

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2134**

BY DELEGATE CAPUTO

[Introduced January 9, 2019; Referred  
to the Committee on Technology and Infrastructure  
then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §47-11-1, §47-11-2, §47-11-3, §47-11-4, §47-11-5, §47-11-6, §47-11-7, §47-  
 3 11-8 and §47-11-9, all relating to requiring retail establishments offering gasoline or other  
 4 motor fuel to provide refueling assistance and refueling access to persons with a disability;  
 5 establishing requirements and exceptions; giving Secretary of the Department of  
 6 Transportation responsibility for implementation and enforcement; giving secretary rule-  
 7 making authority; and providing civil penalties.

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

**ARTICLE 11. DISABLED MOTORIST REFUELING ASSISTANCE AND  
 ACCESSIBILITY ACT.**

**§47-11-1. Short Title.**

1 This article shall be known and may be cited as the “Disabled Motorist Refueling  
 2 Assistance and Accessibility Act”.

**§47-11-2. Purpose.**

1 The purpose of this article is to ensure that persons with a disability receive refueling  
 2 assistance from retail establishments that offer gasoline or other motor fuel for sale, to ensure  
 3 that gas station pumps are accessible for use by persons with a disability and to establish  
 4 requirements for and exceptions to this assistance. The requirements set forth in this article are  
 5 minimum requirements and do not limit additional forms of assistance. The requirements are  
 6 intended to be consistent with and complimentary to all requirements under the federal Americans  
 7 with Disabilities Act. It is further intended that if the Americans with Disabilities Act is amended,  
 8 by law or regulation, to require additional forms of refueling assistance or accessibility features  
 9 than what are provided in this article, this article will be amended and reenacted to reflect the  
 10 additional requirements.

**§47-11-3. Definitions.**

1           For the purposes of this article, the following definitions are applicable unless a different  
2 meaning clearly appears from the context.

3           “Operable parts” are parts of a gas station pump or island and include the credit card  
4 reader, the fuel grade selection button, the push button notification device, all help buttons and  
5 the fuel dispenser.

6           “Person with a disability” is a person who has been issued a special registration plate or  
7 removable windshield placard from the Division of Motor Vehicles pursuant to §17C-13-6 of this  
8 code or a person who has been issued similar items from outside the State of West Virginia.

9           “Refueling assistance” means, at a minimum, the assistance methods identified in this  
10 article that retail establishments are required to provide to a person with a disability and other  
11 methods of assistance that a retail establishment may implement which are not inconsistent with  
12 this article.

13           “Refueling accessibility” means structural designs or alterations which result in gas station  
14 pumps that allow persons with a disability greater ability to pump their own gas.

15           “Retail establishment” means a business that offers gasoline or other motor fuel for sale  
16 on a full service and self-service basis and only on a self-serve basis.

17           “Secretary” means the Secretary of the West Virginia Department of Transportation.

**§47-11-4. Powers and duties of the secretary.**

1           The secretary is responsible for the implementation and enforcement of this article,  
2 including reasonable time frames for compliance, and shall propose rules for legislative approval  
3 in accordance with the provisions of §29A-3-1 et seq. of this code.

**§47-11-5. Refueling assistance at all retail establishments.**

1           (a) The retail establishment shall equip every gas station pump with a push button  
2 notification device that meets the following minimum specifications:

3           (1) Provides a recognizable signal inside the retail establishment that a driver needs  
4 refueling assistance;

5 (2) Is able to be operated from the vehicle using only one hand;

6 (3) Has at least one sign next to it which identifies the device; and

7 (4) Is able to be operated from the vehicle.

8 (b) The retail establishment shall post a phone number at each pump that connects a  
9 person with a disability to an employee within the retail establishment for purposes of requesting  
10 refueling assistance.

11 (c) The retail establishment shall post signage at each gas station pump and at a location  
12 readily observable at the entrance onto the property of the retail establishment that serves to  
13 inform persons with a disability the forms of assistance available. The signage requires, at  
14 minimum, the following information in large, bold lettering:

15 (1) The hours that refueling assistance is available;

16 (2) A phone number that the person with a disability can call to communicate the need for  
17 refueling assistance to an employee within the retail establishment;

18 (3) The requirement that in order to be eligible for refueling assistance, the vehicle must  
19 have properly displayed a special plate or removable windshield placard issued pursuant to §17C-  
20 13-6 of this code;

21 (4) The condition that the retail establishment will not provide refueling assistance if there  
22 is a person in the vehicle who is capable of providing the assistance;

23 (5) The requirement that the operator of the vehicle must be the owner of the vehicle to  
24 whom the special license was issued, or the person to whom the placard was issued; and

25 (6) The location of the push button notification device.

26 (d) The retail establishment is not required to provide refueling assistance if there is only  
27 one employee working at the time a person with disability makes a request for assistance.

28 (e) The retail establishment is not required to provide refueling assistance if someone able  
29 to provide refueling assistance is in the vehicle.

30 (f) A person with disability requesting refueling assistance must have properly displayed  
31 a special plate or removable windshield placard issued pursuant to §17C-13-6 of this code at the

32 time of making the request for refueling assistance.

33 (g) An employee providing refueling assistance may request proof that the operator of the  
34 vehicle is the owner of the vehicle to whom the special plate or parking permit has been issued.

**§47-11-6. Refueling assistance at retail establishments with both full-service and self-service.**

1 (a) A retail establishment that offers gasoline or other motor fuel for sale on both a full-  
2 service and self-service basis shall provide refueling assistance during hours in which full-service  
3 is offered at the establishment upon the request of a person with a disability who is operating a  
4 motor vehicle.

5 (b) During hours in which full-service is not offered but the establishment offers for sale  
6 gasoline or other motor fuel on a self-service basis, the establishment shall provide refueling  
7 assistance upon the request of a person with a disability who is operating a motor vehicle when  
8 at least two employees are working at the establishment.

9 (c) The retail establishment shall provide refueling assistance to the person with a  
10 disability without a charge beyond the self-service price regardless of whether the refueling  
11 assistance is provided at a self-service or full-service pump.

**§47-11-7. Retail establishments with only self-service.**

1 (a) A retail establishment that offers gasoline for sale only on a self-service basis must  
2 provide refueling assistance without a charge beyond the self-service price.

3 (b) The self-service retail establishment is not required to provide refueling assistance  
4 during those times that it is being operated on a remote control basis by only one employee.

**§47-11-8. Refueling accessibility at retail establishments.**

1 (a) All gas pumps at a retail establishment that offers gasoline or any other motor fuel for  
2 sale must contain operable parts that are no more than 54 inches above the driving service.

3 (b) Newly constructed pumps or alterations to existing pumps or pump islands must have  
4 operable parts that are no more than 48 inches above the driving surface.

**§47-11-9. Penalties; assessment and collection.**

- 1            Failure to comply with the provisions of this article subjects the owner of a retail  
2 establishment that offers gasoline or other motor fuel for sale to a civil penalty of not less than  
3 \$300 nor more than \$600 for the first charge of failure to comply and then for each day of  
4 noncompliance beyond the date established by the Secretary of the Department of Transportation  
5 for the retail establishment to achieve compliance.

NOTE: The purpose of this bill is to require retail establishments offering gasoline or other motor fuel to provide refueling assistance and refueling access to persons with a disability, to establish requirements and exceptions, to provide the Secretary of the Department of Transportation with enforcement and rule-making authority and to establish penalties for noncompliance.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.