



## 2009 BILL

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

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### *Analysis by the Legislative Reference Bureau*

This bill requires a retail establishment that has a toilet facility that is designated for use by employees to allow a person who has a certain type of medical condition, or who uses an ostomy device, to use the employees' toilet facility under certain conditions. The conditions are that the person has a written statement from a physician indicating that the person has an eligible medical condition or uses an ostomy device; the person requests use of the toilet facility during normal business hours and while at least two employees are working; the toilet facility is not located in an area where access by the person creates a health or safety risk to the person or a security risk for the retail establishment; and the retail establishment does not have a toilet facility that is open to the public and no public bathroom is immediately accessible to the person.

Under the bill, a person who violates the requirement to allow access to an employees' toilet facility is subject to a civil forfeiture. In addition, a person who forges, alters, transfers, or possesses a forged or altered physicians' statement indicating that a person has an eligible medical condition or uses an ostomy device is subject to a civil forfeiture. Finally, under the bill, a retail establishment and its employees are immune from civil liability for the death of or injury to persons who

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use an employees' toilet facility in accordance with the access provision created in the bill.

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*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 Access to toilet facility in retail establishment. (1) DEFINITIONS.**

3           In this section:

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

7           (b) “Inflammatory bowel disease” means Crohn’s disease or ulcerative colitis.

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

10          (d) “Physician” has the meaning given in s. 448.01 (5).

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

15          **(2) ACCESS TO TOILET FACILITY REQUIRED.** A retail establishment that has a toilet  
16          facility that is designated for use by the establishment’s employees shall permit a  
17          person who suffers from an eligible medical condition or uses an ostomy device to use  
18          the toilet facility if all of the following apply:

19          (a) The person provides the retail establishment with a copy of a written  
20          statement, signed and issued by a physician on the physician’s letterhead or that of

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1 the facility with which the physician is associated, that indicates that the person  
2 suffers from an eligible medical condition or uses an ostomy device.

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

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

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

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

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

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

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

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

20 1. Forges a statement or utters a forged statement.

21 2. Alters a statement or utters an altered statement.

22 3. Transfers to another person, for use by that person, a statement intended for  
23 use by a different person.

24 4. Knowingly possesses a forged or altered statement.

