



HAWAI‘I CIVIL RIGHTS COMMISSION

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Friday, February 24, 2023

Conference Room 016 & Videoconference

To: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 753, S.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports S.B. No. 753, S.D. 1, which requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours, under certain conditions. The bill exempts a retail establishment and employees from civil liability for allowing an eligible customer to use an employee toilet facility.

In addition to the seventeen states listed in Section 1 of the bill, California, Louisiana, New Hampshire and Washington D.C. have enacted this or similar legislation, known as “Ally’s Law,” making it law in twenty states. We urge Hawai‘i to become part of this growing number.

Increasing numbers of people are being diagnosed with inflammatory bowel Diseases (IBD). 1.3% of the U.S. adult population is diagnosed with IBD, or over three million people plus children. Many sufferers of medical conditions requiring frequent or urgent access to a restroom feel housebound, because of the need to be near a restroom. This bill would alleviate some of the challenges of everyday life for those with invisible disabilities that fall under this measure. This legislation would allow those individuals more freedom, and would not create any additional cost to businesses.

Many places have either public restrooms or facilities for patrons, such as movie theaters, museums, department stores and others. We recognize that there are understanding business owners who have allowed customers to use a non-public restroom. The adoption of Ally's law would provide a portion of Hawai'i citizens to live more freely without fear of embarrassment. By providing access, this measure will increase business for smaller retailers, as well as increase awareness of disabilities and the need for access.

The HCRC supports S.B. No. 753, S.D. 1.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 23, 2023
Re: SB 753 SD1 RELATING TO ACCESSIBILITY.**

Good morning, Chair Rhoads and members of the Senate Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

While we understand the intent of SB 753 SD1 Relating to Accessibility, we are respectfully opposed as we have some major concerns. This measure requires retail establishments with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours under certain conditions. Exempts retail establishments and employees from civil liability in allowing an eligible customer to use an employee toilet facility in certain circumstances. Establishes fines; and is effective 12/31/2050.

While we sympathize with those suffering from any type of disease, we see this measure as a **safety issue not only for our stores but for our employees** as well. We would also like to note that **shopping centers and malls already provide PUBLIC RESTROOMS** for everyone to use. **The Center of Disease Control also estimates that only 1.3% of the population in the US has Crohn's disease.**

Often employee restrooms are in places that are way in back of the store in areas that provide easy access to store inventory, sensitive information, cleaning products and employee lockers to name a few. **We are also concerned about our employee's safety if having to escort customers to the back of the house to use the employee only bathroom.** We to ensure that our employees will not be falsely accused of harming or harassed by the customer or persons with them if we escort them to the employee only restroom. Often time there are limited or no cameras in the back of the house. We see this all too often where retailers are deemed easy targets with deep pockets and taken to court over frivolous or fraudulent lawsuits.

Unlike the public restrooms in the shopping malls, **employee restrooms are not cleaned or checked numerous times throughout the day. Often they are cleaned once a day, often by a cleaning crew.** Covid has and continues to make people very apprehensive where there is a disease involved. **We are concerned that we may lose even more employees or unable to attract new hires who are apprehensive to clean the employee restroom because someone from the public used it who had a medical disease.** This would include cleaning a soil toilet and/or floor and disposing of used diapers and items used in the cleanup.

And who is going to pay for the upgrades in security to allow people to enter where the employee bathrooms are? **This would also have a high cost to retailers that will be passed on to customers.** Many retailers can't afford additional operational costs. Many stores with employee restrooms would have to install more cameras, provide their employees with secured locked lockers for their personal items, installing cages to secure valuable merchandise to name a few. These items are costly and not cheap.

Hiring more employees or having an employee escort the customer to the restroom is not viable options as we are already short staffed and having a hard time finding workers. **Many of our local retailers, especially the small businesses, are struggling just to keep their doors open and have incurred a lot of debt due to the pandemic,** high costs of shipping and goods. We continue to see retailers closing their stores – walk in any shopping mall and you will see many vacant stores with the For Lease sign. We are doing everything we can to keep our doors open and our employees employed.

We already experience shoplifters grabbing merchandise and running out the front door. **This would give shoplifters an even easier access to our inventory and employees belongings, and then run out back door to escape.** Even with

3 employees in a store may not be enough as shoplifters are great at diversion tactics. We have seen an increase in theft in our local stores who are getting hit daily and loosing hundreds of thousands of dollars in merchandise. Many stores are already short staffed.

As we have seen in the past couple of years with Covid, **people will do and claim anything they want to get what they want.** After the shut down in 2020 we experienced that the public abused the use of a doctor's note to try to cut the long lines outside of grocery and other retail stores, or to NOT have to wear a mask in retail establishments. Retailers did not have the time and expertise to verify the validity of the doctor's note. **Faking a cards and doctor's note is as easy as download loading a template online or a hospitals logo, fill in your information, sign with a bogus doctors name and print.** Since the vaccine, we have seen people using fake vaccine cards to enter our state or when applying for jobs. We have also seen more pets wearing "service animal" vests or collars to gain access into establishments. Some pets are truly unruilly and are obviously not a service animal especially when they bark, growl and try to attack other customers.

We have heard from states who have enacted this measure that **Organized Retail Crime have used fake documentation to gain access to the storage rooms, stolen large quantities of items and the stores had to take a loss.** These shoplifters are always trying to find ways to access the storage rooms as many times there is a backdoor for delivery. It is easy for them to grab large quantities of valuable products and go out the back door to get away vehicle. This measure gives them the tool to do this.

We also wonder if we would have to provide the restroom to a non-customer in the store. And why is it only retail being targeted when there are other businesses that are open to the public. Will we get into lawsuits when we allow only certain people to use the employee restrooms and not others like the elderly – will it be an age or race discrimination lawsuit?

Shopping centers and malls already provide PUBLIC RESTROOMS for everyone to use. We ask that you hold this bill.

Mahalo again for this opportunity to testify.

SB-753-SD-1

Submitted on: 2/21/2023 2:40:47 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

As we age, especially women, need to use a restroom urgently. These occurrences cannot be planned. Embarrassing situations have occurred when denied the use of a restroom, especially when there was one for employee use. This has happened to many of our kupuna including myself. Previously I have had to write to management. No one should do this to anyone else. Please support this bill. Mahalo.

ROBIN WURTZEL

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TESTIMONY IN STRONG SUPPORT OF S.B. No. 753, S.D. 1

Date: February 24, 2023 at 9:30 a.m.

Location: Room

To: Senator Karl Rhoads Chair
Senator Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

While I currently serve as the Chief Counsel of the Hawai'i Civil Rights Commission, this testimony is offered as an individual, not in my official role or capacity.

I respectfully submit testimony in strong support of S.B. No. 753, S.D. 1 also known as the Restroom Access Act or "Ally's Law," which requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours, under certain conditions. The bill exempts a retail establishment and employees from civil liability for allowing an eligible customer to use an employee toilet facility.

This bill would significantly affect those with eligible medical conditions including irritable bowel disease (IBD), as well as other disabilities. IBD is an invisible disability, that involves chronic inflammation of the digestive tract, affecting over 1% of the population, or approximately 4 million people in the United States. For those with IBD, the disease may affect their entire life, preventing or limiting them from participating in outings and outdoor activities, and often causing anxiety or inability to leave home, for fear of the kind of incident that happened to Ally Bain. At this time, there is no cure.

Twenty states have passed "Ally's Law," as well as Washington D.C.¹

¹ States that have enacted "Ally's Law" in addition to the seventeen states listed in S.B. 753 are California, Louisiana and New Hampshire.

This legislation would allow those with IBD more freedom. It imposes no cost or liability on businesses, but could make an immeasurable difference in the lives of those with colitis or Crohn's disease. Many public buildings, including libraries and the Capital, and public accommodations including beaches, supermarkets, restaurants and movies theaters, have restrooms open to customers. This measure would allow those with qualifying medical conditions to shop in retail establishments in Hawaii, and aid the local economy. This is particularly helpful in store which are not in shopping centers with public bathroom, but in strip malls, or on local streets. Otherwise, those with qualifying medical conditions are forced to shop online.

I support S.B. No. 753, S.D. 1 and urge you to pass it out of committee. Thank you for the opportunity to testify in support of S.B. No. 753, S.D. 1.

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February 22, 2023

TESTIMONY IN STRONG SUPPORT OF SB 753 SD1 RELATING TO ACCESSIBILITY

Date: Feb 24, 2023

Location: By Video Conference

To: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair & members of the Senate Committee on
Judiciary

Aloha Chair Rhoads, Vice Gabbard and members of the Committee.

I respectfully submit this testimony in strong support of SB No. 753, SD1, also known as the Restroom Access Act.

This bill would significantly improve public access for people with disabilities, including, without limitation, irritable bowel disease (IBD). IBD is an invisible disability, that includes ulcerative colitis and Crohn's Disease. These conditions included chronic inflammation of the digestive tract, resulting in symptoms such as chronic diarrhea, fatigue, abdominal pain and cramping. People who have these conditions need immediate access to a restroom frequently. Depending on the severity of the condition, this need may arise as many as 20 times per day.

IBD affects over 1% of the adult population, including children as well as adults. Currently, the cause is unknown and there is no cure. IBD disease can control the activities of a person's daily life. It can often prevent or limit people from participating in activities outside the home for fear of the humiliating result of not having immediate access to a bathroom if an emergency arises.

Numerous states have passed "Ally's Law," as have several municipalities. This bill would allow those with IBD more freedom and fuller participation in social and family activities outside the home and to live more independently. It does not impose significant additional cost or liability on businesses. This simple requirement to allow restroom access could make a substantial improvement in the quality of life for people with IBD. As you know, Hawai'i values family activities. This bill would permit those who have IBD to spend time with family members and friends outside their homes and live more independently by allowing them the security of knowing that they have bathroom access if the need arises.

I suggest §321-(b)(1) conclude with "and" to express the legislature's intent that all conditions must be met to avoid liability.

I strongly support SB 2913 and urge you to pass it out of committee. Mahalo to you and the Committee for this opportunity to testify in support of SB 2913.