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STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWE LAWE KANAKA
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Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

February 24, 2025

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Ryan I. Yamane, Director

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

Hearing: Wednesday, February 26, 2025, 9:40 a.m.
Conference Room 016 & 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 ensures 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 may require places of public accommodation to make financial investments in technology, training, and policy adjustments. Departments will likely need additional resources to become trained and proficient to meet the effective date. DHS asks 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 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.



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

Wednesday, February 26, 2025

9:40 a.m.

Conference Room 016 & Videoconference
State Capitol, 415 South Beretania Street

To: COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, 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.



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

February 26, 2025

The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary
The Thirty-Third Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Rhoads 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,

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

Daintry Bartoldus
Executive Administrator



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)

February 26, 2025

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY

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,

A handwritten signature in blue ink, appearing to read "Kirby L. Shaw".

KIRBY L. SHAW
Executive Director

National Federation of the Blind of Hawaii

Testimony submitted by James Gashel, legislative chair

Senate Judiciary Committee (JDC)

Thirty-third legislature, 2025 regular session

February 26, 2025, 9:40 am, hearing on SB1496 SD 1

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

The purpose of this Act 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.

State and federal laws already require equal access in the use of public accommodations without discrimination based on disability but need to be up dated and more specific to insure that use of information technology is clearly covered. Despite clear language in both HRS chapter 489 and section 302 of the Americans with Disabilities Act, covering all goods, services, facilities, privileges, advantages, and accommodations of public accommodations, most websites and applications used by public accommodations to inform and make their products and services available to the public still contain significant barriers to full and equal use by individuals 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.

I should note that a previous hearing was held on this bill by the HHS and LBT committees, February 7, 2025. The testimony shows strong support by all organizations and individuals, with the exception of Peter Fritz, who raised two questions about jurisdiction, summarized and discussed below:

(1) Mr. Fritz points out that Federal courts have been split on whether and to what extent websites are covered as part of public accommodations under title III of the ADA. As he notes, some courts have held that websites are covered under ADA if they are serving as an extension of the physical presence of a bricks and mortar business, but are not covered by the ADA if not connected to a physical business. Other courts have held that websites are subject to title III of the ADA, whether or not the website is tied to a bricks and mortar business.

(2) Mr. Fritz expressed concern as to whether or to what extent a website would be covered under our amended state law if the website, or the place of public accommodation using the website is not located in Hawaii.

Discussion:

Responding to Mr. Fritz comments, summarized above, the Committee should consider the amended definition of "place of public accommodation," found in section 2 of SB1496 SD 1, which reads in relevant part: "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. ..."

On its face, the words of this revised definition appear to respond to Mr. Fritz's concerns.

Responding to his first concern, the revised definition says clearly that the presence of the place of public accommodation can be "physical or digital," and, responding to Mr. Fritz's second concern, the revised definition says clearly that a place of public accommodation has a "presence in the state," whether the presence is physical or digital.

Several states have laws which extend their public accommodations or civil rights laws to information and communication technology. These laws are often more specific than the ADA,

which was passed before the widespread advent of digital communications. These states with civil rights coverage of information and communication technology, including websites, include:

California --

California's Unruh Civil Rights Act prohibits discrimination based on disability and has been interpreted to apply to websites. In *National Federation of the Blind v. Target Corp.*, the court held that the Act applies to online services, requiring businesses to ensure their websites are accessible.

New York --

New York State's Human Rights Law prohibits discrimination against individuals with disabilities in places of public accommodation, which includes websites. Businesses operating in New York are required to make their online services accessible to individuals with disabilities.

Florida --

Florida's Civil Rights Act prohibits discrimination based on disability in public accommodations. This has been interpreted to include websites, requiring businesses to ensure their online services are accessible to individuals with disabilities.

Minnesota --

Minnesota's Human Rights Act prohibits discrimination against individuals with disabilities in public accommodations, which includes websites. Businesses operating in Minnesota are required to make their online services accessible to individuals with disabilities.

Enactment of SB1496 SD 1 with your help will add Hawaii to this list. 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, 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.

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

SB-1496-SD-1

Submitted on: 2/24/2025 10:34:00 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--|--------------------|---------------------------|
| Stan Young | Testifying for Hawaii State Committee of Blind Vendors | Support | Written Testimony Only |

Comments:

Testimony of Stan Young

Senate Judiciary (JDC) Committee

Thirty-third legislature, 2025 regular session

February 26, 2025, 9:40 am, hearing on SB1496 S.D. 1

The ADA (Americans with Disability Act) was passed in 1990. But, with the advancement of technology, especially digital, we need this bill to modernize the application of the ADA to public accommodations. With all the modern tenets, it is simply the intent to make the technology comply with modern terms of accessibility. This bill will simply address the basic requirements for text and readability of public accommodations. I hope that you will consider the responsibility to make these public accommodations accessible. Thank you.

SB-1496-SD-1

Submitted on: 2/24/2025 3:33:52 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

We are in support.

Testimony of Donald Sakamoto

Senate Judiciary (JDC) Committee

Thirty-third legislature, 2025 regular session

February 26, 2025, 9:40 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.

SB-1496-SD-1

Submitted on: 2/21/2025 8:57:01 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|--------------|--------------------|---------------------------|
| Nancy D Moser | Individual | Support | Written Testimony Only |

Comments:

In STRONG SUPPORT of SB 1496 SD1.

Aloha Chair and members of the Committee,

Please vote YES on this measure.

Nancy Moser in Waikoloa on Hawai'i Island

February 7, 2025

Testimony of Eleanor Macdonald
Submitted to the Health & Human Services, and
Labor and Technology Committees

Honorable Senators Joy San Buena Ventura & Henry J.C. Aquino Chairs
Honorable Senator Chris Lee, Vice Chair

Re: SB 1496, RELATING TO CIVIL RIGHTS

Dear Chairs Sen. San Buena Ventura & Aquino, Vice-Chair Chris Lee and Members,

I would like to whole heartedly support SB 1496, Relating to Civil Rights to “establish that its unlawful discriminatory practice for places of public accommodation to deny a person with a disability (to) have full and equal enjoyment of information...”

This critical legislation requires agencies receiving federal, state and county dollars to provide equal availability of information, meaning that a variety of modes of communication are provided to the general public for full and equal access to what is going on in their home state. This includes digital text to speech and the conversion of documents without graphs or pictures to enable braille readers to have access.

People who are deaf, hard of hearing and deaf-blind may have unique needs and may contact individual agencies to advise them of their special needs. This would require staff who are trained to “listen” to individuals with communication barriers and respond in a dignified and respectful manner.

Please pass this very important civil rights bill.

Mahalo,

Eleanor Macdonald, M.Ed., CRC (ret.)

SB-1496-SD-1

Submitted on: 2/23/2025 1:15:30 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|----------------|--------------|--------------------|------------------------|
| Veronica Moore | Individual | Support | Written Testimony Only |

Comments:

To: Senator Karl Rhoads,
Chair
Chair
Judiciary
and Human Services

Senate Committee on Labor and Technology

Senator Mike Gabbard, Vice
Senate Committee on
Senate Committee on Health

From: Veronica Moore, Individual Citizen

Date: February 23, 2025

RE: Upcoming Hearing for SB1496
SD1
RIGHTS.
Accommodations; Persons with Disabilities;
Places of Public Accommodation

Measure Title: RELATING TO CIVIL
Report Title: Discrimination in Public
Discriminatory Practices;

To All Concerned,

My name is Veronica Moore and I support Senate Bill 1496 SD1 because the use and enjoyment of a place of public accommodation should be available to **all** members of the public instead of create unnecessary barriers for certain members of the public. Thank you for introducing this bill, and I appreciate the opportunity to present testimony regarding it.

Sincerely,

Veronica M. Moore

SB-1496-SD-1

Submitted on: 2/23/2025 5:08:07 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Testimony in Support of SB1496 S.D.1

Testimony of Marie Kouthoofd.
Senate Judiciary (JDC) Committee

Thirty-third legislature, 2025 regular session

February 26, 2025, 9:40 am, hearing on SB1496 S.D. 1

I am writing in support of SB1496 S.D.1, a bill that seeks to ensure providers of public accommodations use accessible communication technology. For blind individuals like myself, accessible technology is not just a convenience—it is a necessity for equal access and full participation in society.

I would not have been able to reach this stage in my life without accessible technology. It has opened the world to me and countless others, turning what could be an insurmountable barrier into a mere nuisance. Now, as I enjoy my retirement years, ensuring continued access to technology is more important than ever. It allows me to live a healthy, independent, and productive life without unnecessary barriers.

My son, a software engineer, who also resides in Hawaii, often assists me in navigating technology, and I have seen firsthand how small changes to accessibility features can make a world of difference. Yet, despite the progress we have made, accessibility is too often overlooked. Many websites and applications used by public accommodations providers

remain inaccessible, unintentionally excluding individuals with disabilities. With a little effort and awareness, these barriers could be significantly reduced, allowing people like me to fully engage with our community and continue contributing to the world around us.

By passing SB1496 S.D.1, Hawaii has the opportunity to lead the way in fostering inclusion and ensuring that technology remains a gateway rather than a roadblock. I am deeply grateful for the opportunities I have had and for the advancements that have made my independence possible. I urge you to support this bill so that accessibility remains a priority—not just for me, but for the many who rely on it every day.

Thank you for your time and consideration.

Sincerely,
Marie Kouthoofd

SB-1496-SD-1

Submitted on: 2/24/2025 4:59:36 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

I support this bill. Please pass it

Brandon Young

2/5/2025

Testimony on SB1496

Dear Chair and Vice Chair,

My name is Brandon Young and I am submitting testimony on behalf of the National Federation of the Blind of Hawaii. I am in support of SB1496. This bill would help blind people in Hawaii to have greater access to places of business in their community. Have you visited a place where they give you a tablet to order something? Well, if you have, then you know that these establishments are impossible for blind people to interact with. This bill would create opportunities for blind people to interact with these places of business. Blind people should have the same type of access to their community as all other citizens in the state of Hawaii. I urge you pass this bill. Thank you for your time and energy on this matter. I hope you have a wonderful day.

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

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

RE: **Comments on SB1496SD1 Rules are Needed**

Dear Chair, Vice Chair and Members of the Committee:

I am a longtime supporter of accessibility or individuals with disabilities. Years ago, I worked with the CIO and the operator of the State Calendar to include information regarding how to obtain an accommodation for disability for public meetings. In addition, I had multiple discussions with ETS and ETS' CIO Murdoch regarding the necessity of assessable PDF files. **I support accessibility for websites, but for the reason below, I think that Hawaii should follow the path taken by the Department of Justice and incorporate many of the provisions that have been added in Rules and not in the Chapter 489, Hawaii Revised Statutes. I have attached a revised Section 2 of SB 1496 SB1 with explanations in red as to why some provisions should be included in rules.**

My concerns relate to the cut and paste of sections from Department of Justice (DOJ) regulations, Title 28 CFR § 35.200- 35-209 relating to Title II and state and local governments. The DOJ did not incorporate these provisions into the Title II law, the DOJ issued guidance in Regulations which provides flexibility for changes to future technology and changes to guidance from the Access Board and the Web Content Accessibility Guidelines (WCAG). The latest version of the WCAG is 2.2 and the standard in SB 1496 is 2.1 and any revisions which means that Hawaii would require adherence to a standard higher than the DOJ requires.

A major concern is the fact that the drafter of SB 1496 cut and pasted a standard of WCAG 2.1, but failed to include any of the exceptions in 28 CFR 201 concerning when compliance is not required or different compliance dates depending on the size of the government, that were included in the DOJ regulations. There should be different standards for small and large businesses. The exceptions are necessary. (A copy of the Department of Justice's regulations with this section highlighted) is attached. These areas are the proper subject for rules.

Rules allow flexibility. Rules are adopted after public hearing. The DOJ's rules provide the framework for rules for Hawaii. Hawaii rules could include compliance dates that provide relief to small and local mom and pop stores while requiring quicker compliance for larger businesses. **THIS BILL SHOULD BE AMENDED TO REQUIRE THAT THE Hawaii Civil Rights Commission (HCRC) write rules to provide guidance for website accessibility.**

CHAPTER 489 CURRENTLY ALLOWS PERSONS TO FILE AN ACTION FOR WEBSITE DISCRIMINATION

An individual can bring an action for website discrimination under §489, HRS. However, a Hawaii court may not have jurisdiction over a defendant that operates an Internet only website. A business must have “nexus”—some sort of adequate connection—with a state for that state to impose jurisdiction. An internet only business may not have sufficient connections with Hawaii for Hawaii to impose obligations under Chapter 489. Legislators may remember that Hawaii could not collect GET from internet businesses until the Supreme court decided *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). Because of *Wayfair*, Hawaii will impose taxes on business that have more than \$100,000 of business with Hawaii residents or 200 transactions. Nexus is not automatic.

State-Level Action on Website Accessibility

There are two prominent lines of decisions addressing web technology accessibility under Title III: 1) Courts holding that places of public accommodation are limited to physical locations and that Title III requires a nexus between an actual physical structure and the goods, services, or privileges provided via web technologies; and 2) courts holding that places of public accommodation are not limited to physical locations and, thus, there need not be any nexus to a physical structure.

Federal courts in at the Third, Sixth, Ninth, and 11th circuits have adopted the nexus theory in the first line of decisions. Under this first line of cases, which limits “places of public accommodation” to actual physical locations, a website is not itself a place of public accommodation. However, under the nexus theory, Title III may nonetheless apply to web technologies if there is a nexus between the services, goods, and privileges they provide and an actual physical place of public accommodation. Significantly, this line of decisions dictates that Title III does not cover web-only businesses, which lack any actual physical place of public accommodation. For instance, the first line of cases makes a distinction between Target — a retail company with a physical place of accommodation as well as a website — and eBay, which has no physical location providing goods, services, or privileges to the public.

Regarding Mr. Gashel’s testimony concerning the 9th Circuit’s position on accessibility, Mr. Gashel cites *National Federation for the Blind v. Target, Inc.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006) (Target). However, Target involved a business that had a substantial presence in California and found that there was a nexus between the brick and mortar business and the website. What Mr. Gashel fails to mention is that the same district court dismissed Title III claims against web-only companies, such as Facebook, Netflix, and eBay, because there was no nexus between the respective website goods and services and an actual physical place of accommodation

STATE CASES

Law suits have been brought under **disability rights laws** rather than state-specific laws targeting online businesses. For example:

1. **New York:**

- New York's **New York State Human Rights Law** includes provisions that mandate equal access to public accommodations, including websites. Although **New York has not passed a specific law solely regulating online business websites for disabilities**, individuals with disabilities can file lawsuits under the existing human rights law if they encounter discrimination on a website.

2. **Florida:**

- Florida has seen several high-profile lawsuits under the ADA related to website accessibility, with businesses being sued for not making their online platforms accessible to those with disabilities. **The state does not have a specific law regulating the accessibility of online business websites, but the ADA applies here as well.**

3. **Other States:**

- Other states like **Massachusetts, Arizona, and North Carolina** have also seen lawsuits under the ADA concerning inaccessible websites. **While states have not passed specific laws regulating website accessibility, they rely on local civil rights protections to handle these issues.**

Conclusion:

Hawaii should follow the same path for regulation as the DOJ did and issue rules. The DOJ's rules provide a quick path for Hawaii. A distinction needs to be made regarding compliance that is keyed to the size of the business and exceptions for situations where compliance is not required.

Thank you for the opportunity to testify.

SUGGESTED REVISIONS TO SB1496 SD1

The following is a revised Section 2 of SB1496. The red text explains why the provision was stricken. The primary reason is that the information belongs in rules which is how the Department of Justice implemented the changes for its Title II, State and Local Government Regulations. Title II of the ADA was not amended.

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

The definitions below are part of definitions under regulations for 508. If 508 changes these hard wired definitions will not change. If case law requires a change, these definitions will not change.

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."~~

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. Section 489-5, Hawaii Revised Statutes, is amended to read as follows:

"§489-5 Other discriminatory practices. (a) It is a discriminatory practice for two or more persons to conspire:

- (1) To retaliate or discriminate against a person because the person has opposed an unfair discriminatory practice;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice; or

(3) Wilfully, to obstruct, or prevent, a person from complying with this chapter.

(b) It is a discriminatory practice to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations because of the known disability of an individual with whom the person is known to have a relationship or association.

The paragraph below is not needed. It is already discriminatory to discriminate against a person and this includes websites.

~~———(c) It is a discriminatory practice to deny a person with a disability full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations, or information related to the 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.~~

The information is stricken because the COMPLIANCE DATE belongs in rules which is where it is in the DOJ Regulations. It is not part of Title II of the ADA. IN ADDITION, THERE SHOULD BE PROVISIONS FOR COMPLIANCE FOR SMALL MOM AND POP STORES LIKE CRACK SEED STORES THAT ARE LATER THAN COMPLIANCE FOR COMPANIES DOING OVER \$100,000 OF BUSINESS IN HAWAII. Under tax law, an internet business must have more than \$100,000 of business or 200 transactions to be subject to jurisdiction for taxation. There should be a similar compliance threshold for website compliance.

Beginning July 1, 2026, a place of public accommodation shall:

~~———(1) Ensure that information and communication technology used to communicate with applicants, participants, customers, and other members of the public is accessible for full and equal use by persons with disabilities; and~~

~~———(2) Ensure that communications and interactions through information and communication technology with applicants, participants, customers, and other members of the public with disabilities are as effective as communications and interactions with individuals without disabilities.~~

THE LATEST VERSION OF THE WEB CONTENT ACCESSIBILITY GUIDELINES IS 2.2. However, neither the Access Board or the DOJ has adopted 2.2 nor will the DOJ require compliance with 2.2. The DOJ may require 2.2 in the future by amending its regulations. The language below says that the standard is 2.1 OR ANY REVISIONS.

~~———— For the purposes of this subsection, a website that meets or exceeds the World Wide Web Consortium Web Content Accessibility Guidelines 2.1 Level AA (as the guideline may be revised) shall be deemed accessible. A public accommodation shall not be deemed to be in violation of this subsection if compliance would impose an undue burden or fundamentally alter the nature of the information and communication technology."~~

SECTION 4. The Hawaii Civil Rights Commission shall issue rules for this section.

§ 35.200 Requirements for web and mobile accessibility Text.

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

§ 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]