. Penalties for violations.

1 A retail establishment or an employee of a retail estab-
2 lishment that violates the provisions of this article is guilty
3 of a misdemeanor and, upon conviction thereof, shall be
4 fined not more than \$100.