

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 606**

BY SENATOR STOLLINGS

[Introduced March 9, 2021; referred  
to the Committee on Health and Human Resources;  
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, and §16-63-5, all relating to access  
 3 to nonpublic restrooms by individuals with certain medical conditions and under specified  
 4 circumstances; and providing criminal penalty for violation.

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

**ARTICLE 63. RESTROOM ACCESS ACT.**

**§16-63-1. Short title.**

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

**§16-63-2. Definitions.**

1 As used in this article:

2 “Customer” means a person or individual who is lawfully on the premises of a retail  
 3 establishment;

4 “Eligible medical condition” means any medical condition that requires immediate access  
 5 to a toilet facility as determined by a health care provider. These conditions include, but are not  
 6 limited to, Crohn’s disease, ulcerative colitis, any inflammatory bowel disease or irritable bowel  
 7 syndrome, urge, or stress urinary incontinence;

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

**§16-63-3. Customer access to restroom facility; retail establishment.**

1 A retail establishment which has a toilet facility for its employees that is not open to the  
 2 general public shall allow a customer to use that toilet facility during normal business hours if the  
 3 following conditions are met:

4 (1) The customer requesting the use of the toilet facility suffers from an eligible medical  
 5 condition or uses an ostomy device;

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

**§16-63-4. Limitation of liability.**

- 1           (a) A retail establishment or an employee of a retail establishment is not civilly liable for
- 2 any action or omission in allowing a customer that has an eligible medical condition to use an
- 3 employee toilet facility that is not a public restroom if the act or omission:
- 4           (1) Is not willful or grossly negligent;
- 5           (2) Occurs in an area of the retail establishment that is not accessible to the public; and
- 6           (3) Results in an injury or death to the customer, or any individual other than an employee
- 7 accompanying the customer.
- 8           (b) A retail establishment is not required to make any physical changes to an employee
- 9 toilet facility under this article.

**§16-63-5. Penalties for violations.**

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

NOTE: The purpose of this bill is to allow access to nonpublic restrooms by individuals with certain medical conditions and under specified circumstances. Criminal penalties are included for violations.

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