



STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
STATE COUNCIL ON DEVELOPMENTAL DISABILITIES
'A'UNIKE MOKU'ĀPUNI NO KA NĀ KĀWAI KULA
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

March 13, 2025

The Honorable Representative Lisa Marten, Chair
House Committee on Human Services & Homelessness
The Thirty-Third Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Marten and Committee Members:

SUBJECT: SB1496 SD1 Relating to Civil Rights

The Hawai'i State Council on Developmental Disabilities **SUPPORTS SB1496 SD1**, which establishes that it is an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors. Establishes exceptions. Effective 12/31/2050. (SD1)

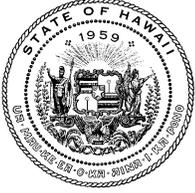
Access to information is fundamental to ensuring the full participation of individuals with intellectual and developmental disabilities (I/DD) in society. In an increasingly digital world, the ability to obtain information through websites, online portals, and other digital resources is critical for securing essential services, engaging in community life, and exercising basic rights. However, many individuals with disabilities face persistent barriers due to inaccessible digital platforms that limit their ability to navigate public accommodations effectively.

For individuals with I/DD, accessible digital information means the difference between independence and exclusion. Many rely on assistive technologies, plain language formats, screen readers, and other accessibility features to communicate, access resources, and make informed decisions. When these tools are unavailable, individuals are denied their right to fully participate in programs, services, and opportunities available to the general public. We need this measure to become a law in order to promote inclusion, autonomy, and self-determination for individuals of all abilities.

Thank you for the opportunity to submit testimony in **support of SB1496 SD1**.

Sincerely,

Daintry Bartoldus
Executive Administrator



**STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY**
DEPARTMENT OF HEALTH - KA 'OIHANA OLAKINO

JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII

KENNETH S. FINK, MD, MGA, MPH
DIRECTOR OF HEALTH
KA LUNA HO'ŌKELE

JOHN C. (JACK) LEWIN, M.D.
ADMINISTRATOR

1177 Alakea St., #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org

March 10, 2025

TO: HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Representative Lisa Marten, Chair;
Representative Ikaika Olds, Vice Chair; and
Honorable Members

FROM: John C (Jack) Lewin MD, Administrator, SHPDA; and Senior Advisor to
Governor Green MD on Healthcare Innovation

RE: SB1496, SD1 – RELATING TO CIVIL RIGHTS – IT ACCESS

HEARING: Thursday, March 13, 2025 @ 10:00 am, Conference Room 329

POSITION: SUPPORT

TESTIMONY:

SB establishes that it is an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors. Establishes exceptions.

SHPDA fully supports this bill. IT access and communications technology access is critically important for a productive, satisfying life, and for the ability to fully participate in community, employment opportunities, and activities of daily living. This kind of access is a basic civil right in our modern society.

Mahalo for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 12, 2025

TO: The Honorable Representative Lisa Marten, Chair
House Committee on Human Services & Homelessness

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 1496 SD 1 – RELATING TO CIVIL RIGHTS.**

Hearing: Thursday, March 13, 2025, 11:00 a.m.
Conference Room 329 & Videoconferencing, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure and provides comments.

PURPOSE: This bill establishes that it is an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors. Establishes exceptions. Effective 12/31/2050. (SD1)

The Committees on Health and Human Services and Labor and Technology amended the measure by:

- (1) Inserting an effective date of December 31, 2050, to encourage further discussion;
and
- (2) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

Access to digital information and communication technology is critical for individuals with disabilities to fully participate in society, engage in commerce, and access essential services. As technology continues to evolve, businesses and service providers increasingly rely on websites, applications, and digital platforms to interact with the public. However, many of these digital spaces remain inaccessible, creating significant barriers for individuals with disabilities, including those with visual, auditory, motor, and cognitive impairments.

This bill aligns with the intent of both the Americans with Disabilities Act (ADA) and Hawaii's existing anti-discrimination laws by clarifying and reinforcing the requirement for digital accessibility in places of public accommodation. By defining accessibility standards in alignment with the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, this bill aims to provide clear guidance for businesses and organizations while safeguarding equal access for persons with disabilities.

As a state agency dedicated to supporting individuals with disabilities in achieving meaningful employment and independence, the Division of Vocational Rehabilitation (DVR) recognizes that digital accessibility directly impacts economic participation. When individuals with disabilities are unable to access online job applications, training programs, or e-commerce platforms, they face exclusion from opportunities that are readily available to others. This bill supports workforce inclusion by eliminating digital barriers and fostering a more equitable economic environment.

DVR acknowledges that ensuring compliance with digital accessibility standards will require places of public accommodation to make financial investments in technology, training, and policy adjustments. Departments will likely need additional time and resources to become trained and proficient to meet the effective date. DHS respectfully asks for an extended effective date and that any appropriation not replace or reduce priorities identified in the administration budget.

However, the long-term benefits—greater inclusion, expanded customer bases for businesses, and enhanced compliance with existing civil rights law outweigh the costs. Additionally, the bill includes provisions for exceptions where compliance would impose an undue burden, ensuring a balanced approach to implementation.

March 12, 2025

Page 3

This legislation highlights steps to ensure that individuals with disabilities in Hawaii have equal access to digital information and services, aligning with our collective commitment to equity, inclusion, and civil rights.

Thank you for the opportunity to provide comments on this measure.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Rm. 118 • Honolulu, Hawai'i 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • (808) 204-2466 (VP)

March 13, 2025

TESTIMONY TO THE HOUSE COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Senate Bill 1496 SD1 – Relating to Civil Rights

The Disability and Communication Access Board (DCAB) supports Senate Bill 1496 SD1 – Relating to Civil Rights. This bill would establish that it is an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors. Establishes exceptions. Effective 12/31/2050. (SD1)

Ensuring equal access to digital information is essential for full participation in public life. As technology continues to play a central role in how businesses and services communicate with the public, it is critical that accessibility standards are upheld. The U.S. Department of Justice (DOJ) has established that the failure to provide accessible digital information and services is a discriminatory practice under the Americans with Disabilities Act (ADA). While the DOJ recently issued a final rule on web accessibility standards under Title II of the ADA for state and local governments, it has consistently interpreted Title III of the ADA to require places of public accommodation to provide effective communication, including accessible digital content. Hawaii should reinforce its commitment to civil rights by explicitly extending these accessibility requirements to places of public accommodation, ensuring equal access to digital information and communication for people with disabilities.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

SB-1496-SD-1

Submitted on: 3/7/2025 5:44:53 PM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Support	Written Testimony Only

Comments:

We are in support.

Testimony of Donald Sakamoto

House HUMAN Services and Homeless (HSH) Committee

Thirty-third legislature, 2025 regular session

March 13, 2025, 10:00 am, hearing on SB1496 S.D. 1

Good morning Chair, Vice Chair, and members. I am Donald Sakamoto, supporting SB1496 S. D. 1, requiring information technology used by public accommodations to be accessible to all persons with disabilities.

The Importance of Digital Accessibility Technology has the power to bridge gaps or deepen divides. When digital platforms are inaccessible, individuals such as myself who is blind or others with disabilities face barriers to employment, healthcare, education, and essential services. Ensuring accessibility is not just a legal obligation, it is a moral imperative that affirms the dignity and equality of all members of our population.

By passing SB1496 S. D. 1, Hawaii will demonstrate its commitment to inclusive innovation and equal opportunity. Furthermore, this bill modernizes our public accommodation laws to reflect the realities of the digital world while upholding the principles of fairness and accessibility.

I urge you all to prepare in supporting SB1496 S. D. 1 to be passed to proceed on for this legislative session. Famous “failing to prepare, you are preparing to fail” by Benjamin Franklin.

Thank you so much for allowing me the opportunity to testify.



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KĪWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Thursday, March 13, 2025

10:00 a.m.

Conference Room 329 & Videoconference
State Capitol, 415 South Beretania Street

To:

[COMMITTEE ON HUMAN SERVICES & HOMELESSNESS](#)

Rep. Lisa Marten, Chair

Rep. Ikaika Olds, Vice Chair

From: Dr. William J. Puette, Chair

and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. 1496 S.D. 1 Relating to Civil Rights

Testimony in SUPPORT

The Hawai‘i Civil Rights Commission (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. HCRC enforces laws protecting the people of Hawai‘i from discrimination in the areas of housing, employment, public accommodations, and in state and state-funded services.

The purpose of S.B. 1496 S.D. 1 is to establish that it is an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors.

As the agency tasked with enforcing laws protecting the people of Hawai‘i in public accommodations, HCRC recognizes the importance of this expanded coverage. Accessibility benefits everyone. By extending the definition of “Place of public accommodation” to include

digital as well as physical places, Hawaii's foundational values of inclusivity, dignity and equality will move into the present and future reality of the digital world.

HCRC supports S.B. 1496 S.D. 1.

SB-1496-SD-1

Submitted on: 3/11/2025 9:05:58 AM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Hawaii Self Advocacy Advisory Council	Hawaii Self-Advocacy Advisory Council	Support	Written Testimony Only

Comments:

The Hawaii Self-Advocacy Advisory Council is in support of SB1496 SD1.

National Federation of the Blind of Hawaii
Testimony submitted by James Gashel, legislative chair

House Human Services and Homelessness (HSH) Committee

Thirty-third legislature, 2025 regular session
March 13, 2025, 10:00 am, hearing on SB1496 S.D. 1

Good morning Chair Marten, Vice Chair Olds, and members. I am James Gashel, National Federation of the Blind (NFB) of Hawaii, legislative chair, strongly supporting SB1496 S.D. 1, requiring information technology used by public accommodations to be accessible to persons with disabilities.

The purpose of this Act is to establish that it is an unlawful discriminatory practice for public accommodations to deny a person with a disability full and equal enjoyment of information related to their services, facilities, privileges, advantages, or accommodations using information and communication technology intended for use by the general public as applicants, participants, customers, clients, or visitors.

State and federal laws require equal access to places of public accommodation without discrimination based on disability but need updating to include specifics about digital, not just physical, access. Physical access was the original focus of our public accommodations laws, but digital access has now become equally and at times even more important.

Despite broad language in both HRS chapter 489 and section 302 of the Americans with Disabilities Act, requiring access to places of public accommodation, websites and mobile applications they use today far too often have barriers to access by persons with disabilities. These disability barriers deny access, but are often not understood as discriminatory. Without equal access to websites and applications, many individuals with disabilities are excluded from equal participation in and equal access to all aspects of society, and are treated as second-class citizens; defeating the purpose of HRS chapter 489.

What This Bill Will Do

SB1496 S.D. 1 clarifies and strengthens the obligations of public accommodations by:

- Defining accessibility in the digital age -- The bill explicitly includes information and communications technology under the definition of public accommodations, ensuring that digital services are held to the same non-discrimination standards as physical spaces.
- Requiring compliance with established accessibility standards -- Places of public accommodation will be required to ensure that their websites, applications, and other digital technologies meet Web Content Accessibility Guidelines (WCAG) 2.1 Level AA,

including subsequent revisions. This is a widely recognized standard for digital accessibility.

- Providing flexibility for businesses -- Recognizing that some entities may face challenges, the bill includes reasonable exemptions for cases where compliance would impose an undue burden or fundamentally alter the nature of the technology.

Importance of Digital Accessibility

Technology has the power to bridge gaps or deepen divides. When digital platforms are inaccessible, individuals with disabilities face barriers to employment, healthcare, education, and essential services. Ensuring accessibility is not just a legal obligation--it is a moral imperative that affirms the dignity and equality of all members of our community.

By passing SB1496 S.D. 1, Hawaii will demonstrate its commitment to inclusive innovation and equal opportunity. This bill modernizes our public accommodation laws to reflect the realities of the digital world while upholding the principles of fairness and accessibility.

This bill will make Hawaii a national leader in equal access to the digital world. Mahalo for hearing SB1496 S.D. 1 today.

Attachment I

NATIONAL FEDERATION OF THE BLIND OF HAWAI'I Memorandum

Re: Senate Judiciary Committee report on SB1496 S.D. 1, report no. SSCR 1041

The National Federation of the Blind of Hawai'i submits this memorandum in response to matters raised by the Senate Judiciary Committee for other committees to consider.

I. The Domino's Decision Does Not Require Absolute Parity Between Physical and Digital Public Accommodations

In **Robles v. Domino's Pizza**, 913 F.3d 898 (9th Cir. 2019), the Ninth Circuit held that the Americans with Disabilities Act (ADA) applies to Domino's website and app because they impeded access to physical places of public accommodation. However, the decision did not mandate identical treatment of digital and physical accommodations. Instead, it reinforced that digital platforms must provide meaningful access, which can be evaluated under an undue burden standard.

SB1496 S.D. 1 aligns with this principle by ensuring that businesses offering digital services take reasonable steps to provide accessibility while acknowledging that some digital modifications may be prohibitively expensive or technically infeasible for smaller

businesses. This differentiation is legally appropriate and ensures fairness in accessibility requirements.

II. Physical and Digital Public Accommodations Present Distinct Accessibility Challenges

The Judiciary Committee noted that SB1496 S.D. 1 includes an undue burden exemption for digital services while physical accommodations under Hawai'i Revised Statutes (HRS) Chapter 489 do not. This differentiation is justified due to the following distinctions:

1. **Established Accessibility Standards for Physical Locations**
 - Physical places of public accommodation have well-defined accessibility compliance measures, such as ramps and designated parking spaces, that are built into standard construction requirements.
2. **HRS chapter 489 exempts physical places of public accommodation from reconstruction of existing physical facilities, which is appropriate.**
3. **Unlike physical facilities, digital services are often being modified and updated, making changes to achieve accessibility a reasonable expectation while other modifications are made.**

By including an undue burden exemption, SB1496 S.D. 1 provides a reasonable framework that encourages accessibility improvements without imposing excessive financial hardship.

III. The Undue Burden Standard is a Well-Established Legal Concept

The undue burden exemption included in SB1496 S.D. 1 is aligned with legal principles found in:

- **Title III of the ADA** (*42 U.S.C. § 12182(b)(2)(A)(iii)*)
- **The Rehabilitation Act of 1973** (*29 U.S.C. § 794d*)
- **Existing federal and state digital accessibility frameworks**

The bill's current language maintains consistency with these frameworks and ensures fairness in accessibility compliance.

Conclusion

SB1496 S.D. 1 appropriately advances digital accessibility. The National Federation of the Blind of Hawai'i strongly urges the Human Services and Homelessness Committee to support this bill as written and advance it without amendment.

Attachment II

National Federation of the Blind of Hawaii
RESPONSE TO ATTORNEY PETER FRITZ previous testimony re: SB1496

The National Federation of the Blind of Hawaii offers the following comments in response to points made by attorney Peter Fritz in his previous testimony to the Senate Judiciary Committee on February 26, 2025, regarding SB1496 S.D. 1:

1. ****Concern About Rigid Standards vs. Rule-Based Flexibility****

Attorney Fritz suggests that Hawaii should adopt a rule-making approach similar to the Department of Justice (DOJ) rather than incorporating WCAG 2.1 directly into statute. However, statutory language provides a clear and enforceable framework, ensuring immediate compliance and accountability. Leaving accessibility standards entirely to administrative rulemaking could delay implementation and weaken enforcement.

2. ****Standards and Updates (WCAG 2.1 vs. 2.2 and Future Changes)****

While Attorney Fritz notes that WCAG 2.2 is available, the DOJ and other agencies have yet to mandate it. SB1496 SD1 follows the precedent set by many other states and the ADA by codifying the most widely recognized standard (WCAG 2.1 Level AA). Additionally, the bill provides flexibility by allowing adherence to future updates of accessibility guidelines, ensuring businesses are not locked into outdated compliance measures.

3. ****Small Business Considerations****

Attorney Fritz proposes compliance exemptions for small businesses. However, the bill already includes provisions for undue burden exceptions, ensuring that compliance is not required when it would impose significant hardship. Creating separate rules for large and small businesses could introduce unnecessary complexity and delay equal access for people with disabilities.

4. ****Jurisdiction Over Internet-Only Businesses****

Attorney Fritz argues that internet-only businesses may not have a sufficient legal nexus to Hawaii. However, SB1496 SD1 follows the precedent set by other states, such as California and New York, which have successfully applied accessibility requirements to businesses that interact with residents, even if they lack a physical presence. The bill's language clarifies that digital spaces serving Hawaii consumers are included within the definition of public accommodations.

5. ****Federal vs. State Authority and the Split in Federal Courts****

While some federal courts have debated whether the ADA applies to websites without a physical storefront, Hawaii has the authority to expand its civil rights protections. Other states have enacted similar laws extending accessibility requirements to digital services, reinforcing that Hawaii can and should take this step independently.

6. ****Support for Digital Accessibility Laws in Other States****

Many states, including California, New York, Florida, and Minnesota, have already implemented accessibility requirements for digital platforms. SB1496 SD1 aligns Hawaii with these forward-thinking states, ensuring that individuals with disabilities have equal access to services and information.

7. ****Conclusion: The Need for Clear, Immediate Action****

Digital accessibility is a civil rights issue. SB1496 SD1 ensures that Hawaii businesses and service providers meet established accessibility standards, preventing unnecessary exclusion of individuals with disabilities. This bill modernizes public accommodation laws while providing reasonable exceptions to avoid undue hardship. Delaying action through prolonged rulemaking would only perpetuate existing barriers.

For these reasons, we strongly support the passage of SB1496 SD1 and urge lawmakers to uphold the civil rights of all individuals in Hawaii.

Brandon Young

3/8/2025

Testimony for SB 1496

Dear Chair Martin and others,

My name is Brandon Young and I am a member of the National Federation of the Blind of Hawaii and I am in support of SB 1496. This bill would allow blind people to access websites and other areas of public accommodations here in Hawaii. The blind of Hawaii have a right to access the Internet and places of business that use technology to interact with their customers. If passed, this bill would improve the lives of blind people in Hawaii. I urge your committee to pass this bill. I thank your committee for your time in considering this bill. I hope you have a wonderful day.

SB-1496-SD-1

Submitted on: 3/10/2025 12:16:35 PM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill! It's common sense and uplifts those some might look down on.

SB-1496-SD-1

Submitted on: 3/10/2025 2:08:50 PM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

SUPPORT FOR SB1496 SD1

I am in total support of SB1496 SD1.

I would like to request an addition to the bill to include, if not clearly defined in the bill, "Private Clubs".

As the education chair for Hawaii Council of Community Assn's, I had an uncomfortable situation at a venue that had a policy of "no pets". The person had a emotional supoort dog in a carrier and a club member raised an uncomfortable issue with it.

Thank you for allowing this testimony.

Raelene Tenno

SB-1496-SD-1

Submitted on: 3/10/2025 3:26:16 PM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

I strongly support SB1496.SD1. Discrimination is across our state and people don't even know the meaning, even in federal government! Most of our population are elderly and can only communicate via telephone or in person or through the mail. But with technology and the youth not doing either these forms are being limited and they can see who is calling and may be biased to answer the phones even for a scheduled appointment.

Younger generations don't have the patience and don't like to speak more than 3 words to older people who need this to better understand what is necessary. There are no instructions on how to apply online, explaining to pull down a menu or hover over a word, and forms are sent out, but if you're from another country it's difficult unless someone speaks your own language, even regular English.

I called the Hawaii Civil Rights Commission, who was answered by a foreigner who could barely communicate and who sent me forms, but their work is very limited to what services they will provide us. I talked to the Ombudsman office and repeated my story twice, but the young person doesn't have the listening skills and instead probably has to fill out a form by asking the same questions that I just told her in my brief story. I spoke to a supervisor who seems to have no time for me and only wants to listen to the complaint of her coworker and not to the overall issues that I face with the county and state systems which she should know. People's narrow perceived responsibilities should be provided in Policies & Procedures for their job descriptions and not what they think it should be. They need to understand what is required in their positions and supervisors should know how to perform all their tasks. Unions need to step up more and stop protecting people just because they pay union dues like I did, but was an exempt employee with an annual termination date!

SB-1496-SD-1

Submitted on: 3/11/2025 8:57:10 PM

Testimony for HSH on 3/13/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Marie Kouthoofd	Individual	Support	Written Testimony Only

Comments:

Testimony of Marie Kouthoofd in support of SB1496 S. D. 1

Good Morning Chair, Vice Chair, and Members of the Committee,

I am writing in support of SB 1496 S.D. 1, which would ensure public accommodations provide accessible communication technology—something essential for blind and visually impaired individuals.

Access isn't just about equality; it's about being able to handle necessary daily tasks. Too often, I find myself at a store, a bank, or running errands, forced to rely on strangers to input my private information. This isn't just inconvenient—it's a serious security risk and an unnecessary barrier in a world where technology could easily eliminate these issues. Sometimes, I can't even order my own meal at a restaurant because of inaccessible tablet-based ordering systems.

As an entrepreneur and a retired professor, I've built my life around independence, problem-solving, and education. Yet, despite all my experience and knowledge, I still face barriers that shouldn't exist.

My son, a software engineer and Hawaii, has shown me how small accessibility improvements can make a major difference. Yet, many websites, kiosks, and apps remain inaccessible, making it harder for people like me to live independently.

This bill is a necessary step to ensure Hawaii stays at the forefront of technological advancements, creating a future where everyone can fully participate in society. I urge you to support SB 1496 S.D. 1 and remove these unnecessary barriers.

Thank you for your time and consideration.

Sincerely,

Marie Kouthoof
Hawaii Resident

PETER L. FRITZ
Attorney at Law
EMAIL: PLFLEGIS@FRITZHQ.COM

COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Representative Marten, Chair
Representative Olds, Vice Chair

RE: **Testimony In Support of SB1496SD1**

Dear Chair, Vice Chair and Members of the Committee:

I am a longtime supporter of accessibility for individuals with disabilities. I support the provisions in this bill to amend the definition of public accommodation and to add a definition for websites. Adding such a definition will clarify Hawaii's position on the applicability of Hawaii Revised Statute Chapter 489 to businesses with a digital presence. This bill should also include a requirement that the Hawaii Civil Rights Commission draft regulations which would provide an opportunity for the public to testify on issues relating to the changes proposed by this bill. Other provisions of this bill, such as the specific WCAG standard, should be deleted and incorporated in guidance that would be issued by the Hawaii Civil Rights Commission. Guidance can also address anger toward the accessibility of documents posted on the website. WCAG accessibility standards concern the ability to access information website. Other standards concern the accessibility of documents.

In April of 2024, the Department of Justice published final regulations regarding websites state and local governments. This bill appears to be an attempt to incorporate provisions from guidance issued by the Department of Justice for websites operated by state and local governments to websites operated by Hawaii businesses. Applying standards intended for large government entities to small businesses it is a bit like trying to force a square peg into a round hole.

As drafted, this bill raises a number of concerns questions which are addressed below. In addition, the cut and paste from the DOJ regulations for some reason did not include the exceptions to complying with certain website accessibility standards. It is not clear why some sections of the DOJ regulations were included in this bill and others were not.

CONCERNS AND UNANSWERED QUESTIONS

The following are some of the problems that will be caused by incorporating guidance into the law rather than step guidance issued after an opportunity for public hearing and input.

- THIS BILL WOULD IMPOSE A STANDARD FOR websites that is beyond the standard proposed by the Department of Justice or any other Federal or State law.
 - The bill says that the standard is WCAG 2.1 or any later version. The latest version is WCAG 2.2.
 - Hawaii will be the only state the using this standard.

- Requiring small businesses to conform to the stricter standards would impose a hardship upon small mom-and-pop stores that have a website.
- Larger businesses, with an Internet only presence, could choose not to do business in Hawaii rather than comply with standards that have not been adopted by any other state or enforcement agency.
- Is this what was intended?
- Hawaii should follow the Federal procedure Website standards should be included in guidance and not in the law.
- **The Effective Date** does not differ between large businesses and smaller businesses.
 - The DOJ regulations impose different time lines for compliance with their regulations. Larger municipalities have a shorter time period for compliant. Smaller municipalities are given more time to comply. It is not known why the director chose not to have different effective dates for different size businesses.
 - The effective date language in this bill doesn't differentiate between the compliance ability of a small business or a larger business. A small business may have a difficult time complying within the same timeframe as a larger business. It is unknown why the drafter did not differentiate it with the compliance date.
 - Software programs designed to test websites for accessibility will not test for compliance with WCAG 2.2 because it is not a standard use to determine compliance with accessibility requirements.
- Exceptions to compliance in the DOJ regulations were not carried into this proposed bill. The DOJ regulations included exceptions for certain situations where nondiscrimination rules would not apply. Exceptions are best incorporated into rule not the law as exceptions may change because of advances in technology and are subject to public input.

The need to address other certain concerns may also come to light at hearings on proposed rules issued by the Hawaii Civil Rights Commission.

I respectfully request that the definition of public accommodation and the definition of website be included in a new Senate draft and the sections in this bill relating to administrative type guidance provisions be deleted. These provisions would be incorporated into any guidance issued by the Hawaii Civil Rights Commission.

Thank you for the opportunity to testify.

§ 35.200 Requirements for web and mobile accessibility Text.

<u>Title 28</u>	Judicial Administration	Part / Section
<u>Chapter I</u>	Department of Justice	<u>0 – 299</u>
<u>Part 35</u>	<u>Nondiscrimination on the Basis of Disability in State and Local Government Services</u>	<u>35.101 – 35.219</u>
<u>Subpart H</u>	<u>Web and Mobile Accessibility</u>	<u>35.200 – 35.209</u>
	<u>Requirements for web and mobile accessibility.</u>	

§ 35.200 Requirements for web and mobile accessibility.

(a) *General.* A public entity shall ensure that the following are readily accessible to and usable by individuals with disabilities:

- (1) Web content that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements; and
- (2) Mobile apps that a public entity provides or makes available, directly or through contractual, licensing, or other arrangements.

(b) *Requirements.*

- (1) **Beginning April 24, 2026, a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.**
- (2) **Beginning April 26, 2027, a public entity with a total population of less than 50,000 or any public entity that is a special district government shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.**
- (3) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the Federal Register under [5 U.S.C. 552\(a\)](#) and [1 CFR part 51](#). All material approved for incorporation by reference is available for inspection at the

U.S. Department of Justice and at the National Archives and Records Administration (“NARA”). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514-0301 (voice) or 1-833-610-1264 (TTY); website: www.ada.gov [<https://perma.cc/U2V5-78KW>]. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html [<https://perma.cc/9SJ7-D7XZ>] or email fr.inspection@nara.gov. The material may be obtained from the World Wide Web Consortium (“W3C”) Web Accessibility Initiative (“WAI”), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273-2711; email: contact@w3.org; website: <https://www.w3.org/TR/2018/REC-WCAG21-20180605/> and <https://perma.cc/UB8A-GG2F>.

§ 35.201 Exceptions.

The requirements of [§ 35.200](#) do not apply to the following:

- (a) *Archived web content.* Archived web content as defined in [§ 35.104](#).
- (b) *Preexisting conventional electronic documents.* Conventional electronic documents that are available as part of a public entity's web content or mobile apps before the date the public entity is required to comply with this subpart, unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities.
- (c) *Content posted by a third party.* Content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity.
- (d) *Individualized, password-protected or otherwise secured conventional electronic documents.* Conventional electronic documents that are:
 - (1) About a specific individual, their property, or their account; and
 - (2) Password-protected or otherwise secured.
- (e) *Preexisting social media posts.* A public entity's social media posts that were posted before the date the public entity is required to comply with this subpart.

§ 35.202 Conforming alternate versions.

- (a) A public entity may use conforming alternate versions of web content, as defined by WCAG 2.1, to comply with [§ 35.200](#) only where it is not possible to make web content directly accessible due to technical or legal limitations.

(b) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the Federal Register under [5 U.S.C. 552\(a\)](#) and [1 CFR part 51](#). All material approved for incorporation by reference is available for inspection at the U.S. Department of Justice and at NARA. Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514-0301 (voice) or 1-833-610-1264 (TTY); website: www.ada.gov [<https://perma.cc/U2V5-78KW>]. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html [<https://perma.cc/9SJ7-D7XZ>] or email fr.inspection@nara.gov. The material may be obtained from W3C WAI, 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273-2711; email: contact@w3.org; website: <https://www.w3.org/TR/2018/REC-WCAG21-20180605/> and <https://perma.cc/UB8A-GG2F>.

§ 35.203 Equivalent facilitation.

Nothing in this subpart prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods, or techniques result in substantially equivalent or greater accessibility and usability of the web content or mobile app.

Duties.

§ 35.204 Duties.

Where a public entity can demonstrate that compliance with the requirements of [§ 35.200](#) would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, compliance with [§ 35.200](#) is required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with [§ 35.200](#) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

§ 35.205 Effect of noncompliance that has a minimal impact on access.

A public entity that is not in full compliance with the requirements of [§ 35.200\(b\)](#) will be deemed to have met the requirements of [§ 35.200](#) in the limited circumstance in which the public entity can demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

- (a) Access the same information as individuals without disabilities;**
- (b) Engage in the same interactions as individuals without disabilities;**
- (c) Conduct the same transactions as individuals without disabilities; and**
- (d) Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities.**

§§ 35.206-35.209 [Reserved]