



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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**MEMORANDUM**

DATE: April 30, 2014

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, <sup>DMP/so</sup> Chairperson  
State Council for Persons with Disabilities

RE: H.B. 245 (Restroom Access)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 245, with H.A. No. 1, which would have the following effects. Customers of customers of retail establishments which have an employee restroom, not usually accessible to the public, would be permitted to use the restroom if the following conditions are met: 1) the customer has written documentation of a qualifying medical condition or uses an ostomy device; 2) two or more employees are working at the time of request; 3) the retail establishment does not normally make the restroom available to the public; and 4) access would not create an obvious health or safety risk. Retailers would not be liable for acts or omissions which do not constitute negligence. Retailers would not be required to make physical alterations to restrooms. Enforcement would be delegated to the Division of Public Health (DPH). A first violation would result in a warning. Any subsequent violation could result in a \$100 civil penalty paid to DPH.

This bill was introduced on March 13, 2014. As of April 4, it remained tabled in the House Health & Human Development Committee. H.A. No. 1 was placed with the bill by the prime sponsor on March 26.

As background, variations of this bill have been introduced on multiple occasions in the House: H.B. No. 329 in 2006 and H.B. No. 3 in 2007. The SCPD endorsed the concept of H.B. No. 3 in February 13, 2007 correspondence. In 2007 the legislation was stricken on the same day the House passed H.R. No. 18 which encouraged, but did not require, retail establishments to allow persons with covered conditions to use an employee restroom. Copies of the above legislation are attached for facilitated reference.

SCPD endorses the proposed legislation. The rationale for the legislation is compiled in the attached articles, “The Restroom Access Act: A Major Victory for Crohn’s Patients” and “Paradee to Introduce Restroom Access Bill for Crohn’s Sufferers”. As the articles note, at least thirteen (13) states have passed similar legislation, including Connecticut, Illinois, Kentucky, Massachusetts, Texas, Washington, Minnesota, Colorado, Ohio, Michigan, Oregon, and Wisconsin. The Delaware legislation, which adopts a warning and civil penalty approach, is more benign to retailers than other states which impose criminal fines. Balancing the modest impact on retailers against the pain/embarrassment/suffering experienced by covered individuals, the legislation merits enactment.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 245 restroom access 4-30-14

### Crohn's Disease

Healthline → Crohn's Disease → Learn the Basics → Restroom Access Act

## The Restroom Access Act: A Major Victory for Crohn's Patients

Written by Jaime Weinstein | Published on August 13, 2012

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Some of the best ideas occur to people while they are in the bathroom. In the case of Allyson Bain, it was a lack of restroom accessibility that helped launch critical legislation, websites, and several iPhone apps.

It all started a decade ago, when a then 14-year-old Bain was out shopping with her mother at Old Navy. Three years prior, the Vernon Hills, Ill., teenager was diagnosed with Crohn's disease, a chronic illness that affects the digestive system. While out shopping, her Crohn's flared up and she had only minutes to find a restroom. Unfortunately, employees denied her the use of their restroom—even after Bain and her mother explained that it was a medical emergency—and the young girl suffered an embarrassing accident.

Vowing that this would never happen to anyone again, Bain and her mother contacted Illinois State Representative Kathy Ryg, whom the young Bain had met on an eighth grade field trip to the State Capitol in Springfield just months before.

Check out the Top 13 Apps for Crohn's Disease

Soon, Allyson Bain found herself helping to write a bill and testifying before the House Judiciary Committee. The bill passed unanimously in the House of Representatives and the Senate, and was signed into law by then-Gov. Rod Blagojevich in August 2005. Known as the "Restroom Access Act" or "Ally's Law," this groundbreaking bill, which requires businesses to make employee bathrooms accessible to those with IBD, chronic medical conditions, and pregnancy, has since passed in 11 other states and is pending in several more.

## The Restroom Access Act: A Major Victory for Crohn's Patients

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Currently, Minnesota, Texas, Kentucky, Tennessee, Colorado, Ohio, Michigan, Washington, Oregon, Wisconsin, and Connecticut have all passed this act or one like it.

Most recently, a bill (H-2366) similar to Ally's Law is making the rounds in Massachusetts and is only waiting on the signature of Gov. Deval Patrick to pass. H-2366 was drafted by the father of Catherine Rutley, a Sharon, Mass., teenager and ulcerative colitis patient, who in the past had found herself in uncomfortable situations similar to Bain's. Before making its way to Gov. Patrick, the bill had gone through several changes to help address concerns brought up by retailers and the following will be required in order to access an "employee-only" restroom: written documentation from a doctor or identification card, and at least two employees have to be present in the store at the time the request is made. There will be a \$100 fine for not complying.

A supporter of this act, The Foundation for Clinical Research in IBD, has created the Medical Alert Restroom Access Pass to help those affected by Crohn's and colitis around the nation. The card, available on the organization's site at [myibd.org](http://myibd.org) reads:

*"The holder of this card has Crohn's disease or ulcerative colitis. Colitis is painful and requires immediate access to a toilet facility. This patient cannot physically 'hold it.' Please make your restroom available."*

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### IBD, the ADA, and How to Report Noncompliance

Some of you may be curious as to why legislation such as the Restroom Access Act and Ally's Law needed to be passed if Inflammatory Bowel Diseases (IBDs) are now covered under the Americans with Disabilities Act (ADA). The reason is twofold: IBD protection under the umbrella of the ADA only recently went into effect (January 1, 2009), and the public is more familiar with the ADA's purpose of protecting employees with disabilities and is not necessarily familiar with the ADA's other functions.

With that said, the ADA explains its secondary function is to guarantee "equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications."

But if you think about what goes on in those critical moments between finding someone who will grant you restroom access to having them deny it to you and then trying to appeal to their moral compass that how you are a disabled individual with an invisible disease, time is of the essence. This is why legislation such as Ally's Law is crucial.

Now with the law in effect, all you will have to do is identify if there is more than one person working in the facility (the law's stipulation in most states), tell the clerk you need to use the facility and show them your IBD card or doctor's note. If you feel uncomfortable or guilty about using a facility without patronizing it, look for something small to purchase like a bottle of water or pack of gum.

For those who live in one of the states with the Restroom Access Act already in effect (MA's will go into effect in October) you may be wondering what to do if you are still denied access to a restroom. Call the police (non-emergency) and file a complaint. Denial of access to the restroom is considered a petty offense or misdemeanor.

## Crohn's Disease

Healthline — Crohn's Disease — Learn the Basics — Restroom Access Act

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Yes, it may feel a tad like tattling on someone. Think of it this way, you are tattling on someone for doing wrong against a person with a physical ailment and possibly helping someone else with IBD face a similar situation if not worse. Also, if you are feeling up to the challenge you can contact your state's attorney general's office to file a complaint. According to the MA attorney general's office's civil resources division, they welcome these types of calls to track incidences and are open to researching the matter to see if mediation with the facility is necessary.

## Find Out If Your State Is Potty Friendly

While little data exists on most public restroom-friendly cities, it's widely accepted that New York City is the least, while Portland ranks the highest.

Whereas San Francisco and Seattle fair somewhere in between, both cities rolled out automated public toilets (in 1995 and 2004, respectively), only to see the majority become dirty, unsafe, and inoperable within a few years. Los Angeles, Boston, New York, Pittsburgh, Atlanta, Washington DC, and San Antonio have also experimented with APTs with various degrees of success.

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Chicago restaurants received criticism last year after an exposé showed that they violated city code by not providing customers with restrooms. On the other hand, the Windy City also houses the most acclaimed public restroom in the country. In fact, the Field Museum's public restroom boasts a ceiling, decorated with renderings of Van Gogh's *Starry Night*, which also happens to absorb sounds, lending an air of tranquility. The women's bathroom also provides a nursing mother's room and special tot-friendly toilets, according to Cintas, a restroom facility supplier, that also ranks the best lavatories in the country.

Portland is considered a model city, offering adequate signage for restrooms in public buildings, several freestanding, open-space comfort stations, and a number of innovative, sustainable, solar-powered, vandalism-resistant, regularly-cleaned, and (most importantly) safe Portland Loos.

No matter what city you live in, popular food chains such as Starbucks and McDonalds, department stores including Macy's and Bloomingdales, and big box stores like Bed, Bath & Beyond and Wal-Mart, as well as a myriad of hotels are typically a sure bet if you're experiencing a flare and need to find a restroom quickly.

## Yep, There's a Website and an App for That, Too

For Crohn's sufferers who don't live in cities with adequate public washrooms, there are still several websites and apps devoted to discovering accessible toilets to help you when you need to "go!"

NYrestroom.com provides users with public restroom information for The Big Apple with hours and amenities information for each location.

The Bathroom Diaries has provided users with the locations of thousands of bathrooms worldwide, since 2000. Readers submit their favorite bathrooms and can even rank them according to spotlessness, safety, and beauty. Additional pertinent information such as handicap access and changing table availability is also included. Top toilets—think ultramodern, eco-friendly, LED-lit, and even gold leaf-painted—receive the site's top honor, the Golden Plunger Award.

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## Paradee to Introduce Restroom Access Bill for Crohn's Sufferers

DOVER – Delawareans who suffer from Crohn's disease, ulcerative colitis and other serious bowel conditions could receive assistance from a measure sponsored by Rep. Trey Paradee.



The measure, which will be House Bill 245 when it is filed this week, would allow people with documented medical needs access to restrooms in retail businesses where restrooms are not normally open to the public. The bill also protects businesses by waiving any civil liability related to the restroom access provided for in the legislation. Sen. Bethany Hall-Long will sponsor the legislation in the Senate.

Smyrna resident Morgan Burnett, along with her parents Amy and Jonathan, brought this issue to Rep. Paradee's attention. Morgan, 15, was diagnosed with Crohn's two years ago and has learned just how difficult it can be to find a nearby public restroom when her symptoms arise.

Morgan, like thousands of others with Crohn's and related conditions, also knows what it's like to be denied the use of a restroom reserved for 'employees only,' even in the midst of a medical emergency.

"Far too often, my disease can turn me into an unwilling homebody, afraid to leave the house and risk putting myself in a situation where I won't have easy access to a restroom," Morgan said. "For me, this bill represents freedom from worry, freedom to go the places I want to go, and freedom to do the things a teenager should be doing in her free time."

Rep. Paradee said he is proud to take up this cause on behalf of Morgan and her family, who have become true ambassadors for Crohn's and colitis awareness.

"As a parent, I can imagine how terrible it must feel to know your child is suffering from a serious disease and, in some situations, may not be able to make it to a restroom when necessary," said Rep. Paradee, D-Dover West. "People with Crohn's and other similar conditions, as well as their families, deserve some peace of mind, compassion and dignity when it comes to their medical needs."

Sen. Hall-Long said she understands the need for this legislation given the seriousness of conditions like Crohn's and ulcerative colitis.

"As a nurse, I know the symptoms of these conditions can strike at any time and often without warning," said Sen. Hall-Long, D-Middletown. "It's our duty as legislators to promote the health and wellbeing of our constituents, and this is a situation where we can educate and work with businesses owners of their role in assisting potential patrons or those in need."

Morgan's mother Amy said the Burnetts don't go anywhere unless they know there will be access to a restroom, but House Bill 245 would take that burden away.

"Constantly checking for a nearby bathroom is a terrible obsession to have," she said. "This legislation, if it becomes law, will make our lives and the lives of so many other families dealing with Crohn's just a little bit easier."

Inflammatory bowel diseases, such as Crohn's, affect thousands of people of all ages. Symptoms of the conditions include persistent diarrhea, cramps and abdominal pain, and the urgent need to move the bowels. Often, these symptoms are sudden and unexpected, following long periods when the person has experienced no symptoms at all.

The restroom access provisions would apply to people with "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," as defined in the bill. It would also cover people using ostomy devices.

The measure would allow businesses to ask a customer requesting restroom access to show documentation of his or her medical condition, either in the form a doctor's note or an identification card issued by a nationally-recognized health organization or health department. The rules would apply only to retail businesses during their regular hours of operation, when at least two employees are on duty, and when no public restrooms are present. Businesses also would not be required to make any changes or upgrades to restrooms that are not normally accessible to the public.

Thirteen states have similar statutes granting access to non-public restrooms for medical reasons, including Connecticut, Illinois, Kentucky, Massachusetts, Texas and Washington. Many of those laws also offer protections to businesses and allow them to ask for documented proof of an eligible condition. These statutes are often referred to as "Ally's Law" in honor of Allyson Bain, an Illinois teen who was denied access to an employee-only restroom when her IBD-related symptoms struck. She spearheaded the drafting and passage of the legislation in her home state.

House Bill 245 is scheduled to be included in Thursday's House prefile. It currently has seven cosponsors in the General Assembly.

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