

**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'OKELE

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

March 21, 2025

To: COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

From: Jack Lewin MD, Administrator SHPDA and
Senior Advisor to Governor Josh Green on Healthcare Innovation

Regarding: **SB1496, SD1, HD1 -- RELATNG TO CIVIL RIGHTS**

Position: SUPPORT with COMMENTS

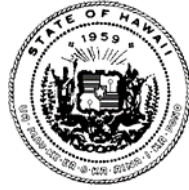
Testimony:

SB 1496 SD1 HD1 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 LAWE LAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 24, 2025

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 1496 SD1 HD1 – RELATING TO CIVIL RIGHTS.**

Hearing: Tuesday, March 25, 2025, 2:00 p.m.
Conference Room 325 & 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 shall be an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of, or information related to, their goods, 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 7/1/3000. (HD1)

The Committee on Health and Human Services 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.

The Committee on Human Services and Homelessness further amended the measure by:

- (1) Changing the effective date to July 1, 3000, to encourage further discussion; and

- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency and style.

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. Although state and federal laws prohibit discrimination in public accommodations based on disability, clearer guidelines and further discussions are needed to support businesses in implementing accessible digital services.

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 may require places of public accommodation to make financial investments in technology, training, and policy adjustments. DVR appreciates that the amended measure includes an exception for places of public accommodation if compliance would impose an undue burden or fundamentally alter the nature of the entity's information and communication technology.

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

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 in support of 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 25, 2025

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Senate Bill 1496 SD1 HD1 – Relating to Civil Rights

The Disability and Communication Access Board (DCAB) supports Senate Bill 1496 SD1 HD1 – Relating to Civil Rights. This bill would establish that it shall be an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of, or information related to, their goods, 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 7/1/3000. (HD1)

Ensuring equitable 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 equitable access to digital information and communication for people with disabilities.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



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

Tuesday, March 25, 2025

2:00 p.m.

Conference Room 325 & Videoconference
State Capitol, 415 South Beretania Street

To:

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice Chair

From: Dr. William J. Puette, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. 1496 S.D. 1 H.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, H.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.

Although the HCRC supports the bill as drafted, which provides for a more stringent standard than currently prescribed by current DOJ or Hawai‘i State law, Hawai‘i state law often affords more civil rights coverage and protections than other states or federal law.

The HCRC recognizes sentiment from community stakeholders that ascribing to the standard set by WCAG 2.2 may have some negative unintended effects such as burdening businesses and imposing a standard beyond that required by the Department of Justice or any current Hawai‘i State law. These stakeholders suggest a more tailored result may be achieved through a bill directing the HCRC to draft rules prohibiting public accommodations discrimination in electronic content with a tiered approach for small and large businesses.

While the HCRC has not yet taken a position on such suggested amendments, in the past it has consistently supported similar efforts to prohibit discrimination in public accommodations for all of Hawaii’s residents and the HCRC would likely not oppose such amendments to achieve the same result as under S.B. 1496 S.D. 1, H.D. 1.

The HCRC Supports S.B. 1496 S.D. 1, H.D. 1 but would also welcome further dialogue to achieve the same results with less impact on small businesses and to provide standards more easily complied with by all.



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
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 25, 2025

The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs
The Thirty-Third Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Tarnas and Committee Members:

SUBJECT: SB1496 SD1 Relating to Civil Rights

The Hawai'i State Council on Developmental Disabilities **SUPPORTS SB1496 SD1, HD1** Establishes that it shall be an unlawful discriminatory practice for places of public accommodation to deny a person with a disability full and equal enjoyment of, or information related to, their goods, 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.

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 HD1**.

Sincerely,

A handwritten signature in blue ink that reads "Daintry Bartoldus".

Daintry Bartoldus
Executive Administrator

SB-1496-HD-1

Submitted on: 3/21/2025 6:40:29 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Support	In Person

Comments:

We join our colleagues in the disability community to support this bill. It is sort of a modern age ADA and the law always needs to evolve with the times.

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

House Judiciary and Hawaiian Affairs (JHA) Committee

Thirty-third legislature, 2025 regular session
March 25, 2025, 2:00 pm, hearing on SB1496, S.D. 1, H.D. 1

Good afternoon Chair Tarnas, 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 HAWAII

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.

SB-1496-HD-1

Submitted on: 3/21/2025 2:29:12 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

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

Comments:

Please support this important bill. Mahalo.

SB-1496-HD-1

Submitted on: 3/21/2025 11:47:41 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
April Bautista	Individual	Support	Written Testimony Only

Comments:

As an aging millennial mom, i hope you pass this bill out of JHA. Mahalo!

April

Kalihi-Palama

SB-1496-HD-1

Submitted on: 3/24/2025 12:33:38 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marie Kouthoofd	Individual	Support	In Person

Comments:

Dear Chair Tarnas, Vice Chair, and Members of the Committee:

I am writing in support of SB1496 SD1, HD1, the Accessible Public Accommodations Technology bill.

For me, accessibility means independence and privacy. It's about managing everyday tasks most people take for granted, without having to rely on strangers. Too often, I find myself at a store, restaurant, or bank, unable to complete a transaction without asking someone else to enter my personal information or I'm forced to trust that the total they read aloud is accurate because the confirmation button isn't accessible, leaving me no way to verify the transaction myself. This isn't just inconvenient; it compromises my privacy and puts my personal data at risk.

As an entrepreneur and retired professor, I've built my life around problem-solving, education, and independence. Yet despite my skills and experience, inaccessible technology still limits my ability to navigate basic daily activities.

I understand that change can be hard, and there are valid concerns about the bill's scope and what compliance might mean for small businesses. Those are fair conversations to have, but they should not stall progress. This bill isn't a cure-all, but it is a necessary first step, and it deserves our support.

I cannot stress enough that no one expects perfection overnight, but we have to start somewhere. My son, a computer programmer here in Hawaii, has shown me how small adjustments in code or design can make a significant difference—without creating an undue burden.

The tools exist to remove these barriers. This bill challenges the status quo and ensures accessibility is no longer treated as an afterthought when technology serves the public. It reminds businesses that accessibility matters—and must be part of the equation.

The very fact that I am able to submit this testimony today is because of accessible technology. Without it, my voice and the voices of so many others would be left out of the equation.

SB1496 SD1, HD1 is a necessary step toward breaking down barriers that need not exist. By moving accessibility forward, we help ensure everyone here in Hawaii can participate fully and independently in their community.

Thank you for your time and consideration.

Respectfully,

Marie Kouthoofd

SB-1496-HD-1

Submitted on: 3/24/2025 12:54:06 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

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

Comments:

Dear Chair Tarnas, Vice Chair and Committee Members:

My name is Rodney Kouthoofd, and I am writing in Support of SB1496 SD1, HD1, The Accessible technology bill.

While I am not blind, my wife is. Over the last 30 years, I've watched her navigate life with incredible independence when accessibility is present.

I've also witnessed her being forced to rely on others, or worse, people bypass her entirely and speak to me just to complete a simple technological transaction. Other times she has to hand me her phone, because an app is not accessible, so I can finish the transaction for her. It's not a matter of capability; it's the lack of accessible design that creates these barriers.

When technology works with assistive tools, my wife thrives. The frustrating part is that the capability exists, what's missing is a prompt for businesses and service providers to consider accessibility. This bill helps do that. It pushes us toward a society where access isn't an afterthought but an expectation.

Thank you for your time and consideration.

Sincerely,

Rodney Kouthoofd

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

Committee Judiciary and Hawaii Affairs
Representative Rep. David A. Tarnas, Chair
Representative. Mahina Poepoe, Vice Chair

RE: **Testimony In SUPPORT of the INTENT of SB1496 SD1HD1**

Dear Chair, Vice Chair and Members of the Committee:

I am a longtime supporter of accessibility for individuals with disabilities. My suggested language regarding electronic ballots was incorporated into the voting by mail bill which became law. Notices for public meetings are required to include information about how to obtain an accommodation for a disability because of a bill that I wrote. I have Chaired the Disability and Communications Access Board (DCAB) and the State Rehabilitation Advisory Council. **I support the intent of this bill to increase access for individuals with disabilities; however,** because certain provisions in the bill need to be incorporated into Guidance/Rules, the bill needs to be amended and to add a requirement that the Hawaii Civil Rights Commission (HCRC) to draft rules. **I have ATTACHED NEW PROPOSED BILL to address drafting concerns in the current draft which are discussed below.** I have also attached a rough draft of rules with comments about information that needs to be discussed at a public hearing.

Genesis For This Bill:

In April, 2024, the Department of Justice (DOJ) issued Regulations relating to Title II of the ADA for State and Local governments to provide additional guidance about how the DOJ would analyze disability complaints based on certain public electronic content.

The purpose of guidance is to advise parties of the DOJ's interpretation of Title II of the ADA so that parties can make changes prior to the effective date of the guidance. The law is not amended to incorporate the Guidance. The Guidance is published separately after public hearing and comments. The guidance adopted the recommendations of the World Wide Web Consortium (W3C) for Web Content Accessibility Guidelines (WCAG) 2.1.¹ **The DOJ proposed guidance was subject to public hearings and comment and changes were incorporated into the final DOJ regulations based on those comments.**

Noticing that the DOJ had adopted WCAG 2.1 in its guidance, it appears that the drafter of this bill cut and pasted some parts of the DOJ's guidance into Chapter 489, Hawaii Revised Statutes

¹ The Web Content Accessibility Guidelines (WCAG) are part of a series published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), the main international standards organization for the Internet. They are a set of recommendations for making Web content more accessible, primarily for people with disabilities—but also for all user agents. WCAG 2.0 was published in December 2008 WCAG 2.1 became a recommendation in 2018 and WCAG 2.2 became a recommendation October 2023.

(HRS) instead of drafting a bill for the HCRC to draft rules. Incorporating the DOJ Guidance directly into the law created ambiguity and drafting concerns and denies the public the opportunity to comment on any proposed rules. Part of the intent of the drafter of these rules was to incorporate the recommendations for 2.1 of the Web Content Accessibility Guidelines (WCAG); however, as discussed below, poor drafting means that WCAG 2.2 is also included .

CONCERNS AND UNANSWERED QUESTIONS

As drafted, this bill raises a number of concerns and 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.

The following are some of the problems that 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 states that the standard is WCAG 2.1 **or any later version**. The latest version is WCAG 2.2. This means that businesses would have to comply with WCAG 2.2.
 - The DOJ froze the standard at WCAG 2.1 to allow businesses the opportunity to review their information for compliance with the WCAG 2.1 standard. Automatically imposing any new standards is moving the target which would burden businesses. The target should not move.
 - Hawaii should follow the Federal procedure Website standards should be included in guidance and not in the law. It is easier to change guidance then amend the law
- **The Effective Date for compliance is the same for large and small businesses.**
 - The DOJ regulations impose different compliance dates for compliance with their regulations. Larger municipalities have a shorter time period for compliant. Smaller municipalities are given more time to comply.
 - 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.
 - Requiring Hawaii small businesses to conform to at the same time if larger businesses would impose a hardship upon small mom-and-pop stores that have a website, but do not have IT departments that businesses such as Bank of Hawaii, Island Insurance, Central Pacific Bank or other large Hawaii Businesses.
 - Larger businesses, with an Internet only presence in Hawaii could choose not to do business in Hawaii rather than comply with WCAG 2.2 standards that have not been adopted by any other state or enforcement agency.

- Software programs designed to test websites for accessibility will not test for compliance with WCAG 2.2 because it is not a standard used to determine compliance with accessibility requirements. Compliance could be difficult because testing software would not be available.
- **The 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 rules not the law as exceptions may change because of advances in technology and are subject to public input.

I respectfully request that this Committee amend this bill to address some of the drafting concerns described above or, alternatively defer this bill to permit further discussion during the next legislative session enable the parties to further discuss this bill.

Thank you for the opportunity to testify.

Proposed DRAFT of revised substantive provisions knowing additions and deletions with comments.

SECTION 1. The legislature finds that the information age is changing how providers of public accommodations communicate with customers and the public, including the use of technologies such as websites and applications on smartphones and other mobile devices to take reservations, view menus, place orders, make sales, and provide product information.

SECTION 2. Section 489-2, Hawaii Revised Statutes, is amended as follows:

These definitions would be in the rules.

~~1. By adding four new definitions to be appropriately inserted and to read:~~

~~""Accessible" means the ability to receive, use, and manipulate data and operate controls included in information and communication technology in a manner equivalent to that of individuals who do not have disabilities.~~

~~"Application" means software that is designed to run on a device, including a smartphone, tablet, self-service kiosk, wearable technology item, laptop or desktop computer, or another device, and perform or help the user perform a specific task.~~

~~"Information and communication technology" means electronic information, software, systems, and equipment used in the creation, manipulation, storage, display, or transmission of data, including internet and intranet systems, websites and interfaces, software applications, operating systems, video and multimedia, telecommunications products, kiosks, information transaction machines, copiers, printers, smartphones, tablets, and desktop and portable computers.~~

~~"Website" means any collection of related web pages, images, videos, or other digital assets placed in one or more computer server-based file archives so that the collection can be accessed over the Internet or through a private computer network."~~

1. 2. By amending the definition of "place of public accommodation" to read:

""Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors[-], whether the presence of the business, accommodation, refreshment, entertainment, recreation, or transportation facility in the State is physical or digital. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

(1) A facility providing services relating to travel or transportation;

- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment conducted to serve the health, appearance, or physical condition of persons;
- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;
- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; and
- (12) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment.

No place of public accommodation defined in this section shall be requested to reconstruct any facility or part thereof to comply with this chapter."

SECTION 3. The Hawaii Civil Rights shall issue guidance for Chapter 489.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on _____.

Sample Rough Draft of Proposed Rules for the HCRC based on DOJ proposed rules with comments.

§ (new reference number) ~~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, (decide on a date for compliance) a [public] entity, ~~(decide on size of larger [public] entity standard can be dollars which the Department of Taxation uses or another standard such as visits or members)~~ 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 ~~(small business standard – perhaps use a definition from the SBA)~~ 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 ~~(LRB can help with this language.) 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>.

§ [to be numbered] Exceptions.

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

- (a) *Archived web content.* Archived web content as defined in [[§ 35.104](#)]. (insert new reference.)
- (b) *Preexisting conventional electronic documents.* Conventional electronic documents that are available as part of a ~~public~~ the 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.* An [public] entity's social media posts that were posted before the date the [public] entity is required to comply with this subpart.

§ (New Reference Number) Conforming alternate versions.

- (a) An [public] entity may use conforming alternate versions of web content, as defined by WCAG 2.1, to comply with (new reference) [[§ 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>.

§ (new reference number) [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.

§ (new reference number) [35.204] Duties.

Where a [public] entity can demonstrate that compliance with the requirements of (new reference number) § [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 (new reference number) § [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.~~

SB-1496-HD-1

Submitted on: 3/25/2025 9:40:42 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Linda Elento	Individual	Support	Written Testimony Only

Comments:

I support adding clarifying language to apply to participants **including students**.