

Websites and Software Applications Accessibility Act

U.S. Senator Tammy Duckworth (D-IL)

Frequently Asked Questions

Why is web and application accessibility an important issue?

According to a 2021 Pew Research Center survey of U.S. adults, about 93 percent of people in the U.S. use the internet, up from 90 percent in 2019. COVID-19 has accelerated the reliance on internet in all parts of society, and digital access continues to be imperative. However, people with disabilities continue to face frequent and significant barriers to using websites and software applications (applications) for employment, commerce, education, public services and all other aspects of society. These prevalent barriers result in wasted time and money, frustration, and exclusion from programs, activities and services.

Does the Americans with Disabilities Act (ADA) already apply to websites and applications?

Yes, the Department of Justice (DOJ) has long held that the ADA covers websites and other technologies that are critical to accessing a business or agency's services or facilities. However, the DOJ has not yet issued regulations covering websites and applications, particularly with regards to public accommodations. While existing DOJ guidance does say websites should be accessible to be in compliance with the ADA, it does not address applications and software in "smart" devices, such as cars, refrigerators, tractors, phones, thermostats and so on. Finally, even though it appears DOJ plans to proceed with rulemaking regarding public entities, it will not do so for public accommodations.

The courts have not consistently interpreted whether and how the ADA covers websites. In their opinions, some courts say that all websites of covered entities are required to be accessible by the ADA. Others say that websites and digital spaces of any entity are not covered by the ADA, and yet other courts say that only websites of covered entities with a physical presence are covered. Various courts have raised further questions about the coverage of applications used on mobile phones.

This bill does not amend the ADA, but it affirms that the ADA requires websites and applications used by covered entities to communicate or

interact with job applicants, employees, customers and members of the public be accessible to and useable by individuals with disabilities. It also affirms that this requirement applies regardless of whether the entity has a physical location or is digital only.

What is new in the Websites and Software Applications Accessibility Act?

Under the ADA, it is the covered entity (the business, public entity or employer) that is solely responsible for ensuring that websites and applications are accessible to people with disabilities. However, many covered entities deploy websites and software that are designed, developed and maintained by a vendor. This bill goes beyond the ADA to cover commercial providers who design, develop and modify websites or applications to certain covered entities and requires these commercial providers to follow the accessibility regulations promulgated pursuant to the legislation.

The bill also invests in technical assistance to make sure commercial providers, covered entities and the general public have the knowledge and tools they need to design, develop and modify accessible websites and applications, as well as their rights and responsibilities.

Finally, the bill authorizes a study by the independent National Council on Disability on emerging technologies.

What does this bill mean for development of Federal regulations for web accessibility?

Within two years, this legislation would require the DOJ and Equal Employment Opportunity Commission (EEOC) to, with respect to privacy, independence and ease of use, issue regulations that ensure people with disabilities have and can, when compared to nondisabled people:

- access the same information;
- engage in the same interactions;
- communicate and be understood as effectively; and
- enjoy the same services.

Such regulations would include standards for accessible website and applications, and agencies would be required to periodically review and update these regulations to ensure the purpose of the legislation is being carried out.

While this bill affirms and inspired by the ADA, this bill is separate from the ADA, the Rehabilitation Act and other laws that assure the right of individuals with disabilities to access cover entities' websites and applications. It does not preempt laws that afford individuals with disabilities greater protections, and it requires the regulations provided for to be consistent with other digital access regulations promulgated under the ADA or by the Federal Communications Commission.