



HAWAI‘I CIVIL RIGHTS COMMISSION

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Tuesday, March 1, 2022, 9:30 a.m.
Via Videoconference

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, 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. 2913, 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. 2913, 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.

This measure, known as “Ally’s Law,” will help those with irritable bowel disease or the use of an ostomy device. At least fifteen states have passed this or similar legislation, and 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. The disease also affects children. It is estimated that over 600,000 Americans suffer from Crohn's disease alone,

which is a chronic illness involving the gastrointestinal tract. People who suffer from such diseases often need urgent and sudden access to a toilet facility. Irritable bowel disease is an invisible disability, but many sufferers feel housebound, because of the need to be near a restroom. This legislation would allow those individuals more freedom, and would not create any additional costs to businesses.

The HCRC supports S.B. No. 2913, S.D. 1.



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 1, 2022

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Senate Bill 2913, Senate Draft 1– Relating to Accessibility

The Disability and Communication Access Board (DCAB) supports the intent of Senate Bill 2913, Senate Draft 1 Relating to Accessibility. The purpose of this bill is to require a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use the employee toilet facility that is not a public restroom.

At least fifteen states have passed similar legislation that would provide relief for persons with an eligible medical condition to use a retail establishment employee toilet facility when there is no public restroom that is not immediately accessible. Included in this bill, is an exemption for the retail establishment and employees from civil liability in allowing persons with an eligible medical condition to use a retail establishment employee toilet facility when there is no public restroom.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

Kristino Pagano

for KIRBY L. SHAW
Executive Director



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 1, 2022
Re: SB 2913 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 2913 SD1 Relating to Accessibility, we are 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. Establishes fines. Effective 1/1/2050.

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 hope that you hold this measure. However, we 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 discrimination lawsuit?

Often employee restrooms are in places that provide easy access to store inventory, sensitive information, cleaning products and employee lockers to name a few. 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 losing hundreds of thousands of dollars in merchandise.

As we have seen in the past couple of years with Covid, unfortunately is that 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 as we were told you could download a template online, fill in your information 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 unruly and are obviously not a service animal especially when they bark, growl and try to attack other customers.

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.

Many retailers can't afford additional operational costs. Saying that retailers should do a better job to secure the like of their merchandise, employee belongings, etc. by installing more cameras, hiring more employees, or having an employee escort the customer to the restroom is not viable options. 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. Employees are also hard to find to fill positions. 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 are also concerned that with the ongoing pandemic we may lose even more employees 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.

We would also like to note that 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.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO
SB 2913 SD1**

Date: Tuesday, March 1, 2022

Time: 9:30 a.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 2913 SD1, Relating To Accessibility . HAJ appreciates the intent of the measure, however, we **oppose SB 2913 SD1** 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 injury or death that isn't the result of willful conduct or gross negligence. For example, a customer with Crohn's disease who needs to use the employee-only bathroom in an emergency could slip on the floor in the employee-only area and suffer severe injury or even death. If the condition that led to slip was the result of simple negligence, this customer would have no recourse for compensation against the retail establishment. 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." Winfrey v. GGP Ala Moana LLC, 130 Haw. 262, 271, 308 P.3d 891, 900 (2013). 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 or an additional burden on retail establishments or premises owners to maintain these employee-only spaces for patrons in need of emergency use.

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 because 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 are 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.

Robin Wurtzel
Robinwurtzel@gmail.com

TESTIMONY IN STRONG SUPPORT OF SB 2913, S.D.
Relating to Accessibility

Date: March 1, 2022, 9:30 a.m.

Location: By Video Conference

To: Senator Karl Rhoads, Chair
Senator Jarrett Keohokaloli, 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 any official role or capacity.

I respectfully submit testimony in **strong support** of SB No. 2913, S.D. 1, also known as the Restroom Access Act or "Ally's Law."

This bill would significantly affect those with irritable bowel disease (IBD). IBD is an invisible disability. Ulcerative Colitis or Crohn's Disease, two disorders classified under the umbrella term of Inflammatory Bowel Disease, are disorders that involve chronic inflammation of the digestive tract, resulting in symptoms such as chronic diarrhea, fatigue, abdominal pain and cramping, and most salient to this testimony, the need for immediate access to a restroom.

For those with IBD, the disease dictates 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. IBD affects over 1% of the adult population, and also affects children. At this time, there is no cure.

Over a dozen states have passed "Ally's Law," as well as some municipalities.

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.

I support S.B. no. 2913, S.D. 1 and urge you to pass it out of committee. Thank you for the opportunity to testify in support of SB 2913, S.D. 1.