

- SUBJECT:** Access to private restrooms for persons with certain medical conditions
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Delisi, Laubenberg, Jackson, Cohen, Coleman, Gonzales, S. King, Truitt
- 0 nays
- 1 absent — Olivo
- WITNESSES:** For — Mark Fantacone, Crohns and Colitis Foundation; Daniel Manks; Gabriel Martinez; Nancy McIlhaney; Catherine Wicker; Jeff Zwiener; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans with Disabilities; Sherrie Caplan, Crohns and Colitis Foundation; Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; Randall Ellis, Legacy Community Health Services; Carrie Kroll, Texas Pediatric Society; Brad Shields, Texas Retailers Association; Darren Whitehurst, Texas Medical Association; and six individuals)
- Against — None
- On — Annabelle Dillard, Texas Department of State Health Services
- DIGEST:** CSHB 416 would amend Health and Safety Code, ch. 341 to establish the Restroom Access Act. The bill would permit customers – defined as individuals who were lawfully on the premises of a business – to use an employee restroom during normal business hours if the business did not have a public restroom immediately available. Customers would be allowed to access employee restrooms if the customers provided the business with evidence of a medical condition that would necessitate an emergency need to use the restroom. The evidence of a medical condition could include:
- a copy of a signed physician statement that indicated that the customer had a medical condition that would require the customer to use the restroom suddenly or used an ostomy device, a device that allows for the collection of urine or feces outside of the body; or

- an identification card from a nationally recognized health organization or a local health department that indicated that the customer has a medical condition that would require the customer to use the restroom suddenly or used an ostomy device.

CASHB 416 would apply to businesses that were open to the general public for the sale of goods or services. Businesses would not have to allow customers access to an employee restroom if the restroom were located in an area that could be dangerous to the health and safety of the customer or if the business had fewer than three employees physically present on the premises at the time the customer asked to use the restroom. CASHB 416 would not require businesses to make any physical changes to an employee restroom to accommodate customers.

A retail establishment or its employees that refused to provide a customer with access to an employee restroom would commit a misdemeanor offense punishable by a fine no more than \$100.

The bill would take effect on September 1, 2007

**SUPPORTERS  
SAY:**

CASHB 416 would benefit greatly those who needed suddenly to use a restroom because of a medical condition. Millions nationwide are affected by the need to suddenly use a restroom, including pregnant women.

An estimated 1 million Americans and 115,000 Texans are afflicted by Inflammatory Bowel Disease, including Crohn's Disease and ulcerative colitis, medical conditions that require immediate access to a restroom. These diseases involve an abnormal response by the immune system in which it attacks parts of the small intestine, large intestine, and colon, and sufferers may experience fecal or urinary incontinence. It is estimated that 5.5 to 17 million Americans have conditions that would require them to seek immediate access to a restroom, including pregnant women, the elderly, and people with diabetes.

This bill would allow these people to go about their lives without suffering embarrassment or feeling the need to shut themselves indoors. A number of states have considered similar laws and Illinois enacted a law in 2005, "Ally's Law," which allows those who need immediate access to a toilet facility to use employee facilities. Michigan, Minnesota, Delaware, and Tennessee have or are considering similar statutes.

The fine that CSHB 416 would levy would be no more than \$100, which would not be excessive. Also, placing enforcement in the purview of local prosecutors would avoid appropriating new staff and funding at the Department of State Health Services.

There should be no concerns about educating business owners because, as in other states, the Department of State Health Services would work with retail and business interests to inform businesses across the state of the new requirement. In Illinois, the result of the collaborative education campaign between government and private industry has been remarkably successful in educating businesses, as there have been no known violations of “Ally's Law.”

OPPONENTS  
SAY:

CSHB 416 could create a burden for business because the bill would not contain any provision to inform and educate them and their employees about allowing customers to use employee restrooms. Businesses and their employees could unwittingly violate the law because they were unaware of it. Even with an accidental violation, these businesses would be subject to a criminal penalty. This bill should provide for a first warning so that businesses could be informed about the law if a first violation were accidental.

CSHB 416 also could confuse some citizens who wished to report being denied access to an employee restroom because enforcement would not lie with the usual channels. The Department of State Health Services generally oversees inspection of restrooms in public buildings, but local prosecutors would be responsible for enforcing this law, creating a schism between enforcement and inspection.

NOTES:

The original bill would have required a customer to present a signed physician's prescription when requesting to use an employee restroom. The substitute eliminated that provision.