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HOUSE BILL NO. 1375

Offered January 9, 2013

Prefiled December 10, 2012

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-553, relating to customer access to restrooms; penalty.*

Patron—Krupicka

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-553, as follows:

CHAPTER 50.**RESTROOM ACCESS ACT.****§ 59.1-550. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Customer" means an individual who is lawfully on the premises of a retail establishment.

"Eligible medical condition" means Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a toilet facility.

"Retail establishment" means a place of business open to the general public for the sale of goods or services. "Retail establishment" does not include (i) a filling station or service station if the structure does not exceed 800 square feet or less, regardless of whether an employee toilet facility is located within that structure, or (ii) a branch or office of a bank or savings institution or any subsidiary or affiliate thereof.

§ 59.1-551. Retail establishment; customer access to restroom facilities.

A retail establishment that has a toilet facility for its employees shall allow a customer to use that facility during normal business hours if the toilet facility is reasonably safe and all of the following conditions are met:

1. The customer requesting the use of the employee toilet facility suffers from an eligible medical condition or utilizes an ostomy device;

2. The customer requesting the use of the employee toilet facility, at the time he requests to use the employee toilet facility, provides evidence of the customer's eligible medical condition or use of an ostomy device, which may be satisfied by written certification of a physician or other licensed medical professional or such other evidence that is reasonable under the circumstances;

3. Three or more employees of the retail establishment are working at the time the customer requests use of the employee toilet facility;

4. The retail establishment does not normally make a restroom available to the public;

5. The employee toilet facility is not located in an area where providing access would create an obvious security risk to the retail establishment;

6. A public restroom is not immediately accessible to the customer; and

7. The employee toilet facility is not located in an area that is legally restricted to the public.

§ 59.1-552. Liability.

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

1. It is not willful or grossly negligent;

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

3. It results in an injury to or the death of 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 act.

§ 59.1- 553. Penalty; additional liability.

A retail establishment or an employee of a retail establishment that violates the provisions of this chapter shall be subject to a civil penalty of \$100. Such penalty shall be collected by the attorney for the locality in which the violation occurred and the proceeds shall be deposited into the general fund. A violation of any provision of this chapter by a retail establishment or its employee shall not create any private cause of action or otherwise subject a retail establishment or its employee to any civil liability

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59 *to any person.*