



U.S. Senator Tammy Duckworth and U.S. Representative John Sarbanes have jointly introduced a new bill—the [Websites and Software Applications Accessibility Act](#) (the Act)—to address barriers that Americans with disabilities encounter when attempting to use websites and apps.

The Act proposes to codify digital accessibility requirements for websites and apps, set schedules for continuous accessibility-related rulemaking to keep up with technological changes, and establish organizations to serve as support structures to facilitate digital accessibility. If enacted, the Act would fill a hole left open by the Americans with Disabilities Act (ADA), which has been interpreted by some (but not all) courts to apply to websites and apps.

Key components of the Act include the following:

- **Express confirmation that the ADA applies to digital technologies.** The ADA, which was enacted in 1990, does not address the application of its terms to web-based technologies. As we have previously noted, courts across the country have reached differing conclusions as to whether the ADA applies to digital media, and the U.S. Department of Justice (DOJ), which has the authority to promulgate rules concerning digital accessibility under the ADA, has not yet done so. The Act would affirm that the ADA prohibits discrimination against individuals with disabilities when they use websites, software applications, and other digital technologies. Notably, this accessibility obligation would apply not only to entities currently covered by the ADA (which include employers, state and local governments, and some private businesses that provide goods and services to the public) but also to commercial providers who design, develop, and modify websites and apps for covered entities. In addition, the Act would effectively eliminate the "nexus" requirement embraced by certain courts, declaring that the website or app must be accessible regardless of whether the business is exclusively online or uses a brick-and-mortar location.
- **New and regularly updated digital accessibility rules.** The Act intends to create subsequent digital accessibility rules to keep pace with the rapid advancement of technology. Within a year of the law's enactment, the U.S. attorney general (AG) would be required to publish a notice of proposed rulemaking proposing accessibility standards for public entities, public facilities, and commercial providers. Regulations implementing the accepted rules would be required to be issued within two years. The Act would also establish a three-year periodic review period in which the AG and the Equal Employment Opportunity Commission (EEOC) would compile a report on the status of enforcement and civil actions under the Act for the first three years of its implementation and every two years thereafter. The AG and the EEOC would also release revised regulations every three years.
- **Establishment of advisory committees and technical assistance centers.** The Act would direct the AG and the EEOC to form a permanent advisory committee on accessible websites and apps. The majority of the committee would comprise people with disabilities. The committee may also include online accessibility specialists, representatives from state or local governments, or representatives from covered entities. A technical help center would also be established under the Act to offer resources and technical support regarding the development of accessible websites, as well as provide information about the legal rights of people with disabilities and covered entities.
- **Establishment of a private right of action to enforce the Act.** Although the Act would grant the AG and EEOC authority to investigate and pursue breaches of the Act, it would also create a private right of action. Individual plaintiffs would be able to seek both injunctive relief and a wide range of monetary damages.

The Act represents the latest step by the U.S. government to address whether and to what extent the ADA applies to digital media. In February 2021, a bill called the [Online Accessibility Act](#) was introduced in Congress that would, if adopted, amend the ADA to require that consumer-facing websites and apps comply with the Web Content Accessibility Guidelines, which courts and industry generally view as the benchmark for determining digital accessibility. Separately, in August of this year, the DOJ [announced](#) its intention to adopt rules setting forth web accessibility standards under Title II of the ADA, which governs state and local government entities. These recent developments, in addition to the new introduction of the Act, suggest that digital accessibility will remain a key government priority.

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