

H. B. 3016

(By Delegate Wells)

[Introduced March 21, 2013; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-45-1, §16-45-2,
§16-45-3, §16-45-4 and §16-45-5, all relating to access to
nonpublic restrooms by individuals with certain medical
conditions and under specified circumstances; and providing
criminal penalty for violation.

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 §16-45-1, §16-45-2,
§16-45-3, §16-45-4 and §16-45-5, all to read as follows:

ARTICLE 45. RESTROOM ACCESS ACT.

§16-45-1. Short title.

This article shall be known as the Restroom Access Act.

§16-45-2. Definitions.

1 As used in this article:

2 (1) "Customer" means a person or individual who is lawfully
3 on the premises of a retail establishment;

4 (2) "Eligible medical condition" means any medical condition
5 that requires immediate access to a toilet facility as determined
6 by a health care provider. These conditions include, but are not
7 limited to, Crohn's disease, ulcerative colitis, any inflammatory
8 bowel disease or irritable bowel syndrome;

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

14 **§16-45-3. Customer access to restroom facility; retail**
15 **establishment.**

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

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

23 (2) Three or more employees of the retail establishment are
24 working at the time the customer requests use of the employee

1 toilet facility;

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

4 (4) The employee toilet facility is not located in an area
5 where providing access would create an obvious health or safety
6 risk to the customer or an obvious security risk to the retail
7 establishment; and

8 (5) A public restroom is not immediately accessible to the
9 customer.

10 **§16-45-4. Limitation of liability.**

11 (a) A retail establishment or an employee of a retail
12 establishment is not civilly liable for any action or omission in
13 allowing a customer that has an eligible medical condition to use
14 an employee toilet facility that is not a public restroom if the
15 act or omission:

16 (1) Is not willful or grossly negligent;

17 (2) Occurs in an area of the retail establishment that is not
18 accessible to the public; and

19 (3) Results in an injury or death to the customer, or any
20 individual other than an employee accompanying the customer.

21 (b) A retail establishment is not required to make any
22 physical changes to an employee toilet facility under this article.

23 **§16-45-5. Penalties for violations.**

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

NOTE: The purpose of this bill is to allow individuals with eligible medical conditions access to nonpublic employee restrooms in retail establishments under specified circumstances; limit liability for the retail establishments and employees; and establish penalties.

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