

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO
SB 753**

Date: Wednesday February 15, 2023

Time: 1:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **opposition** to SB 753, Relating To Accessibility. HAJ appreciates the intent of the measure. However, we **oppose SB 753** due to the immunity granted to retail establishments.

HAJ understands the intent of the measure to provide access to customers with eligible medical conditions to use employee-only bathrooms. HAJ, however, opposes the immunity granted to retail establishments that permit customers to use their restrooms during normal business hours. In particular, subsection (b) of the newly proposed section contains a limitation of liability clause for any act or omission in allowing a customer with an eligible medical condition to use the toilet facility provided that the act or omission is: 1) not negligent; 2) occurs in an area not open to the public; and 3) results in an injury to or death of a customer. For example, someone with Crohn's disease who needs to use the bathroom in an emergency could slip on the floor in the employee-only area and die and the store would not be liable. This seems to be contradictory to the purpose behind the bill, which is to provide relief to people with eligible medical conditions in public spaces.

The Hawai'i Supreme Court has held, "[a]n occupier of land has a duty to use reasonable care for the safety of **all persons reasonably anticipated to be on the premises**, regardless of the status of the individual as invitee, licensee, or trespasser. Specifically, cases such as:

1. Pickard v. City & Cnty. of Honolulu, 51 Haw: Granted new trial based on duty owed to visitor to courthouse, who used restroom with broken light switch and fell through a

hole in the floor.

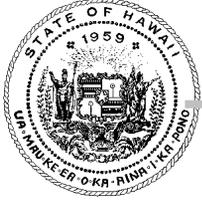
2. Gibo v. City & Cnty. of Honolulu: Court held that hospital had a duty to maintain premises in a reasonably safe condition for plaintiff who entered through ambulance garage rather than main entrance.

Further, in contrast to Winfrey v. GGP Ala Moana LLC where the court held that Ala Moana did not have a duty of care to the decedent who died while trapped in an exhaust hood because she “could not have been reasonably anticipated to be on the rooftop,” it could be reasonably anticipated that a patron would use employee-only bathrooms. These employee-only bathrooms should already be kept and maintained in a reasonably safe condition for employees to use, therefore, it would not create a heightened duty to retail establishments or premises owners to maintain these employee-only spaces for patrons in need of emergency use.

Now, while this statute is requiring a retail establishment with an employee toilet facility to allow an eligible customer to use it, this requirement to provide it should not exempt the retail establishment from continuing to keep its premises in a reasonably safe condition for everyone that comes onto its property, **employee or customer**. For instance, an employee injured as a result of the retail establishment’s failure to maintain their bathrooms in a reasonably safe condition can receive workers compensation for their injuries. By contrast, a patron who is invited onto the premises by the retail establishment and requires the use of the employee-only bathroom is given less rights.

In sum, an occupier of land has a duty to use reasonable care for the safety of **all persons** reasonably anticipated to be on the premises, including customers with eligible medical conditions. While the scope of the exemptions is limited, allowing immunity for retail establishments from civil liability for acts or omissions leading to death or injury that would preclude a patron from any compensation is not in line with this principle of law.

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 15, 2023

Room 225, 1:00 p.m.; Videoconference

To: The Honorable Joy A. San Buenaventura, Chair
The Honorable Henry J.C. Aquino, Vice Chair
Members of the Senate Committee on Health and Human Services

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

Re: S.B. No. 753

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, 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, 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.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 15, 2023
Re: SB 753 RELATING TO ACCESSIBILITY.**

Good afternoon, Chair San Buenaventura and members of the Senate Committee on Health & Human Services. 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 Relating to Accessibility, we are respectfully opposed as we have some major concerns. This measure 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. Exempts a retail establishment and employees from civil liability in allowing an eligible customer to use an employee toilet facility in certain circumstances; and establishes fines.

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 unrulily 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.

CARL M. VARADY

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February 13, 2023

Re: SB753: Testimony in support

Hearing: February 15, 2023 1:00 PM

Before: COMMITTEE ON HEALTH AND HUMAN SERVICES
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Aloha Chair Buenaventura, Vice Chair Aquino, and members of the committee. I am writing to strongly support SB753, referred to as Ally's Law or the Restroom Access Act, which requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom.

As a frequent advocate of persons with disabilities, I am aware of the unmet need for bathroom access by children and adults with disabling conditions such as Crohn's Disease, IBD, and colitis that affect bowel control and other diseases. Not having bathroom access in places of public accommodation including retail establishments, excludes people with such disabilities from participating in ordinary activities that non-disabled people take for granted. People with such disabilities face the choice between being confined to home or risking public humiliation that can result if they don't have access to a toilet. The bill eliminates the need to stay home for fear of being denied toilet access when needed and soiling themselves in public.

This bill allows those with eligible medical conditions to use the restroom of retail establishments with an employee toilet facility during normal business hours, under certain conditions. The solution is simple and does not require modification of premises. It will improve disabled people's lives and allow them to enjoy public life without the constant fear of embarrassment that accompanies these diseases.

The bill imposes no cost on businesses, and no liability. Twenty states plus Washington, D.C., and some municipalities have passed restroom access acts. The bill allows people with eligible medical conditions to enjoy the same benefits of public life available to non-disabled people. The bill accommodates these medical needs and provides security for those whose medical conditions currently keep them at home because of the very real fear of soiling themselves in public.

Thank you for the opportunity to testify in strong support of SB753.

SB-753

Submitted on: 2/13/2023 1:23:20 PM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Roberta Lee	Individual	Support	Written Testimony Only

Comments:

I support SB753 because I have a medical condition, interstitial cystitis, which can cause me to frequently use a lavatory. Sometimes it is difficult to locate a public restroom in small businesses or businesses that don't offer a restroom to the public. As I age I also have developed an irritable GI tract, which can require locating a lavatory. It can be inconvenient and even distressing.

There are many others with similar, or worse, conditions who would benefit from access to a lavatory. It very stressful for those of us with IC or IBS to be caught by surprise in public when our conditions flare.

I support this bill and will hope the legislature will support it also.

Roberta Lee

ROBIN WURTZEL

RobinWurtzel@gmail.com

TESTIMONY IN STRONG SUPPORT OF S.B. No. 753

Date: February 15, 2023 at 1:00 p.m.

Location: Room

To: Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair
Members of the Senate Committee on Health and Human Services

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, 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- such as libraries and the Capital, and public accommodations, such as beaches, supermarkets, restaurants and movies theaters, have restrooms open to customers. This measure would aid those with qualifying medical conditions use retail establishments in Hawaii, and aid the local economy. Otherwise, those with qualifying medical conditions are forced to shop online.

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

SB-753

Submitted on: 2/14/2023 4:53:21 PM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lynn Hiyakumoto	Individual	Support	Written Testimony Only

Comments:

Passage of this bill will improve the quality of life for those with eligible medical conditions.