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HOUSE BILL 399

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

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, nurse practitioner  
2 or doctor of oriental medicine, licensed to practice in New  
3 Mexico; 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 that the customer  
3 suffers from an eligible medical condition or uses an ostomy  
4 device; 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  
17 anyone else allowed 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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A. is not willfully or grossly negligent;

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

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

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

**SECTION 6. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2011.