

116TH CONGRESS
2D SESSION

H. R. 8478

To amend the Americans with Disabilities Act of 1990 to include consumer facing websites and mobile applications owned or operated by a private entity, to establish web accessibility compliance standards for such websites and mobile applications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2020

Mr. BUDD (for himself and Mr. CORREA) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Americans with Disabilities Act of 1990 to include consumer facing websites and mobile applications owned or operated by a private entity, to establish web accessibility compliance standards for such websites and mobile applications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Online Accessibility
5 Act”.

1 **SEC. 2. AMENDMENT TO THE AMERICANS WITH DISABIL-**
2 **ITIES ACT OF 1990 RELATING TO CONSUMER**
3 **FACING WEBSITES AND MOBILE APPLICA-**
4 **TIONS OWNED OR OPERATED BY A PRIVATE**
5 **ENTITY.**

6 The Americans with Disabilities Act of 1990 (42
7 U.S.C. 12101 et seq.) is amended by adding at the end
8 the following new title:

9 **“TITLE VI—CONSUMER FACING**
10 **WEBSITES AND MOBILE AP-**
11 **PLICATIONS OWNED OR OP-**
12 **ERATED BY A PRIVATE ENTI-**
13 **TY**

14 **“SEC. 601. REQUIREMENTS FOR CONSUMER FACING**
15 **WEBSITES AND MOBILE APPLICATIONS**
16 **OWNED OR OPERATED BY A PRIVATE ENTITY.**

17 “(a) GENERAL RULE.—No individual, by reason of
18 a disability, shall be excluded from participation in or be
19 denied the full and equal benefits of the services of a con-
20 sumer facing website or mobile application, or be subjected
21 to discrimination by any private owner or operator of a
22 consumer facing website or mobile application.

23 “(b) STANDARD FOR COMPLIANCE.—

24 “(1) IN GENERAL.—A consumer facing website
25 or mobile application shall be considered compliant
26 under the requirements of this section if such

1 website or mobile application is in substantial com-
2 pliance with the Web Content Accessibility Guide-
3 lines (referred to in this title as WCAG) 2.0 Level
4 A and Level AA standard established by the Accessi-
5 bility Guidelines Working Group, or any subsequent
6 update, revision, or replacement to the WCAG 2.0
7 Level A and Level AA standard published by the
8 World Wide Web Consortium or successor organiza-
9 tion.

10 “(2) ALTERNATIVE MEANS OF ACCESS.—A pri-
11 vate entity that owns or operates a consumer facing
12 website or mobile application that is not in substan-
13 tial compliance with the standard set forth under
14 paragraph (1) shall provide an alternative means of
15 access for individuals with disabilities that is equiva-
16 lent to access the content available on such website
17 or mobile application.

18 “(c) REGULATION.—

19 “(1) ACCESS BOARD.—

20 “(A) IN GENERAL.—The Architectural and
21 Transportation Barriers Compliance Board (re-
22 ferred to in this title as the ‘Access Board’),
23 shall issue and publish standards setting
24 forth—

1 “(i) for purposes of this title, a defini-
2 tion of ‘substantial compliance’, ‘alter-
3 native means of access’, and ‘consumer
4 facing website or mobile application’; and

5 “(ii) regulations necessary to imple-
6 ment the standard set forth in subsection
7 (b).

8 “(B) TIMING OF REGULATIONS.—For pur-
9 poses of this title:

10 “(i) Not later than 180 days after the
11 date of the enactment of this Act, the Ac-
12 cess Board shall promulgate a notice of
13 proposed rulemaking.

14 “(ii) Upon issuance of the notice
15 under clause (i), the Access Board shall so-
16 licit comments from the public on such
17 proposed rule for a period of 90 days.

18 “(iii) After the Access Board has re-
19 viewed the comments solicited under clause
20 (ii) and revised such proposed rule, the Of-
21 fice of Management and Budget shall con-
22 duct a regulatory assessment of the rule
23 for a period not to exceed 90 days.

24 “(iv) Not later than 365 days after
25 the Office of Management and Budget has

1 completed the regulatory assessment under
2 clause (iii), the Access Board shall issue
3 final regulations.

4 “(C) REVIEW AND AMENDMENT.—The Ac-
5 cess Board shall periodically review and, as ap-
6 propriate, amend the standard required under
7 subsection (b) to reflect technological advances
8 or changes in electronic and information tech-
9 nology.

10 “(2) DEPARTMENT OF JUSTICE.—No later than
11 365 days after the end of the comment period under
12 subparagraph (B)(ii), the Attorney General shall es-
13 tablish a procedure for receiving and investigating
14 complaints filed under this title.

15 “(3) FLEXIBILITY FOR SMALL BUSINESS CON-
16 CERNS.—Regulations established under this section
17 shall include flexibility for small business concerns to
18 comply with the standard under subsection (b).

19 **“SEC. 602. ADMINISTRATIVE REMEDIES.**

20 “(a) EXHAUSTION OF ADMINISTRATIVE REM-
21 EDIES.—No individual may bring an action before a civil
22 court to enforce the provisions of this title until all admin-
23 istrative remedies under this section have been exhausted.

24 “(b) NOTICE TO OWNER OR OPERATOR.—Prior to fil-
25 ing a complaint with the Attorney General under sub-

1 section (c), an individual must first notify the private
2 owner or operator of a consumer facing website or mobile
3 application that such website or mobile application is not
4 in compliance with the standard for compliance under sec-
5 tion 601 of this title.

6 “(1) If within 90 days of receiving notice under
7 subsection (b) the owner or operator of a consumer
8 facing website or mobile application fails to bring
9 such website or such application into compliance
10 with the requirement under section 601 of this title,
11 an individual may file a complaint with the Depart-
12 ment.

13 “(2) If an individual files a complaint with the
14 Department of Justice (referred to in this title as
15 the ‘Department’) under paragraph (1), a copy of
16 such complaint shall be provided to the owner or op-
17 erator of a consumer facing website or mobile appli-
18 cation.

19 “(c) REPORTING OF VIOLATIONS TO ATTORNEY
20 GENERAL.—

21 “(1) DEADLINE TO FILE COMPLAINT.—If an in-
22 dividual files a complaint with the Department, such
23 complaint shall be filed within the 90-day period be-
24 ginning on the date after the 90-day period under
25 subsection (b)(1) has terminated.

1 “(2) INVESTIGATION BY ATTORNEY GEN-
2 ERAL.—Upon receiving a complaint of an alleged
3 violation, the Attorney General shall complete an in-
4 vestigation within 180 days to determine whether a
5 violation exists.

6 “(3) FINAL AGENCY DETERMINATION.—The
7 Attorney General shall be considered to have made
8 a final determination on a complaint if—

9 “(A) during the 180-day period after a
10 complaint has been filed with the Department,
11 the Attorney General determines the owner or
12 operator of a consumer facing website or mobile
13 application is not in compliance with the stand-
14 ard set forth under section 601; or

15 “(B) the 180-day period expires without
16 the Attorney General having made such a final
17 determination.

18 “(d) ENFORCEMENT BY ATTORNEY GENERAL.—

19 “(1) DENIAL OF RIGHTS.—

20 “(A) DUTY TO INVESTIGATE.—

21 “(i) IN GENERAL.—The Attorney
22 General shall investigate alleged violations
23 of this title, and shall undertake periodic
24 reviews of compliance of consumer facing

1 websites and mobile applications under this
2 title.

3 “(ii) ATTORNEY GENERAL CERTIFI-
4 CATION.—On the application of a State or
5 local government, the Attorney General
6 may, in consultation with the Access
7 Board, and after prior notice and a public
8 hearing at which persons, including indi-
9 viduals with disabilities, are provided an
10 opportunity to testify against such certifi-
11 cation, certify that a State law or local or-
12 dinance that establishes accessibility re-
13 quirements that meets or exceeds the min-
14 imum requirements of this Act for the ac-
15 cessibility and usability of consumer facing
16 websites and mobile applications under this
17 title. At any enforcement proceeding under
18 this section, such certification by the At-
19 torney General shall be rebuttable evidence
20 that such State law or local ordinance does
21 meet or exceed the minimum requirements
22 of this Act.

23 “(B) POTENTIAL VIOLATION.—If the At-
24 torney General has reasonable cause to believe
25 that—

1 “(i) any person or group of persons is
2 engaged in a pattern or practice of dis-
3 crimination under this title; or

4 “(ii) any person or group of persons
5 has been discriminated against under this
6 title and such discrimination raises an
7 issue of general public importance,
8 the Attorney General may commence a civil ac-
9 tion in any appropriate United States district
10 court.

11 “(2) AUTHORITY OF COURT.—In a civil action
12 under paragraph (1)(B), the court may—

13 “(A) grant any equitable relief that such
14 court considers to be appropriate;

15 “(B) order monetary damages to persons
16 aggrieved when requested by the Attorney Gen-
17 eral; and

18 “(C) assess a civil penalty against the enti-
19 ty in an amount—

20 “(i) not to exceed \$20,000 for a first
21 violation; and

22 “(ii) not to exceed \$50,000 for any
23 subsequent violation.

1 “(3) PUNITIVE DAMAGES.—For purposes of
2 paragraph (2)(B), the term ‘monetary damages’ and
3 ‘such other relief’ does not include punitive damages.

4 “(4) SINGLE VIOLATION.—For purposes of
5 paragraph (2)(C), in determining whether a first or
6 subsequent violation has occurred, a determination
7 in a single action, by judgment or settlement, that
8 the consumer facing website or mobile application
9 has engaged in more than one discriminatory act
10 shall be counted as a single violation.

11 “(5) JUDICIAL CONSIDERATION.—In a civil ac-
12 tion under paragraph (1)(B), the court, when con-
13 sidering what amount of civil penalty, if any, is ap-
14 propriate, shall give consideration to any good faith
15 effort or attempt to comply with this Act by the en-
16 tity.

17 **“SEC. 603. PRIVATE RIGHT OF ACTION.**

18 “(a) IN GENERAL.—Upon exhausting all administra-
19 tive remedies under section 602, any individual aggrieved
20 by a violation of this title may commence a civil action
21 in any appropriate court of the United States against the
22 owner or operator of a consumer facing website or mobile
23 application that engages in such a violation, unless the At-
24 torney General has instituted an enforcement action under
25 this title. A civil action under this title is the sole and

1 exclusive remedy for any person aggrieved by the failure
2 of any consumer facing website or mobile application to
3 meet the requirements of section 601. In any action filed
4 under this title, the complaint shall plead with particu-
5 larity each element of the plaintiff's claim, including the
6 specific barriers to access a consumer facing website or
7 mobile application.

8 “(b) TOLLING.—With respect to the running of the
9 statutory periods of limitation for such action, the running
10 of such statutory periods shall be deemed suspended dur-
11 ing the period beginning on the date of the enactment of
12 this Act and ending 180 days after the date the Access
13 Board has issued final regulations under section 601.

14 **“SEC. 604. DEFINITIONS.**

15 “In this Act:

16 “(1) CONSUMER FACING WEBSITE.—The term
17 ‘consumer facing website’ means any website that is
18 purposefully made accessible to the public for com-
19 mercial purposes.

20 “(2) MOBILE APPLICATIONS.—The term ‘mobile
21 application’ means a consumer facing software appli-
22 cation that can be executed on a mobile platform, or
23 a web-based software application that is tailored to
24 a mobile platform but is executed on a server.

1 “(3) SMALL BUSINESS.—The term ‘small busi-
2 ness concern’ has the meaning given such term in
3 section 3(a) of the Small Business Act (15 U.S.C.
4 632(a)).”.

5 **SEC. 3. CLERICAL AMENDMENT.**

6 The table of contents of the Americans with Disabil-
7 ities Act of 1990 (42 U.S.C. 12101 et seq.) is amended
8 by inserting after the item relating to section 515 the fol-
9 lowing new item:

 “TITLE VI—CONSUMER FACING WEBSITES AND MOBILE
 APPLICATIONS

 “Sec. 601. Requirements for consumer facing websites and mobile applications
 owned or operated by a private entity.

 “Sec. 602. Administrative remedies.

 “Sec. 603. Private right of action.

 “Sec. 604. Definitions.”.

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