116TH CONGRESS
2D SESSION

H. R.       

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

Mr. BUDD introduced the following bill; which was referred to the Committee on ____________________

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”.

(Original Signature of Member)
SEC. 2. AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO CONSUMER FACING WEBSITES AND MOBILE APPLICATIONS OWNED OR OPERATED BY A PRIVATE ENTITY.

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

“TITLE VI—CONSUMER FACING WEBSITES AND MOBILE APPLICATIONS OWNED OR OPERATED BY A PRIVATE ENTITY

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

“(a) General Rule.—No individual, by reason of a disability, shall be excluded from participation in or be denied the full and equal benefits of the services of a consumer facing website or mobile application, or be subjected to discrimination by any private owner or operator of a consumer facing website or mobile application.

“(b) Standard for Compliance.—

“(1) In General.—A consumer facing website or mobile application shall be considered compliant under the requirements of this section if such
website or mobile application is in substantial com-
pliance with the Web Content Accessibility Guide-
lines (referred to in this title as WCAG) 2.0 Level
A and Level AA standard established by the Accessi-
bility Guidelines Working Group, or any subsequent
update, revision, or replacement to the WCAG 2.0
Level A and Level AA standard published by the
World Wide Web Consortium or successor organiza-
tion.

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

“(c) REGULATION.—

“(1) ACCESS BOARD.—

“(A) IN GENERAL.—The Architectural and
Transportation Barriers Compliance Board (re-
ferred to in this title as the ‘Access Board’),
shall issue and publish standards setting
forth—
“(i) for purposes of this title, a definition of ‘substantial compliance’, ‘alternative means of access’, and ‘consumer facing website or mobile application’; and

“(ii) regulations necessary to implement the standard set forth in subsection (b).

“(B) TIMING OF REGULATIONS.—For purposes of this title:

“(i) Not later than 180 days after the date of the enactment of this Act, the Access Board shall promulgate a notice of proposed rulemaking.

“(ii) Upon issuance of the notice under clause (i), the Access Board shall solicit comments from the public on such proposed rule for a period of 90 days.

“(iii) After the Access Board has reviewed the comments solicited under clause (ii) and revised such proposed rule, the Office of Management and Budget shall conduct a regulatory assessment of the rule for a period not to exceed 90 days.

“(iv) Not later than 365 days after the Office of Management and Budget has
completed the regulatory assessment under clause (iii), the Access Board shall issue final regulations.

“(C) REVIEW AND AMENDMENT.—The Access Board shall periodically review and, as appropriate, amend the standard required under subsection (b) to reflect technological advances or changes in electronic and information technology.

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

“(3) FLEXIBILITY FOR SMALL BUSINESS CONCERNS.—Regulations established under this section shall include flexibility for small business concerns to comply with the standard under subsection (b).

“SEC. 602. ADMINISTRATIVE REMEDIES.

“(a) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—No individual may bring an action before a civil court to enforce the provisions of this title until all administrative remedies under this section have been exhausted.

“(b) NOTICE TO OWNER OR OPERATOR.—Prior to filing a complaint with the Attorney General under sub-
section (c), an individual must first notify the private
owner or operator of a consumer facing website or mobile
application that such website or mobile application is not
in compliance with the standard for compliance under sec-
tion 601 of this title.

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

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

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

“(1) DEADLINE TO FILE COMPLAINT.—If an in-
dividual files a complaint with the Department, such
complaint shall be filed within the 90-day period be-
ginning on the date after the 90-day period under
subsection (b)(1) has terminated.
“(2) INVESTIGATION BY ATTORNEY GENERAL.—Upon receiving a complaint of an alleged violation, the Attorney General shall complete an investigation within 180 days to determine whether a violation exists.

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

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

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

“(d) ENFORCEMENT BY ATTORNEY GENERAL.—

“(1) DENIAL OF RIGHTS.—

“(A) DUTY TO INVESTIGATE.—

“(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of consumer facing
websites and mobile applications under this title.

“(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Access Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local ordinance that establishes accessibility requirements that meets or exceeds the minimum requirements of this Act for the accessibility and usability of consumer facing websites and mobile applications under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

“(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—
“(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

“(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

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

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

“(B) order monetary damages to persons aggrieved when requested by the Attorney General; and

“(C) assess a civil penalty against the entity in an amount—

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

“(ii) not to exceed $50,000 for any subsequent violation.
“(3) PUNITIVE DAMAGES.—For purposes of paragraph (2)(B), the term ‘monetary damages’ and ‘such other relief’ does not include punitive damages.

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

“(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

“SEC. 603. PRIVATE RIGHT OF ACTION.

“(a) IN GENERAL.—Upon exhausting all administrative remedies under section 602, any individual aggrieved by a violation of this title may commence a civil action in any appropriate court of the United States against the owner or operator of a consumer facing website or mobile application that engages in such a violation, unless the Attorney General has instituted an enforcement action under this title. A civil action under this title is the sole and
exclusive remedy for any person aggrieved by the failure
of any consumer facing website or mobile application to
meet the requirements of section 601. In any action filed
under this title, the complaint shall plead with particu-
larity each element of the plaintiff’s claim, including the
specific barriers to access a consumer facing website or
mobile application.

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

“SEC. 604. DEFINITIONS.

“In this Act:

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

“(2) MOBILE APPLICATIONS.—The term ‘mobile
application’ means a consumer facing software appli-
cation that can be executed on a mobile platform, or
a web-based software application that is tailored to
a mobile platform but is executed on a server.
“(3) SMALL BUSINESS.—The term ‘small business concern’ has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).”.

SEC. 3. CLERICAL AMENDMENT.

The table of contents of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is amended by inserting after the item relating to section 515 the following 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.”.