

H. B. 2537

(By Delegates Caputo (By Request) Longstreth,
Diserio and Manchin

[Introduced February 19, 2013; referred to the
Committee on Roads and Transportation then the
Judiciary.]

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

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 §47-11-1, §47-11-2,
§47-11-3, §47-11-4, §47-11-5, §47-11-6, §47-11-7, §47-11-8 and
§47-11-9, all to read as follows:

**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
2 Motorist Refueling Assistance and Accessibility Act".

3 **§47-11-2. Purpose.**

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

18 **§47-11-3. Definitions.**

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

22 "Operable parts" are parts of a gas station pump or island and
23 include the credit card reader, the fuel grade selection button,
24 the push button notification device, all help buttons and the fuel

1 dispenser.

2 "Person with a disability" is a person who has been issued a
3 special registration plate or removable windshield placard from the
4 Division of Motor Vehicles pursuant to section six, article
5 thirteen, chapter seventeen-c of this code or a person who has been
6 issued similar items from outside the State of West Virginia.

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

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

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

18 "Secretary" means the secretary of the West Virginia
19 Department of Transportation.

20 **§47-11-4. Powers and duties of the secretary.**

21 The secretary is responsible for the implementation and
22 enforcement of this article, including reasonable time frames for
23 compliance, and shall propose rules for legislative approval in
24 accordance with the provisions of article three, chapter

1 twenty-nine-a of this code.

2 **§47-11-5. Refueling assistance at all retail establishments.**

3 (a) The retail establishment shall equip every gas station
4 pump with a push button notification device that must meet the
5 following minimum specifications:

6 (1) Must provide a recognizable signal inside the retail
7 establishment that a driver needs refueling assistance;

8 (2) Must be able to be operated from the vehicle using only
9 one hand;

10 (3) Must have at least one sign next to it which identifies
11 the device; and

12 (4) Must be able to be operated from the vehicle.

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

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

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

24 (2) A phone number that the person with a disability can call

1 to communicate the need for refueling assistance to an employee
2 within the retail establishment;

3 (3) The requirement that in order to be eligible for refueling
4 assistance, the vehicle must have properly displayed a special
5 plate or removable windshield placard issued pursuant to section
6 six, article thirteen, chapter seventeen-c of this code;

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

10 (5) The requirement that the operator of the vehicle must be
11 the owner of the vehicle to whom the special license or placard was
12 issued; and

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

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

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

20 (f) A person with disability requesting refueling assistance
21 must have properly displayed a special plate or removable
22 windshield placard issued pursuant to section six, article
23 thirteen, chapter seventeen-c of this code at the time of making
24 the request for refueling assistance.

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

4 **§47-11-6. Refueling assistance at retail establishments with both**
5 **full-service and self-service.**

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

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

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

21 **§47-11-7. Retail establishments with only self-service.**

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

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

4 **§47-11-8. Refueling accessibility at retail establishments.**

5 (a) All gas pumps at a retail establishment that offers
6 gasoline or any other motor fuel for sale must contain operable
7 parts that are fifty-four inches or below the driving service.

8 (b) Newly constructed pumps or alterations to existing pumps
9 or pump islands must have operable parts that are forty-eight
10 inches or below.

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

12 Failure to comply with the provisions of this article will
13 subject the owner of a retail establishment that offers gasoline or
14 other motor fuel for sale to a civil penalty of not less than \$300
15 nor more than \$600 for the first charge of failure to comply and
16 then for each day of noncompliance beyond the date established by
17 the Secretary of the Department of Transportation for the retail
18 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 with rule-making authority and to establish penalties for noncompliance.

This bill is new; therefore, it has been completely underscored.