

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 341**

6 (By Senators Stollings and Foster)

7 _____
8 [Originating in the Committee on Government Organization;
9 reported February 16, 2012.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §16-44-1, §16-44-2,
14 §16-44-3, §16-44-4 and §16-44-5, all relating to creating the
15 Restroom Access Act; requiring access to employee-only
16 restrooms by individuals with certain medical conditions who
17 present a valid medical alert restroom access card under
18 specified circumstances; limiting liability to the
19 establishment; and providing criminal penalty for violation.

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

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §16-44-1, §16-44-2,
23 §16-44-3, §16-44-4 and §16-44-5, all to read as follows:

24 **ARTICLE 16. PUBLIC HEALTH.**

1 **ARTICLE 44. RESTROOM ACCESS ACT.**

2 **§16-44-1. Short title.**

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

4 **§16-44-2. Definitions.**

5 As used in this article:

6 (1) "Customer" means a person or individual who is lawfully
7 on the premises of a retail establishment.

8 (2) "Eligible medical condition" means any medical condition
9 that requires immediate access to a restroom as determined by a
10 health care provider. These conditions include, but are not
11 limited to, Crohn's disease, ulcerative colitis, any inflammatory
12 bowel disease or irritable bowel syndrome.

13 (3) "Medical alert restroom access card" means a card provided
14 by the Foundation for Clinical Research in Inflammatory Bowel
15 Disease or other nationally recognized organization indicating that
16 the carrier has an eligible medical condition and needs immediate
17 access to a restroom.

18 (4) "Restroom" means a toilet facility.

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

24 **§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 a
3 customer to use the employee-only restroom during normal business
4 hours if the following conditions are met:

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

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

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

13 (4) The restroom is not located in an area where providing
14 access would create an obvious health or safety risk to the
15 customer or an obvious security risk to the retail establishment;
16 and

17 (5) A public restroom is not immediately accessible to the
18 customer.

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

22 **§16-44-4. Limitation of liability.**

23 (a) A retail establishment or an employee of a retail
24 establishment is not civilly liable for any act or omission for

1 allowing a customer that has an eligible medical condition and
2 presents a valid medical alert restroom access card to use an
3 employee-only 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
6 accessible to the public; and
- 7 (3) Results in an injury or death to the customer, or any
8 individual other than an employee accompanying the customer.

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

11 **§16-44-5. Penalties for violations.**

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