

HCRC Staff Testimony on [HB2576](#)



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KĪWILA O HAWAI‘I

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DATE: Tuesday, February 24, 2026
TIME: 2:00 PM
PLACE: VIA VIDEOCONFERENCE
Conference Room 325
State Capitol
415 South Beretania Street

To:

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice Chair

From: Marcus L. Kawatachi, Executive Director of the Hawai‘i Civil Rights Commission
and HCRC Staff

Re: HB 2576 HD1 Relating to Background Checks

HCRC Staff Comments

While the Commissioners of the Hawai‘i Civil Rights Commission (HCRC) have not yet had the opportunity to meet and take an official position on H.B. 2576 HD1, HCRC staff provide the following comments. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5. HCRC has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment (Chapter 378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (HRS § 368-1.5).

The HCRC's staff comments concern the proposed language of HRS § 321-15.2(h): "Any use of background check information to make an employment

decision based on conviction record information shall comply with the requirements of section 378-2.5(c), including any applicable limitation on the consideration of conviction record information."

We assert that the state's employment discrimination law, including but not limited to HRS §378-2.5, already encompasses a wide range of employment-related decisions and would continue to do so whether or not the proposed language is added. However, we do not object to the language, as it makes the coverage of HRS §378-2.5 explicit and may therefore provide clarity to the public.

The analysis of whether a covered employment action violates the state's employment discrimination law requires an individualized assessment of the relevant facts. With a practice or policy applied to a group of individuals to make employment decisions, a violation could be found if the practice or policy is either discriminatory on its face, or if it is applied in a discriminatory manner. HRS §378-2.5 provides detailed information specifically relating to employment decisions based on conviction record information, including subsection (c) that is cited in the proposed language. Moreover, subsection (d) describes specific employers, including but not limited to the Department of Health, that under certain circumstances may be exempted from HRS §378-2.5 but subject to the restrictions of other HRS sections. HCRC staff do not interpret H.B. 2576 HD1 to change employers' obligations under any section of existing state employment law under the jurisdiction of the HCRC. Thank you for the opportunity to provide these comments.

Documents relating to [SB2852](#) – Public
Accommodations, digital accessibility

A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the information age
2 is changing how providers of public accommodations and public
3 services communicate with their customers. Many service
4 providers use websites, software applications, and other
5 technologies to take reservations, display menus, take orders,
6 make sales, and provide product information.

7 The legislature recognizes that ready access to, and the
8 ability to use, information and communication technology is
9 essential to allow all citizens to fully engage with and enjoy
10 public goods, services, facilities, privileges, advantages, and
11 accommodations. However, the legislature is aware that some
12 websites and applications used by public accommodation providers
13 in the State are not accessible to persons with disabilities,
14 denying them full and equal access.

15 The legislature also recognizes that existing state and
16 federal laws that prohibit discrimination in public
17 accommodations based on disability could better inform providers



1 of public accommodations and benefit persons with disabilities
2 by clarifying requirements for electronic access.

3 Accordingly, the purpose of this Act is to make it an
4 unlawful discriminatory practice for a place of public
5 accommodation to deny a person with a disability full and equal
6 enjoyment of, or information related to, their goods, services,
7 facilities, privileges, advantages, or accommodations by
8 requiring the use of information and communication technology
9 that is not accessible to the person.

10 SECTION 2. Section 489-2, Hawaii Revised Statutes, is
11 amended by adding four new definitions to be appropriately
12 inserted and to read as follows:

13 "Accessible" means the ability to receive, use, and
14 manipulate data, and operate any controls included in
15 information and communication technology, in a manner equivalent
16 to that of a person who does not have a disability.

17 "Information and communication technology" means electronic
18 information, software, systems, or equipment used in the
19 creation, manipulation, storage, display, or transmission of
20 data, including internet and intranet systems, websites and
21 interfaces, software applications, operating systems, video and



1 multimedia, telecommunications products, kiosks, information
2 transaction machines, copiers, printers, smartphones, tablets,
3 and desktop and portable computers.

4 "Software application" means software that is designed to
5 run on a device, including a smartphone, tablet, self-service
6 kiosk, wearable technology item, laptop or desktop computer, or
7 another device, and that performs or helps the user perform a
8 specific task.

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

14 SECTION 3. Section 489-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§489-5 Other discriminatory practices.** (a) It [~~is~~]
17 shall be a discriminatory practice for two or more persons to
18 conspire[+] to:

19 (1) [~~To retaliate~~] Retaliate or discriminate against a
20 person because the person has opposed an unfair
21 discriminatory practice;



1 (2) [~~To aid,~~] Aid, abet, incite, or coerce a person to
2 engage in a discriminatory practice; or

3 (3) Wilfully[~~to~~] obstruct[~~to~~] or prevent[~~to~~] a person from
4 complying with this chapter.

5 (b) It [~~is~~] shall be a discriminatory practice to deny a
6 person the full and equal enjoyment of the goods, services,
7 facilities, privileges, advantages, and accommodations of a
8 place of public [~~accommodations~~] accommodation because of the
9 known disability of an individual with whom the person is known
10 to have a relationship or association.

11 (c) It shall be a discriminatory practice to deny a person
12 with a disability full and equal enjoyment of the goods,
13 services, facilities, privileges, advantages, or accommodations
14 of a place of public accommodation, or information related to
15 the goods, services, facilities, privileges, advantages, or
16 accommodations by requiring the use of information and
17 communication technology that is not accessible to the person.

18 (d) Beginning July 1, 2027, each place of public
19 accommodation with sixteen or more employees shall ensure that
20 all:



- 1 (1) Information and communication technology used to
2 communicate with applicants, participants, customers,
3 clients, visitors, and other members of the public is
4 accessible to persons with disabilities; and
- 5 (2) Communications and interactions carried out through
6 information and communication technology with
7 applicants, participants, customers, clients,
8 visitors, and other members of the public who have
9 disabilities are as accessible and effective as
10 communications and interactions with individuals
11 without disabilities.
- 12 (e) Beginning July 1, 2028, all places of public
13 accommodation, including public accommodations with fifteen or
14 fewer employees shall each ensure that all:
- 15 (1) Information and communication technology used to
16 communicate with applicants, participants, customers,
17 clients, visitors, and other members of the public is
18 accessible to persons with disabilities; and
- 19 (2) Communications and interactions carried out through
20 information and communication technology with
21 applicants, participants, customers, clients,



1 visitors, and other members of the public who have
2 disabilities are as accessible and effective as
3 communications and interactions with individuals
4 without disabilities.

5 (f) Subsections (d) and (e) shall not apply to:

6 (1) Archived web content that was posted before the
7 applicable compliance date and:

8 (A) Is kept solely for reference, research, or
9 recordkeeping purposes;

10 (B) Is kept in a designated area for archived
11 content; and

12 (C) Has not been modified since the applicable
13 compliance date;

14 (2) Preexisting conventional electronic documents that:

15 (A) Are word processing, presentation, portable
16 document format (PDF), or spreadsheet files; and

17 (B) Were posted before the applicable compliance
18 date;

19 (3) Individualized documents that are password-protected
20 or otherwise secured and are:



1 (A) Word processing, presentation, portable document
2 format (PDF), or spreadsheet files; and

3 (B) Relating to a specific person, property, or
4 account; and

5 (4) Social media posts that were posted before the
6 applicable compliance date.

7 (g) A place of public accommodation shall not be deemed to
8 be in violation of this section if compliance would impose an
9 undue burden or fundamentally alter the nature of the
10 information and communication technology used.

11 (h) For the purposes of this section, a website that meets
12 or exceeds the most current version of the World Wide Web
13 Consortium Web Content Accessibility Guidelines shall be deemed
14 accessible."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on January 30, 2050.



Report Title:

Discrimination in Public Accommodations; Persons with Disabilities; Discriminatory Practices; Places of Public Accommodation

Description:

Establishes it as an unlawful discriminatory practice for a place 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 by requiring use of information and communication technology that is not accessible to the person. Beginning 7/1/2027, requires each place of public accommodation with 16 or more employees to ensure that all information and communication technology used is accessible to persons with disabilities. Beginning 7/1/2028, requires all places of public accommodations to each ensure that all information and communication technology used is accessible to persons with disabilities. Establishes exceptions. Effective 1/30/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



PETER L. FRITZ

Committee on Consumer Protection & Commerce

March 17, 2026

SUBJECT: S.B. No. 2852, S.D. 1 (Proposed S.D. 2) — Relating to Civil Rights —
Comments

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

My name is Peter Fritz. I am an attorney, an individual with a disability, and an advocate for persons with disabilities. My practice includes work under the Americans with Disabilities Act and related state civil rights law. I have experience drafting legislation, reviewing regulations and drafting opinion letters in this area. I am submitting these comments on S.B. 2852, S.D. 1.

I am requesting that the Committee:

- Amend S.B. 2852, S.D. 1 to reflect the statutory architecture proposed in Attachment 2;
- Direct the Hawaii Civil Rights Commission to initiate rulemaking under Chapter 91, Hawaii Revised Statutes, using the draft rules in Attachment 1 as the working document; and
- Direct the Commission to complete rulemaking on an expedited basis consistent with the timeline established by the Department of Justice for its Title II web accessibility rule.

I have attached draft implementing rules for the Hawaii Civil Rights Commission as Attachment 1 and a proposed S.D. 2 as Attachment 2. I am the author of both documents. Together they constitute a complete, legally sound, and workable framework for digital accessibility in Hawaii.

The Problem with S.B. 2852, S.D. 1

S.B. 2852, S.D. 1 attempts to embed regulatory content into statutory text. Portions of the bill were imported from the Department of Justice's Title II regulatory framework

but without the accompanying provisions that give them legal coherence. The result is an incomplete and internally inconsistent text.

Specifically, S.D. 1 places definitions, compliance deadlines, technical accessibility standards, exceptions, an undue burden provision, and a WCAG benchmark provision into the statute. Each of these elements is regulatory in nature. Each belongs in agency rules, not in a statute. Each was imported incompletely. Each creates legal problems that the complete regulatory framework resolves.

This is not a criticism of the bill's civil rights purpose. That purpose is sound. It is a drafting problem with a specific and ready solution.

The Correct Statutory Architecture

Hawaii Revised Statutes Chapter 489 already prohibits discrimination based on disability by places of public accommodation. No new civil rights prohibition is needed.

The statute needs to do three things and nothing more.

- Confirm in Chapter 489 that requiring use of inaccessible information and communication technology by a place of public accommodation is an unlawful discriminatory practice. This provision appears in S.D. 1 as subsection (c) of amended Section 489-5. It is correct. It is retained in the proposed S.D. 2 without change.
- Direct the Hawaii Civil Rights Commission to promulgate implementing rules consistent with the Department of Justice Title II web accessibility framework.
- Confirm that a violation of the implementing rules constitutes an unlawful discriminatory practice under Chapter 489, subject to all remedies under that chapter, and that the Commission shall process complaints under Chapter 368. Without this confirmation, a covered entity could challenge whether a rules violation triggers Chapter 489 remedies or whether Chapter 368 procedural authority applies. The proposed S.D. 2 provides this confirmation. It does not expand the Commission's authority. It confirms it.

Everything else belongs in the rules.

Rulemaking Is the Right Path

The rulemaking process is not delay. It is the mechanism that produces workable rules. The Department of Justice completed its Title II web accessibility rulemaking from proposed rule to final rule in approximately eight months. Hawaii's process begins with a complete working draft already prepared. The Commission does not start from a blank page.

The compliance dates in the draft rules are tied to the effective date of the final rule, not to the legislative calendar. Businesses receive the preparation time they need. The disability community receives enforceable protection as soon as the rules take effect.

The rulemaking process gives both the disability community and the business community a formal opportunity to shape the rules. The four open issues in the draft rules; entity size threshold, compliance dates, WCAG incorporation by reference procedure, and section numbering, are precisely the questions that public input should answer. No legislator, no drafter, and no single expert can answer them correctly without that input.

Testimony at the prior hearing documented present, ongoing barriers experienced by blind and low vision residents in Hawaii. Those barriers exist today under existing law. The proposed S.D. 2 and the draft rules, processed through an expedited rulemaking, will deliver enforceable protection to those individuals on a defined schedule.

The Draft Rules

The draft rules in Attachment 1 address definitions, a fixed technical benchmark of WCAG 2.1 Level AA incorporated by reference, a phased compliance schedule with two tiers based on entity size, five specific exceptions, an equivalent facilitation defense, a structured undue burden procedure, and enforcement integrated into existing Chapter 489 and Chapter 368 infrastructure including a private right of action under HRS Section 489-22.

Four issues are reserved for public rulemaking: the size threshold for phased compliance, the compliance dates, the incorporation by reference procedure for WCAG 2.1, and Hawaii Administrative Rules section numbering.

I respectfully recommend that the Committee:

- (1) Amend S.B. 2852, S.D. 1 to reflect the statutory architecture in the proposed S.D. 2 in Attachment 2;
- (2) Direct the Hawaii Civil Rights Commission to initiate rulemaking under Chapter 91, Hawaii Revised Statutes, using the draft rules in Attachment 1 as the working document; and
- (3) Direct the Commission to complete rulemaking on an expedited basis consistent with the timeline established by the Department of Justice for its Title II web accessibility rule.

Thank you for the opportunity to submit testimony. I am available to discuss this proposal with the Committee or with Commission staff.

Respectfully submitted,

Peter L. Fritz

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Email: plflegis@fritzhq.com

Attachment 1: Draft Rules for Hawaii Civil Rights Commission -- Web and Mobile Application Accessibility for Places of Public Accommodation (HCRC Draft Rules)

Attachment 2: Proposed S.B. No. 2852, S.D. 2

HAWAII CIVIL RIGHTS COMMISSION
PROPOSED RULES: DRAFT FOR NOTICE-AND-COMMENT
Web and Mobile Application Accessibility
for Places of Public Accommodation

Adapted from U.S. Department of Justice Title II Final Rule (April 24, 2024)

DRAFTING NOTE: *This is a rough working draft for review and comment by the Hawaii Civil Rights Commission and interested parties. Bracketed items in bold are unresolved policy choices or require action by the Legislative Reference Bureau (LRB) before publication of a formal Notice of Proposed Rulemaking. All section reference numbers are placeholders pending assignment in the Hawaii Administrative Rules.*

§ [HAR reference] Definitions

As used in this subpart:

Accessible means that individuals with disabilities are able to acquire the same information, engage in the same interactions, and enjoy the same services as individuals without disabilities, with substantially equivalent ease of use.

Archived web content means web content that meets all of the following: (1) it is maintained exclusively for reference, research, or recordkeeping purposes; (2) it is not altered or updated after the date the covered entity is required to comply with this subpart; and (3) it is organized and stored in a dedicated archive area of the covered entity's website.

Conventional electronic document means a file in a format such as Portable Document Format (PDF), word processor file formats, presentation file formats, or spreadsheet file formats.

Covered entity means a place of public accommodation as defined in Hawaii Revised Statutes § 489-2.

Information and communication technology means technology that is used in the creation, display, transmission, and storage of digital content, including but not limited to websites, web applications, mobile applications, kiosks, electronic documents, and software programs.

Mobile app means software that is downloaded or installed on mobile devices such as smartphones and tablets, and is used to access or receive the goods, services, or information of a covered entity.

WCAG 2.1 means the Web Content Accessibility Guidelines, Version 2.1, published June 5, 2018, by the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI). WCAG 2.1 is incorporated herein by reference. [LRB to confirm correct Hawaii incorporation-by-reference language and process.] The standard is available 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/>.

Web content means information and sensory experience communicated to the user by means of a web browser or other web-based technology, including but not limited to text, images, sounds, videos, controls, animations, and documents.

§ [HAR reference] Requirements for Web and Mobile App Accessibility

(a) General

A covered entity shall ensure that the following are readily accessible to and usable by individuals with disabilities:

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

(b) Technical Standard

- (1) Beginning [DATE: recommended 18 months after effective date of final rule], a covered entity with [SIZE THRESHOLD: see drafting note below] or more [employees / annual gross revenue / other measure: see drafting note below] shall ensure that the web content and mobile apps it provides or makes available, directly or through contractual, licensing, or other arrangements, comply with WCAG 2.1, Level A and Level AA success criteria and conformance requirements, unless the covered entity can demonstrate that compliance would result in a fundamental alteration in the nature of its goods, services, or accommodations, or in undue financial and administrative burdens.
- (2) Beginning [DATE: recommended 24 months after effective date of final rule], all other covered entities shall ensure that the web content and mobile apps they provide or make available, directly or through contractual, licensing, or other arrangements, comply with WCAG 2.1, Level A and Level AA success criteria and conformance requirements, unless the covered entity can demonstrate that

compliance would result in a fundamental alteration in the nature of its goods, services, or accommodations, or in undue financial and administrative burdens.

(3) WCAG 2.1 is incorporated by reference into this section. [LRB to confirm final incorporation-by-reference language.] The standard 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/>.

DRAFTING NOTE: *Size Threshold: The compliance schedule differentiates between larger and smaller covered entities, consistent with the approach taken by the DOJ in its Title II final rule (which used population size for government entities). For private businesses, several options are available for defining the threshold: (1) number of employees (e.g., 15 or more employees, consistent with the ADA threshold for Title I); (2) annual gross revenue as defined by the Hawaii Department of Taxation; (3) SBA small business size standards by industry; or (4) average number of monthly website visits. The Commission should solicit public comment on which measure is most workable and equitable.*

§ [HAR reference] Exceptions

The requirements of § [HAR reference, Requirements section] do not apply to the following:

(a) Archived web content

Archived web content, as defined in § [HAR reference, Definitions section], is exempt from the requirements of this subpart.

(b) Preexisting conventional electronic documents

Conventional electronic documents that are available as part of a covered entity's web content or mobile apps before the date the covered entity is required to comply with this subpart, unless such documents are currently used to apply for, gain access to, or participate in the covered entity's goods, services, or accommodations.

(c) Content posted by a third party

Content posted by a third party on a covered entity's website or mobile app is exempt, unless the third party is posting due to contractual, licensing, or other arrangements with the covered 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 covered entity's social media posts that were posted before the date the covered entity is required to comply with this subpart.

§ [HAR reference] Conforming Alternate Versions

(a) A covered entity may use conforming alternate versions of web content, as defined by WCAG 2.1, to comply with § [HAR reference, Requirements section] 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. [LRB to confirm final incorporation-by-reference language.] The standard may be obtained from W3C WAI at the address and website listed in § [HAR reference, Definitions section].

§ [HAR reference] 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 for individuals with disabilities.

DRAFTING NOTE: *This section is critical. It preserves the fact-based equivalency defense recognized by federal courts, including *Bunting v. Gap, Inc.* (E.D.N.Y. 2024), which held that a business may defeat an accessibility claim by demonstrating it provided equivalent access even without strict technical WCAG conformance. This provision ensures that covered entities are not subject to per se violations based solely on technical non-conformance with WCAG if they can show they provided individuals with disabilities substantially equivalent access in practice.*

§ [HAR reference] Duties; Undue Financial and Administrative Burdens

(a) Where a covered entity can demonstrate that compliance with the requirements of § [HAR reference, Requirements section] would result in a fundamental alteration in the

nature of its goods, services, or accommodations, or in undue financial and administrative burdens, compliance with § [HAR reference, Requirements section] is required to the extent that it does not result in such a fundamental alteration or undue burdens.

(b) The covered entity bears the burden of demonstrating that compliance would result in a fundamental alteration or undue financial and administrative burdens.

(c) The determination that compliance would result in a fundamental alteration or undue burdens must be:

(1) Made by a responsible official or senior officer of the covered entity after considering all resources available to the covered entity for use in providing the goods, services, or accommodations at issue; and

(2) Accompanied by a written statement of the reasons for reaching that conclusion, which must be retained by the covered entity and made available to the Commission or any complainant upon request.

(d) Where full compliance is not required under this section, the covered entity shall take any other action that would not result in a fundamental alteration or undue burdens but would nevertheless ensure that individuals with disabilities receive substantially equivalent access to the covered entity's goods, services, or accommodations to the maximum extent feasible.

§ [HAR reference] Enforcement; Private Right of Action

(a) Substantive Basis; Unlawful Discriminatory Practice

A violation of this subpart constitutes an unlawful discriminatory practice under Hawaii Revised Statutes Chapter 489. These rules are adopted pursuant to the authority of the Hawaii Civil Rights Commission (Commission) under HRS Chapter 489 to define, implement, and enforce the prohibition against discriminatory practices by places of public accommodation.

(b) Commission Enforcement

Any person who believes that a covered entity has committed an unlawful discriminatory practice in violation of HRS Chapter 489 and this subpart may file a complaint with the Commission alleging a violation of HRS Chapter 489. The Commission shall process such complaints pursuant to its authority under HRS Chapter 489, using its procedural rules under HRS Chapter 368.

(c) Investigation and Conciliation

Upon receipt of a timely complaint alleging a violation of HRS Chapter 489 and this subpart, the Commission shall investigate the allegations and attempt conciliation pursuant to HRS Chapter 489 and the Commission's procedural rules. If conciliation fails, the matter shall be subject to a hearing before the Commission in accordance with HRS Chapter 489 and the Commission's rules of practice and procedure.

(d) Remedies, Commission

Upon a finding that a covered entity has committed an unlawful discriminatory practice in violation of HRS Chapter 489 and this subpart, the Commission may order any remedy available under HRS Chapter 489, including but not limited to:

- (1) Cease and desist orders requiring the covered entity to bring its web content and mobile apps into compliance with WCAG 2.1, Level AA, within a reasonable time specified by the Commission;
- (2) Compensatory damages to the complainant for any actual injury suffered as a result of the unlawful discriminatory practice; and
- (3) Such other relief as the Commission deems just and appropriate under HRS Chapter 489.

(e) Private Right of Action

Any individual aggrieved by an unlawful discriminatory practice in violation of HRS Chapter 489 and this subpart may bring a civil action in the circuit court of the State of Hawaii. The claim shall be styled as a violation of HRS Chapter 489, as implemented by this subpart.

- (1) Statute of limitations. Any private action under this section must be filed within the limitations period applicable to claims under HRS Chapter 489.
- (2) Available remedies. In a private action under HRS § 489-22 and this section, a court may award the following remedies as provided under HRS § 489-22:
 - (A) Injunctive relief requiring the covered entity to bring its web content and mobile apps into compliance with this subpart within a period specified by the court;
 - (B) Reasonable attorneys' fees and costs to a prevailing plaintiff as provided under HRS Chapter 489; and

(C) Such other equitable relief as the court deems appropriate.

(3) Relationship to Commission proceedings. A private right of action under HRS § 489-22 and this section is independent of any complaint filed with or proceeding before the Commission. An aggrieved person may pursue relief through the Commission, through a private civil action, or both. Filing a complaint with the Commission does not toll the limitations period for a private action, nor does a Commission determination bind a court in a private civil action.

Summary of Open Issues for Commission Action

The following issues must be resolved before a Notice of Proposed Rulemaking is published. Public comment should be solicited on items 1 and 2.

1. Size threshold for phased compliance.

The Commission must decide how to define "larger" versus "smaller" covered entities for purposes of the two-tier compliance schedule. Options include: number of employees (e.g., 15 or more, consistent with the ADA Title I threshold); annual gross revenue using Hawaii Department of Taxation definitions; SBA small business size standards by industry; or average number of monthly website visits. Public comment should be solicited on which metric is most equitable and administrable.

2. Compliance dates.

The compliance dates in sections (b)(1) and (b)(2) are placeholders. Recommended approach: set dates as 18 months and 24 months, respectively, after the effective date of the final rule, to allow for adequate preparation and technical assistance before enforcement begins. Public comment should be solicited on whether these timeframes are appropriate for Hawaii's business community.

3. Incorporation by reference of WCAG 2.1.

The LRB should confirm the correct Hawaii administrative law procedure for incorporating a private technical standard by reference and provide the precise formula for use in the final rule.

4. HAR section reference numbers.

All section numbers are placeholders pending assignment in the Hawaii Administrative Rules.

Working draft prepared for HCRC review. Not for public distribution. All bracketed items require resolution before Notice of Proposed Rulemaking is published.

THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2852
S.D. 2

A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the information age is changing how providers
2 of public accommodations and public services communicate with their customers. Many
3 service providers use websites, software applications, and other technologies to take
4 reservations, display menus, take orders, make sales, and provide product information.

5 The legislature recognizes that ready access to, and the ability to use, information
6 and communication technology is essential to allow all citizens to fully engage with and
7 enjoy public goods, services, facilities, privileges, advantages, and accommodations.
8 However, the legislature is aware that some websites and applications used by public
9 accommodation providers in the State are not accessible to persons with disabilities,
10 denying them full and equal access.

11 The legislature also recognizes that existing state and federal laws that prohibit
12 discrimination in public accommodations based on disability could better inform
13 providers of public accommodations and benefit persons with disabilities by clarifying
14 requirements for electronic access.

15 The legislature further finds that the technical standards, definitions, compliance
16 schedules, and enforcement procedures necessary to implement digital accessibility
17 requirements are regulatory in nature. These matters are best addressed through
18 administrative rulemaking, which allows for public participation by persons with
19 disabilities, businesses of all sizes, and other interested parties, and allows for updating
20 as technology evolves.

1 The legislature finds that the Hawaii Civil Rights Commission has existing authority
2 under chapter 489, Hawaii Revised Statutes, to define, implement, and enforce the
3 prohibition against discriminatory practices by places of public accommodation, and that
4 this authority extends to discriminatory practices carried out through information and
5 communication technology. Explicit rulemaking authority will confirm and give effect to
6 that authority and provide clear, workable guidance to both the disability community and
7 the business community.

8 The legislature notes that a working draft of proposed rules has been prepared for
9 consideration by the Hawaii Civil Rights Commission. That draft, which is adapted from
10 the United States Department of Justice Title II web accessibility final rule issued April
11 24, 2024, addresses definitions, technical accessibility standards, phased compliance
12 schedules, exceptions, equivalent facilitation, undue burden procedures, and
13 enforcement, including a private right of action. The legislature intends that the
14 Commission use that draft, or a substantially similar document, as the working
15 document for its rulemaking proceeding.

16 Accordingly, the purpose of this Act is to:

17 (1) Confirm that it is an unlawful discriminatory practice for a place of public
18 accommodation to deny a person with a disability full and equal enjoyment of the goods,
19 services, facilities, privileges, advantages, or accommodations of a place of public
20 accommodation, or information related thereto, by requiring the use of information and
21 communication technology that is not accessible to the person; and

22 (2) Direct the Hawaii Civil Rights Commission to promulgate rules implementing that
23 prohibition, consistent with the United States Department of Justice Title II web
24 accessibility framework, through a public rulemaking process that allows participation by
25 persons with disabilities, businesses, and other interested parties.

26 SECTION 2. Section 489-5, Hawaii Revised Statutes, is amended by adding a new
27 subsection to be appropriately designated and to read as follows:

28 **"§489-5 Other discriminatory practices.** (a) It shall be a discriminatory practice
29 for two or more persons to conspire to:

30 (1) Retaliate or discriminate against a person because the person has opposed an
31 unfair discriminatory practice;

32 (2) Aid, abet, incite, or coerce a person to engage in a discriminatory practice; or

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

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

5 (c) It shall be a discriminatory practice to deny a person with a disability full and
6 equal enjoyment of the goods, services, facilities, privileges, advantages, or
7 accommodations of a place of public accommodation, or information related to the
8 goods, services, facilities, privileges, advantages, or accommodations by requiring the
9 use of information and communication technology that is not accessible to the person.

10 (d) The Hawaii Civil Rights Commission shall adopt rules pursuant to chapter 91,
11 Hawaii Revised Statutes, governing the implementation of this subsection, including
12 definitions, technical accessibility standards, phased compliance schedules, exceptions,
13 undue burden procedures, equivalent facilitation, and enforcement.

14 A violation of rules adopted pursuant to this subsection shall constitute an unlawful
15 discriminatory practice under this chapter, subject to all remedies available under this
16 chapter. The Commission shall process complaints alleging such violations pursuant to
17 its authority under this chapter and its procedural rules under chapter 368, Hawaii
18 Revised Statutes."

19 SECTION 3. Chapter 489, Hawaii Revised Statutes, is amended by adding a new
20 section to be appropriately designated and to read as follows:

21 **"§489- Digital accessibility; rulemaking.**

22 (a) The Hawaii Civil Rights Commission shall adopt rules pursuant to chapter 91,
23 Hawaii Revised Statutes, to implement the prohibition established in section 489-5(),
24 including rules governing:

25 (1) Definitions of terms used in the administration and enforcement of that
26 prohibition;

27 (2) Technical accessibility standards applicable to websites, mobile applications,
28 and other information and communication technology used by places of public
29 accommodation;

30 (3) Phased compliance schedules that take into account the size of the covered
31 entity and the nature of its operations;

1 (4) Exceptions to the requirements, including exceptions for archived content,
2 preexisting documents, and other categories consistent with established federal
3 accessibility standards;

4 (5) Standards and procedures for determining when compliance would impose an
5 undue financial and administrative burden or require a fundamental alteration in the
6 nature of the covered entity's goods, services, or accommodations;

7 (6) Procedures for equivalent facilitation, recognizing that alternative designs,
8 methods, or technologies may provide substantially equivalent or greater accessibility;
9 and

10 (7) Enforcement procedures, including procedures for filing complaints with the
11 Commission, Commission investigation and conciliation, available remedies, and the
12 right of any aggrieved person to bring a civil action pursuant to section 489-22.

13 (b) The rules adopted under this section shall be consistent with the web
14 accessibility framework established by the United States Department of Justice in its
15 Title II final rule on web accessibility, 28 C.F.R. Part 35, as amended.

16 (c) In conducting rulemaking under this section, the Commission shall solicit public
17 comment from persons with disabilities, disability advocacy organizations, places of
18 public accommodation of all sizes, business associations, and other interested parties.

19 (d) A violation of rules adopted pursuant to this section shall constitute an unlawful
20 discriminatory practice under this chapter, subject to all remedies available under this
21 chapter. The Commission shall process complaints alleging such violations pursuant to
22 its authority under this chapter and its procedural rules under chapter 368, Hawaii
23 Revised Statutes."

24 SECTION 4. This Act does not affect rights and duties that matured, penalties that
25 were incurred, and proceedings that were begun before its effective date.

26 SECTION 5. Statutory material to be repealed is bracketed and stricken. New
27 statutory material is underscored.

28 SECTION 6. This Act shall take effect on January 30, 2050.

Report Title:

Discrimination in Public Accommodations; Persons with Disabilities; Discriminatory Practices; Places of Public Accommodation; Digital Accessibility; Rulemaking

Description:

Establishes it as an unlawful discriminatory practice for a place of public accommodation to deny a person with a disability full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations, or information related thereto, by requiring the use of information and communication technology that is not accessible to the person. Directs the Hawaii Civil Rights Commission to adopt rules implementing the prohibition, consistent with the United States Department of Justice Title II web accessibility framework, including rules governing definitions, technical accessibility standards, phased compliance schedules, exceptions, undue burden procedures, equivalent facilitation, and enforcement including a private right of action. Requires public participation in the rulemaking process. Effective 1/30/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.