

HAWAI‘I CIVIL RIGHTS COMMISSION

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Wednesday, March 15, 2023 at 2:15 p.m.
Conference Room 325 & Videoconference

To: The Honorable David Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

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

Re: S.B. No. 753, S.D.2

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.

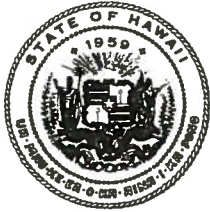
The HCRC supports S.B. No. 753, S.D.2, which requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours, under certain conditions.

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, S.D.2.



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 15, 2023

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Senate Bill 753 SD2 – Relating to Accessibility

The Disability and Communication Access Board (DCAB) supports Senate Bill 753 SD2 Relating to Accessibility. This bill would require 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.

Fear of a lack of available restrooms cause many people with disabilities to be reluctant to patronize certain establishments or to venture to far from home. This bill would provide some reassurance that a toilet facility would be available in a medical emergency and thereby improve the quality of their lives.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) WITH COMMENTS ON
SB 753, SD2**

Date: Wednesday March 15, 2023

Time: 2:15 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) with COMMENTS on SB 753, SD2, Relating To Accessibility. HAJ appreciates the amendments to the measure by the previous committee which removed immunity to retail establishments.

HAJ understands the intent of the measure to provide access to customers with eligible medical conditions to use employee-only bathrooms. We appreciate the removal of subsection (b) which contained a limitation of liability clause for any act or omission in allowing a customer with an eligible medical condition to use the toilet facility. This provision was contradictory to the purpose behind the bill, which is to provide relief to people with eligible medical conditions in public spaces.

As a matter of general policy, 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. We are supportive of the removal of immunity for retail establishments which is consistent with exercising reasonable care for all persons anticipated to be on the premises.

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.

SB-753-SD-2

Submitted on: 3/13/2023 2:45:04 PM

Testimony for JHA on 3/15/2023 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Sandy Wright	Big Island Ostomy Group	Support	Remotely Via Zoom

Comments:

I wish to testify via zoom. I support this bill.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 15, 2023
Re: SB 753 SD2 RELATING TO ACCESSIBILITY.**

Good morning, Chair Tarnas and members of the House Committee on Judiciary and Hawaiian Affairs. 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 SD2 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; and establishes fines as well as being 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.

This measure would encompass anyone who has a disease and a “doctors note.” **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 open employee cubbyhole lockers to name a few. We are concerned about the liability of allowing a non-employee into the back storage area where employees restrooms are. The retailer would be liable if someone got hurt while in the back of the house or if a child got into the cleaning products or on equipment. **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 want 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 only once a day, often by a cleaning crew or the staff themselves.** Covid has and continues to make people very apprehensive when there is a disease involved. **We are concerned that Retailer may lose even more employees or be unable to attract new hires who are apprehensive to clean the employee restroom because someone from the public used it who has a medical disease.** This would include cleaning a soil toilet and/or floor and disposing of used adult diapers and items used in the cleanup.

Many retailers can’t afford additional operational costs. We also wonder who is going to pay for the upgrades in security to allow people to enter where the employee bathrooms area? 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. **This cost to the retailers would most likely be passed on to customers or employees may be let go or if smaller local retailers are unable to afford this they will simply shut down.**

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. We also want to point out that there may be 3 employees working but that does not mean the store is fully staffed. The majority of retailers across the state are short staffed. **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. For some stores 3 employees is short staffed.

We already experience shoplifters grabbing merchandise and running out the front door. **This bill gives shoplifters an even easier access to our inventory and employees belongings, and then run out back service 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, **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 doctor's name and print and there is NO WAY to verify that the note or the card is legitimate.** 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 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. 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.

Mahalo again for this opportunity to testify.



The
Store
with
Aloha

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Testimony 3/15/23

Re: SB 753, SD2 (SSCR875) Relating to Accessibility

Good afternoon Chairperson David Tarnas, Vice Chairperson Gregg Takayama, and members of the Judiciary & Hawaiian Affairs Committee. I am Curtis Higashiyama Government Affairs Manager and I appreciate this opportunity to testify.

While we understand the intent, we are **opposed** to SB 753, SD2 (SSCR875). 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. Establishes fines.

While we understand the needs an individual has when having a medical condition, there are also needs for all customers and employees of the business.

The first and foremost is safety. Having worked in the stores for 37+ years I can attest to the concern for safety, on a daily basis. Safety concerns has worsened over the years and in retrospect, exponentially within the past 5 years. I am able to state, when a store has an employee only bathroom, the location will be off the sales floor. In the majority of the stores, the restrooms are in the deep recesses of the warehouse.

Safety: Individual must be escorted to the restroom due to security and safety issues. Escort must stay with the individual in the warehouse to protect exposed goods, equipment and for some businesses a cash drop area. This removes the employee from being on the sales floor and possibly exposing that person to an undesired encounter with the individual using the rest room; physical, sexual, or verbal. With the proliferation of aggressive individuals, individuals carrying knives, and potentially firearms, this scenario becomes a bigger concern. While there may be others in the warehouse, this may not always be the case. Our job is not to stay in the warehouse but to be on the sales floor to assist customers, provide security, and safety while minimizing our time in the warehouse.

Enforcement: "Reasonably safe." Verbiage is vague and of concern when enforcement is considered. There will be increased costs to the business when attempting to enforce this Bill. These costs will be tied into the ability of the business to enforce, and hopefully, not as a cost to one's personal self.

Thank you for considering my testimonial.

Sincerely,

Curtis Higashiyama
Employee Relations & Government Affairs
ABC Stores

ROBIN WURTZEL

RobinWurtzel@gmail.com

TESTIMONY IN STRONG SUPPORT OF S.B. No. 753, S.D.2

Date: March 15, 2023 at 2:15 p.m.

Location: Room

To: The Honorable David Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

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. 2, 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.

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

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,

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.

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, S.D. 2 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.2.