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BILL ANALYSIS

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House Bill 5046 (Substitute H-1 as passed by the House)
Sponsor: Representative Andy Meisner
House Committee: Commerce
Senate Committee: Commerce and Tourism

Date Completed: 6-23-08

CONTENT

The bill would create a new statute to do all of the following:

- Require a retail establishment to allow a customer who suffered from an "eligible medical condition" or used an ostomy device to use an employee toilet facility.**
- Exempt a retail establishment and its employees from civil liability for an injury or death arising from customer use of an employee restroom, unless certain conditions applied.**
- Prescribe civil and criminal penalties for violations of the bill.**

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

"Retail establishment" would mean a place of business open to the general public for the sale of goods or services. "Customer" would mean an individual who is lawfully on the premises of a retail establishment.

Customer Use of Toilet Facility

The bill would require a retail establishment that had a toilet facility for its employees to allow a customer to use that facility during normal business hours if all of the following applied:

- The customer requesting use of the employee toilet facility suffered from an eligible medical condition or used an ostomy device.
- Two or more employees of the retail establishment were working at the time the customer requested use of the toilet facility.
- The customer provided the retail establishment with a copy of a statement, signed by a doctor on a prescription form, that indicated the customer suffered from an eligible medical condition or used an ostomy device.
- The retail establishment did not normally make a restroom available to the public.
- The employee toilet facility was 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 retail establishment.
- A public restroom was not immediately accessible to the customer.

The bill would not require a retail establishment to make any physical changes to an employee toilet facility.

Immunity from Civil Liability

A retail establishment or an employee of a retail establishment would not be civilly liable for any injury to or death of a customer allowed to use an employee toilet facility that was not a public restroom, or to an individual accompanying the customer, other than an employee, unless all of the following applied:

- The retail establishment or the employee knew or should have known of the condition that caused the injury or death, should have realized that the condition involved an unreasonable risk of harm to a customer or other individual, and should have expected that the customer or other individual would not discover or realize the danger.
- The retail establishment or employee failed to exercise reasonable care to make the condition safe or to warn the customer or other individual of the condition and the risk.
- The customer or other individual did not know or have reason to know of the condition and the risk involved.
- The injury or death occurred in an area of the retail establishment that was not accessible to the public.

Civil & Criminal Penalties

A retail establishment or an employee of a retail establishment that violated the requirement to allow a customer to use the employee toilet facility would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$100.

A person who did any of the following would be guilty of a misdemeanor:

- Falsely made, published, passed, altered, or forged a prescription form required under the bill.
- Altered or forged a doctor's signature on a prescription form required under the bill.
- Knowingly possessed a false, forged, or altered prescription form required under the bill.

(Under the Michigan Penal Code, a misdemeanor for which no penalty is specifically prescribed is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500 (MCL 750.504).)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. State civil infraction fine revenue received under the bill would benefit public libraries. Justice System Fund assessments (which the court imposes when a defendant is responsible for a State civil infraction) would go to support various programs in the judicial branch, and the Departments of State Police and Corrections. The amount of revenue would depend on the number of violations under the bill.

There are no data to indicate how many offenders would be convicted of the proposed offense. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.