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HOUSE BILL 168

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE RESTROOM ACCESS ACT;
PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Restroom Access Act".

Section 2. DEFINITIONS.--As used in the Restroom Access
Act:

A. "customer" means an individual who is lawfully
on the premises of a retail establishment;

B. "eligible medical condition" means Crohn's
disease, ulcerative colitis, irritable bowel syndrome or any
other permanent or temporary medical condition that requires
immediate access to a restroom facility;

C. "health professional" means a physician,

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1 osteopathic physician, physician assistant or nurse
2 practitioner licensed or certified to practice in New Mexico;
3 and

4 D. "retail establishment" means a place of business
5 open to the general public for the sale of goods or services.

6 Section 3. REQUIRED ACCESS--DUTIES.--

7 A. A retail establishment that has a restroom
8 facility for its employees shall allow a customer to use the
9 restroom facility during normal business hours if:

10 (1) the retail establishment does not have a
11 public restroom that is immediately accessible to the customer;

12 (2) the employee restroom facility is not
13 located in an area where providing access would create an
14 obvious health or safety risk to the customer or an obvious
15 security risk to the retail establishment;

16 (3) the customer requesting use of the
17 employee restroom facility provides the retail establishment
18 with evidence of the customer's eligible medical condition,
19 including:

20 (a) a copy of a statement signed by a
21 health professional or a person acting under the delegation and
22 supervision of a health professional that indicates the
23 customer suffers from an eligible medical condition or uses an
24 ostomy device; or

25 (b) an identification card that is

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1 issued by a nationally recognized health organization or a
2 local health department and that indicates the customer suffers
3 from an eligible medical condition or uses an ostomy device;
4 and

5 (4) three or more employees of the retail
6 establishment are working and physically present on the
7 premises of the retail establishment at the time the customer
8 requests to use the employee restroom facility.

9 B. A customer who uses a restroom facility pursuant
10 to the Restroom Access Act shall leave the restroom facility in
11 the same condition as it was before the customer used the
12 restroom facility.

13 C. In providing access to an employee restroom
14 facility pursuant to the Restroom Access Act, the retail
15 establishment or employee does not owe the customer to whom
16 access is provided a greater degree of care than is owed to a
17 licensee on the premises.

18 D. A retail establishment is not required to make
19 any physical changes to an employee restroom facility pursuant
20 to the Restroom Access Act.

21 Section 4. CIVIL LIABILITY.--A retail establishment or an
22 employee of a retail establishment is not civilly liable for an
23 act or omission in allowing a customer who claims to have an
24 eligible medical condition to use an employee restroom facility
25 that is not a public restroom if the act or omission:

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1 A. is not willful or grossly negligent;

2 B. occurs in an area of the retail establishment
3 that is not accessible to the public; and

4 C. results in an injury to or death of the customer
5 or an individual other than an employee accompanying the
6 customer.

7 Section 5. PENALTIES.--An employee of a retail
8 establishment who refuses to provide a customer with access to
9 an employee restroom facility as required by the Restroom
10 Access Act is, upon conviction, guilty of a petty misdemeanor
11 and shall be sentenced pursuant to the provisions of Section
12 31-19-1 NMSA 1978.

13 Section 6. SEVERABILITY.--If any part or application of
14 this act is held invalid, the remainder or its application to
15 other situations or persons shall not be affected.

16 Section 7. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2009.