

2007 ASSEMBLY BILL 859

February 21, 2008 – Introduced by Representatives VAN ROY, ALBERS, BIES, BERCEAU, HAHN, MUSSER, SMITH, TOWNSEND and WASSERMAN, cosponsored by Senators LEHMAN and ROESSLER. Referred to Committee on Small Business.

1 **AN ACT to create** 146.29 and 895.512 of the statutes; **relating to:** requiring
2 access by certain customers to certain toilet facilities, providing immunity from
3 certain civil liability, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill requires a retail establishment, as defined in the bill, that has a toilet facility that is designated for use by the establishment's employees to permit use of the facility by customers who request it, under certain conditions. In order for the requirement to apply, the customer must suffer from an eligible medical condition or use an ostomy device; two or more of the retail establishment's employees must be working at the establishment at the time the request is made; the customer must provide the retail establishment with a copy of a written statement that is signed and issued by a physician; the retail establishment must not usually make the toilet facility available to customers; the toilet facility must not be located in an area where access creates an obvious health or safety risk for the customer or an obvious security risk for the retail establishment; and a public toilet facility must not be immediately available to the customer.

The bill specifies that a retail establishment may not, under the requirement, be required to make physical changes to a toilet facility that is designated for use by the establishment's employees.

Under the bill, a violation of the requirement is subject to a forfeiture that may not exceed \$200. However, a retail establishment and employee of an establishment are immune from civil liability for the death or injury of a customer, or of an

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individual other than an employee who accompanies the customer, that is caused by or during the use of a toilet facility under the bill's requirement, unless the death or injury was caused by a willful or wanton act or omission of the employee.

Also under the bill, forging a statement or uttering a forged statement, altering a statement or uttering an altered statement, transferring to a customer, for use by that customer, a statement intended for use by a different customer, and knowingly possessing a forged or altered statement are subject to a forfeiture that may not exceed \$200.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.29 of the statutes is created to read:

2 **146.29 Customer access to toilet facility. (1) DEFINITIONS.** In this section:

3 (a) “Customer” means an individual, other than the owner or an employee of
4 a retail establishment, who is lawfully on the premises of the establishment.

5 (b) “Eligible medical condition” means inflammatory bowel disease, irritable
6 bowel syndrome, or any other medical condition that periodically requires
7 immediate access to a toilet facility.

8 (c) “Inflammatory bowel disease” means Crohn’s disease or ulcerative colitis.

9 (d) “Ostomy device” means a medical device that creates an artificial passage
10 for elimination of body waste.

11 (e) “Physician” has the meaning given in s. 448.01 (5).

12 (f) “Retail establishment” means a store or shop in which retail sales is the
13 principal business conducted, except that “retail establishment” does not include a
14 motor vehicle fuel retailer’s establishment that is a structure that is 800 square feet

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1 or less in size and that has a toilet facility located within the structure that is
2 designated for use by the retailer's employees.

3 **(2) CUSTOMER ACCESS TO TOILET FACILITY REQUIRED.** A retail establishment that
4 has a toilet facility that is designated for use by the establishment's employees shall,
5 during the establishment's usual business hours, permit use of the facility by a
6 customer who requests the use, if all of the following conditions are met:

7 (a) The customer suffers from an eligible medical condition or uses an ostomy
8 device.

9 (b) Two or more employees of the retail establishment are working at the
10 establishment at the time the customer requests use of the toilet facility.

11 (c) The customer provides the retail establishment with a copy of a written
12 statement, signed and issued by a physician on the physician's letterhead or that of
13 the facility with which the physician is associated, that indicates that the customer
14 suffers from an eligible medical condition or uses an ostomy device.

15 (d) The retail establishment does not usually make a toilet facility available to
16 a customer.

17 (e) The toilet facility is not located in an area where access creates an obvious
18 health or safety risk for the customer or an obvious security risk for the retail
19 establishment.

20 (f) A public toilet facility is not immediately accessible to the customer.

21 **(3) LIMITATION ON REQUIREMENT.** No retail establishment may, under this
22 section, be required to make physical changes to a toilet facility that is designated
23 for use by the establishment's employees.

24 **(4) PENALTIES.** (a) Any person who violates sub. (2) may be required to forfeit
25 not more than \$200.

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1 (b) Any person who does any of the following with respect to a written
2 statement that is specified in sub. (2) (c) may be required to forfeit not more than
3 \$200:

- 4 1. Forges a statement or utters a forged statement.
- 5 2. Alters a statement or utters an altered statement.
- 6 3. Transfers to a customer, for use by that customer, a statement intended for
7 use by a different customer.
- 8 4. Knowingly possesses a forged or altered statement.

9 (c) Each day of continued violation under par. (a) or (b) constitutes a separate
10 offense.

11 **SECTION 2.** 895.512 of the statutes is created to read:

12 **895.512 Civil liability exemption; customer access to toilet facility.** If
13 an employee of a retail establishment permits a customer to use the establishment's
14 toilet facility, under the requirements of s. 146.29, the employee and the
15 establishment are immune from civil liability for the death of or injury to the
16 customer, or an individual other than an employee who accompanies the customer,
17 that is caused by or during the use of the facility, unless the death or injury was
18 caused by a willful or wanton act or omission of the employee.

19 (END)