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HOUSE BILL NO. 2207

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 1, 2023)

(Patron Prior to Substitute—Delegate Tran)

A BILL to amend and reenact §§ 2.2-3500 through 2.2-3504 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 35 of Title 2.2 a section numbered 2.2-3505, relating to Information Technology Access Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3500 through 2.2-3504 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 35 of Title 2.2 a section numbered 2.2-3505 as follows:

§ 2.2-3500. Policy.

A. The General Assembly finds that (i) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information and communication technology; (ii) use of interactive visual display terminals information and communication technology by state and state-assisted organizations is becoming has become a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access; whether by speech, Braille, or other appropriate means for persons with disabilities has been overlooked in when purchasing and deploying the latest information and communication technology; (iii) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing when presentation of data through information and communication technology is not accessible by persons with disabilities, it prevents them from participating on equal terms in crucial areas of life, such as education and employment; (iv) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is possible by both visual and nonvisual means accessible information and communication technology is often cheaper for the government in the long run because it does not require post-implementation adaptations and does not expose the government to liability under various state and federal laws that require access for persons with disabilities; and (v) the goals of the state in obtaining and deploying the most advanced forms of information and communication technology properly include universal access so that the segments of society with particular needs (including individuals unable to use visual displays) persons with disabilities will not continue to be left out of the information age.

B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) individuals who are blind or visually impaired all persons with disabilities have the right to full participation in the life of the Commonwealth, including the use of advanced technology that is information and communications technology that is provided by such covered entities for use by employees, program participants, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth, or developed by a covered entity, to be used for the creation, storage, retrieval, display, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be adaptable for access by individuals who are blind or visually impaired. The implementation of nonvisual access technology under this chapter shall be determined on a case-by-case basis as the need arises accessible by all persons with disabilities.

§ 2.2-3501. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology and communications technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Accessibility" means 508 Standards and 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255.

"Covered entity" means all state agencies, public institutions of higher education, school divisions, and political subdivisions of the Commonwealth.

"Digital accessibility" means technology that is designed in a way that allows for access by all users regardless of the platform, including desktops, laptops, mobile platforms, and hand-held devices.

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60 "Digital accessibility" (i) includes the design of electronic documents, websites, applications, hardware,
61 video, audio, kiosks, copiers and printers, and other digital tools and (ii) allows for the integration and
62 use of assistive technologies such as screen readers, refreshable Braille displays, alternative input
63 devices, and tools that allow for customization of a digital asset to achieve necessary levels of access.

64 "Equally effective alternate access plan" means a plan for information and communications
65 technology for persons with disabilities that is based on (i) timeliness of delivery, (ii) accuracy of
66 translation, and (iii) delivery in a manner and medium appropriate to the disability of the person. Such
67 alternate access plan, to be equally effective, is not required to produce the identical result or level of
68 achievement for persons with and without a disability but must afford persons with a disability equal
69 opportunity to obtain the same result, to gain the same benefit, or to reach the same level of
70 achievement in the most integrated setting appropriate to the person's needs.

71 "Head of each covered entity" means the person responsible for making executive decisions on behalf
72 of the covered entity.

73 "Information and communications technology" or "ICT" means ~~all electronic~~ any hardware, software,
74 or other product or service primarily intended to fulfill or enable the function of information processing
75 hardware and software and communication by electronic means, including telecommunications
76 transmission and display via the Internet.

77 "Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

78 "Public broadcasting services" means the acquisition, production, and distribution by public
79 broadcasting stations of noncommercial educational, instructional, informational, or cultural television
80 and radio programs and information that may be transmitted by means of electronic communications,
81 and related materials and services provided by such stations.

82 "Telecommunications" means the transmission of information, images, pictures, voice, or data by
83 radio, video, or other electronic or impulse means, but does not include public broadcasting.

84 "Person with a disability" means the same as that term is defined in § 51.5-40.1.

85 "Procured" means a product or service obtained through a covered entity's procurement process.

86 § 2.2-3502. Assurance of digital accessibility.

87 In general, the head of each covered entity or his designee shall ensure that information technology
88 equipment and software the ICT used by blind or visually impaired employees, program participants, or
89 members of the general public who have a disability: (i) ~~provide~~ provides access (including interactive
90 use of the equipment and services) that is equivalent to that provided to individuals who are not blind or
91 visually impaired; ~~do not have a disability~~, (ii) ~~are~~ is designed to present information (including prompts
92 used for interactive communications) in formats accessible or adaptable to both visual and nonvisual use
93 persons with and without disabilities; and (iii) ~~have been purchased under a contract that includes the~~
94 technology access clause required pursuant to § 2.2-3503 conforms with accessibility requirements
95 whether developed in-house by a covered entity or procured.

96 § 2.2-3503. Procurement requirements.

97 A. The A technology access clause specified in clause (iii) of § 2.2-3502 shall be developed by the
98 Secretary of Administration and shall require compliance with the nonvisual access standards established
99 in subsection B a vendor-paid and completed accessibility conformation report indicating the level of
100 conformance with accessibility for the ICT being procured by the covered entity. Any areas of
101 nonconformance shall be documented with a vendor-paid and completed product enhancement roadmap
102 highlighting areas of improved accessibility, including a timeline for each nonconforming area's
103 completion. The clause shall be included in all future contracts for the procurement of information
104 technology the ICT by, or for the use of, entities covered by this chapter that are begun to be
105 negotiated or re-negotiated on or after the effective date of this chapter. A covered entity may stipulate
106 additional specifications in any procurement and may require additional specifications for in-house
107 developed or procured ICT.

108 B. At a minimum, the nonvisual access standards shall include the following: (i) the effective,
109 interactive control and use of the technology (including the operating system); applications programs;
110 and format of the data presented; shall be readily achievable by nonvisual means; (ii) the technology
111 equipped for nonvisual access shall be compatible with information technology used by other individuals
112 with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be
113 integrated into networks used to share communications among employees, program participants, and the
114 public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent
115 access by nonvisual means to telecommunications or other interconnected network services used by
116 persons who are not blind or visually impaired. A covered entity may stipulate additional specifications
117 in any procurement.

118 Compliance with the nonvisual access standards shall not be required if the head of a covered entity
119 determines that (a) the information technology is not available with nonvisual access because the
120 essential elements of the information technology are visual and (b) nonvisual equivalence is not
121 available.

§ 2.2-3504. Exclusions to digital accessibility.

A. 1. The head of any covered entity or his designee that permits the procurement, acquisition, or in-house development of ICT that does not otherwise conform to the standard of accessibility may, with respect to nonvisual access software or peripheral devices, approve the exclusion of the technology access clause approve such procurement or in-house development only to the extent that the cost of the software or devices conformance for the covered entity would increase the total cost of the procurement, acquisition, or in-house development by more than five percent, including the cost of developing and implementing an equally effective alternate access plan for each person with a disability impacted by the inaccessible ICT. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Administration.

2. Any such procurement shall be documented by the head of the covered entity together with documentation of any added cost to the covered entity for the development of any equally effective alternative access plan. In addition, each covered entity shall prepare an internal document explaining how the procurement of the inaccessible ICT does not constitute a violation of state or federal laws, including the Virginians with Disabilities Act (§ 51.5-1 et seq.) and the Virginia Human Rights Act (§ 2.2-3900 et seq.). The requirements of this subdivision shall not apply to localities with a population of less than 50,000.

B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual access when the information technology is being used exclusively by individuals who are not blind or visually impaired shall not be required. The covered entity shall publish a list of exclusions for procurement contracts along with, for each exclusion, the five percent calculations, the accessibility conformation report, and the product enhancement roadmap on its public website. The requirements of this subsection shall not apply to localities with a population of less than 50,000.

C. Notwithstanding the provisions of subsection B, the applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

§ 2.2-3505. Designation of covered entity digital accessibility coordinator; grievance process.

A. The head of each covered entity or his designee may designate an employee to serve as such covered entity's digital accessibility coordinator. The digital accessibility coordinator shall be responsible for ensuring the covered entity complies with state and federal laws, including the Virginians with Disabilities Act (§ 51.5-1 et seq.) and the Virginia Human Rights Act (§ 2.2-3900 et seq.), to ensure the ICT and other products or services can be accessed by persons with disabilities.

B. The digital accessibility coordinator shall also be responsible for developing and implementing the covered entity's digital accessibility policy. The name, phone number, email address, and office address of the covered entity's digital accessibility coordinator shall be listed on such entity's public website.

C. The head of each covered entity or his designee shall adopt and publish on such covered entity's website a comprehensive grievance procedure that provides for prompt and equitable resolution of complaints alleging any action that would be prohibited by this chapter and any other law that protects the rights of persons with disabilities. Such grievance procedure adopted pursuant to this subsection shall not supersede or conflict with any vendor grievance procedure or policy adopted by a public institution of higher education under the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

3. That the provisions of this act shall become effective on July 1, 2024.