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AB-1632 Restroom access: medical conditions. (2021-2022)

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Assembly Bill No. 1632

CHAPTER 893

An act to add Article 6 (commencing with Section 118700) to Chapter 2 of Part 15 of Division 104 of the Health and Safety Code, relating to restroom access.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1632, Akilah Weber. Restroom access: medical conditions.

Existing law sets forth various requirements for providing restroom access in the workplace, place of public accommodation, or elsewhere, under specified circumstances, including, among others, provisions relating to employees, disabled travelers, baby diaper changing stations, and all-gender toilet facilities.

This bill would, if certain conditions are met, require a place of business that is open to the general public for the sale of goods and that has a toilet facility for its employees to allow any individual who is lawfully on the premises of that place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the general public. A willful or grossly negligent violation of this requirement would be subject to a civil penalty, not exceeding \$100 per violation, without creating or implying a private right of action, and without applying to an employee. Under the bill, an employee would not be subject to discharge or any other disciplinary action by their employer for a violation of this requirement, unless the employee's action is contrary to an expressed policy developed by their employer pursuant to these provisions.

Under the bill, conditions for the above requirement would include, among others, that the individual has an eligible medical condition or uses an ostomy device, that a public restroom is not immediately accessible to the individual, and that providing access would not create an obvious health or safety risk to the individual or obvious security risk to the place of business. The bill would define "eligible medical condition" as Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility.

The bill would permit the place of business to require the individual to present reasonable evidence of an eligible medical condition or use of an ostomy device. The bill would authorize the individual to satisfy that evidence requirement through a signed statement by a licensed physician, nurse practitioner, or physician assistant, on a specified form to be developed by the State Department of Public Health and posted on its internet website.

The bill would require the department to implement these provisions in consultation with the Department of Consumer Affairs, and only to the extent not in conflict with nor construed to limit rights under civil rights law, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 6 (commencing with Section 118700) is added to Chapter 2 of Part 15 of Division 104 of the Health and Safety Code, to read:

Article 6. Restroom Access for Medical Conditions

118700. For purposes of this article, the following definitions apply:

(a) "Department" means the State Department of Public Health, unless otherwise specified.

(b) "Eligible medical condition" means Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility.

118701. (a) The State Department of Public Health shall implement this article, in consultation with the Department of Consumer Affairs.

(b) This article shall be implemented only to the extent that it is neither in conflict with nor construed to limit rights under the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the Unruh Civil Rights Act (Section 51 of the Civil Code), or any other civil rights law, as applicable.

(c) An employee toilet facility, as accessed pursuant to this article, shall not be construed as a place of public accommodation for purposes of state law.

118702. (a) A place of business that is open to the general public for the sale of goods and that has a toilet facility for its employees shall allow any individual who is lawfully on the premises of that place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the general public, if all of the following conditions are met:

(1) The individual requesting use of the employee toilet facility has an eligible medical condition, as defined in Section 118700, or uses an ostomy device. The place of business may require the individual to present reasonable evidence that the individual meets the condition in this paragraph, as described in subdivision (b).

(2) Three or more employees of the place of business are working onsite at the time that the individual requests use of the employee toilet facility.

(3) The employee toilet facility is not located in an employee changing area or an area where providing access would create an obvious health or safety risk to the requesting individual or would create an obvious security risk to the place of business.

(4) Use of the employee toilet facility would not create an obvious health or safety risk to the requesting individual.

(5) A public restroom is not immediately accessible to the requesting individual.

(b) If the place of business requires the requesting individual to present reasonable evidence that the individual has an eligible medical condition or uses an ostomy device, the individual may present a signed statement issued to the individual by a physician, nurse practitioner, or physician assistant, licensed under the Business and Professions Code, on a form developed by the department pursuant to Section 118703. The signed statement is sufficient for purposes of presenting reasonable evidence, if required by the place of business.

(c) (1) Subject to paragraphs (2) to (4), inclusive, a violation of subdivision (a) is subject to a civil penalty not exceeding one hundred dollars (\$100) for each violation.

(2) A place of business is not civilly liable for a violation of subdivision (a) unless the violation is willful or grossly negligent.

(3) An employee of a place of business is not civilly liable, and shall not be subject to paragraph (1), for a violation of subdivision (a). The employee shall not be subject to discharge or any other disciplinary action by their employer for a violation of subdivision (a), unless the employee's action is contrary to an expressed policy developed by their employer pursuant to this section.

(4) This section does not create or imply a private right of action for a violation of subdivision (a).

(d) A place of business is not required to make any physical changes to an employee toilet facility for purposes of this section.

118703. (a) The department shall develop a standard electronic form that may be signed by a health care provider, as specified in subdivision (b) of Section 118702, to serve as reasonable evidence of the existence of an eligible medical condition or use of an

ostomy device. The department shall post the form, in a printable format, on the department's internet website.

(b) The form shall include all of the following components:

(1) Space for the requesting individual's name.

(2) Space for the requesting individual's address.

(3) Space for the requesting individual's date of birth.

(4) Space for the health care provider's name, signature, and statement confirming the eligible medical condition or use of an ostomy device.

(5) Both of the following statements:

(A) "MEDICAL ALERT: RESTROOM ACCESS REQUIRED."

(B) "The holder of this form uses an ostomy device or suffers from Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility."

(6) A reference to this article and to any regulations adopted to implement this article.