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]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, and §16-63-5, 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:

ARTICLE 63. Restroom Access Act.

§16-63-1. Short title.

This article shall be known as the Restroom Access Act.

§16-63-2. Definitions.

As used in this article:

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

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

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

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

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

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

(2) Three or more employees of the retail establishment are working at the time the customer requests use of the employee toilet facility;

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

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

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

§16-63-4. Limitation of liability.

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

(1) Is not willful or grossly negligent;

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

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

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

§16-63-5. Penalties for violations.

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