

State of Wisconsin



2009 Assembly Bill 709

Date of enactment: **April 21, 2010**

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2009 WISCONSIN ACT 198

AN ACT to create 146.29 and 895.512 of the statutes; **relating to:** requiring access to toilet facilities in a retail establishment, immunity from civil liability related to use of the toilet facilities, and providing penalties.

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

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

146.29 Access to toilet facility in retail establishment. (1) **DEFINITIONS.** In this section:

(a) "Eligible medical condition" means inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that periodically requires immediate access to a toilet facility.

(b) "Inflammatory bowel disease" means Crohn's disease or ulcerative colitis.

(c) "Ostomy device" means a medical device that creates an artificial passage for elimination of body waste.

(d) "Physician" has the meaning given in s. 448.01 (5).

(e) "Retail establishment" means a store or shop in which retail sales is the principal business conducted, except that "retail establishment" does not include a motor vehicle fuel retailer's establishment that is a structure that is 800 square feet or less in size.

(2) **ACCESS TO TOILET FACILITY REQUIRED.** A retail establishment that has a toilet facility that is designated for use by the establishment's employees shall permit a person who suffers from an eligible medical condition or

uses an ostomy device to use the toilet facility if all of the following apply:

(a) The person provides the retail establishment any of the following:

1. A copy of a written statement, signed and issued by a physician on the physician's letterhead or that of the facility with which the physician is associated, that indicates that the person suffers from an eligible medical condition or uses an ostomy device.

2. An identification card issued by an entity approved by the department under sub. (4) that indicates that the person suffers from an eligible medical condition or uses an ostomy device.

(b) The person requests to use the toilet facility during the retail establishment's usual business hours.

(c) Three or more employees of the retail establishment are working at the establishment at the time the person requests use of the toilet facility.

(d) The toilet facility is not located in an area where access creates an obvious health or safety risk for the person or an obvious security risk for the retail establishment.

(e) The retail establishment does not have a toilet facility that the public may use.

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

(3) **LIMITATION ON REQUIREMENT.** No retail establishment may, under this section, be required to make physi-

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

cal changes to a toilet facility that is designated for use by the establishment's employees.

(4) ENTITIES THAT MAY ISSUE IDENTIFICATION CARDS. The department shall approve, to issue identification cards that may be used under sub. (2) (a) 2., entities that provide services to, or advocate on behalf of, persons who suffer from an eligible medical condition or use an ostomy device.

(5) PENALTIES. (a) Whoever violates sub. (2) may be required to forfeit not more than \$200.

(b) Whoever does any of the following with respect to a written statement or identification card that is specified in sub. (2) (a) may be required to forfeit not more than \$200:

- 1. Forges a statement or identification card, or utters a forged statement or identification card.
- 2. Alters a statement or identification card, or utters an altered statement or identification card.

3. Transfers to another person, for use by that person, a statement or identification card intended for use by a different person.

4. Knowingly possesses a forged or altered statement or identification card.

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

SECTION 2. 895.512 of the statutes is created to read:
895.512 Civil liability exemption; access to toilet facility. If an employee of a retail establishment permits a person to use the establishment's toilet facility, under the requirements of s. 146.29, the employee and the establishment are immune from civil liability for the death of or injury to the person, or an individual other than an employee who accompanies the person, that is caused by or during the use of the facility, unless the death or injury was caused by a willful or wanton act or omission of the employee.