

CHAPTER 414
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 245
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ACCESS TO PRIVATE BATHROOMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16 of the Delaware Code by inserting a new Chapter 30E as shown by underline as follows:

Chapter 30E. ACCESS TO PRIVATE RESTROOMS

§ 3001E. Definitions.

For purposes of this chapter:

- (1) "Customer" means an individual who is lawfully on the premises of a retail establishment.
- (2) "Eligible medical condition" means Crohn's disease or ulcerative colitis, celiac disease, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a restroom facility.
- (3) "Retail establishment" means any business or place where members of the public have access as invitees, licensees, or customers.
- (4) "Restroom" means a room containing a toilet.

§ 3002E. Access to restrooms.

(a) A retail establishment that has a restroom facility for its employees, not usually accessible to the public, shall allow a customer to use that facility during normal business hours if the following conditions are met:

(1) The customer requesting the use of the employee restroom facility suffers from an eligible medical condition or uses an ostomy device, provided that the existence of the condition or device is documented in writing by a physician or other licensed medical professional, or an identification card that is issued by a nationally-recognized health organization or state agency and that indicates the customer 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 the use of the employee restroom facility;

(3) The employee restroom 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 establishment;

(4) Accessing the bathroom would not expose the customer to sensitive company documents, materials, or trade secrets;

(5) Accessing the bathroom would not cause the retail establishment to cease or significantly curtail normal business operations; and

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

(b) For purposes of this subsection, an obvious health or safety risk would include but is not limited to a situation where accessing the employee restroom facility requires the customer to traverse an area where manufacturing or heavy equipment is in use, items are stored on high shelves, adequate lighting is not present, the floor may be wet or slippery, or hazardous materials are used or stored.

§ 3003E. Physical changes or improvements.

This chapter does not require a retail establishment to make any physical changes or improvements to an employee restroom facility located on the premises.

§ 3004E. Penalty.

A violation of this chapter shall for the first offense receive a warning. Any subsequent offense shall be punished by a civil penalty of one hundred dollars.

§ 3005E. Enforcement.

The Division of Public Health shall enforce the provisions of this chapter. Any civil penalties collected under this chapter shall be directed to the Division of Public Health for enforcement and education related to this chapter.

Approved August 12, 2014