

SENATE BILL REPORT

ESHB 1138

As of March 26, 2009

Title: An act relating to allowing persons with certain medical conditions to access the restroom in a retail establishment.

Brief Description: Concerning access to employee restrooms in retail stores.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Liias, Clibborn, Moeller, Green, Cody, Driscoll, Morrell and Pedersen).

Brief History: Passed House: 3/03/09, 90-7.

Committee Activity: Judiciary: 3/25/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: Under current public accommodation laws, a retail establishment is not explicitly required to allow a customer access to a nonpublic restroom. The Human Rights Commission has adopted rules prohibiting a person in the operation of a place of public accommodation from failing to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when ordinary service would prevent the person from fully enjoying the place of public accommodation. Whether an accommodation is "reasonable" is determined on a case-by-case basis. Thus, depending on the unique context of a contemplated retail establishment, it may or may not be reasonable for that establishment to provide safe access to an employee restroom.

Inflammatory bowel disease (IBD) refers to two chronic diseases that cause inflammation of the intestines: ulcerative colitis and Crohn's disease. Both of these diseases typically cause patients to experience diarrhea and abdominal pain, and there is no known cure for IBD. Although a person with IBD may achieve remission through treatment, the person will likely experience the occasional, acute recurrence of the original symptoms. When a person suffers a recurrent episode, that person will often require the use of a restroom. Severe IBD may require surgery, including a temporary or permanent colostomy or ileostomy. An ostomy refers to a surgically created opening in the body for the discharge of body wastes. An ostomy device is a receptacle used to collect the diverted waste.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Several states, including Illinois, Minnesota, Texas, and Maryland, have enacted legislation that requires retail establishments and their employees to grant persons with IBD access to a restroom facility ordinarily reserved for employees.

Summary of Bill: A retail establishment that has a restroom facility for its employees must allow a customer to use the facility during business hours if it is reasonably safe and the following conditions are met:

1. the customer making the request has an eligible medical condition or uses an ostomy device, and provides evidence of the existence of the medical condition or device in writing. The writing may be in the form of either a signed statement by the customer's health care provider on a form prepared by the Department of Health or an identification card issued by a nonprofit organization that serves individuals who suffer from an eligible medical condition or use an ostomy device;
2. three or more employees are working at the time of the request;
3. the retail establishment does not normally make a restroom available to the public;
4. the restroom facility is reasonably safe and not located in an area where providing access would create an obvious health or safety risk to the customer;
5. allowing the customer access to the restroom facility does not pose a security risk to the retail establishment or its employees.

A retail establishment may require that an employee accompany a qualifying customer to an employee restroom facility. A retail establishment is not required to make any physical changes to an employee restroom facility in order to comply with this section. "Retail establishment" does not include a structure of 800 square-feet or less.

For a first violation of the requirement to allow a customer with an eligible medical condition to have access to a retail establishment's restroom facility, the establishment and employee will receive a warning letter from the city or county attorney providing information about the access requirements. For a subsequent violation, the retail establishment or employee will be guilty of a civil infraction with a fine not to exceed \$100.

An eligible medical condition includes Crohn's disease, ulcerative colitis, any other IBD, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a restroom facility.

A retail establishment or an employee is not civilly liable for any act or omission in allowing a qualifying customer to use a restroom that is not a public restroom if the act or omission is not willful or grossly negligent; it occurs in an area of the retail establishment that is not accessible to the public; and it results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is a simple way we can help people with IBD live a more comfortable life by allowing access to a restroom when necessary. It is extremely degrading and embarrassing to have an accident when all one needs is access to a restroom. It is especially hard for children with IBD that are denied access to a restroom. There are over 14 million Americans living with IBD. This bill represents freedom for people with IBD because they will be able to go places and enjoy activities with greater peace of mind.

Persons Testifying: PRO: Representative Liias, prime sponsor; Lois Fink, Get Your Guts In Gear; Mike McCready, Pearl Jam; Barb Wodzin, Linda Huse, Crohn's and Colitis Foundation.