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HOUSE BILL NO. 1355

House Amendments in [] - February 12, 2024

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; digital accessibility.

Patron Prior to Engrossment—Delegate Tran

Referred to Committee on Communications, Technology and Innovation

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 communications technology; (ii) use of interactive visual display terminals information and communications 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 often been overlooked in when developing, designing, purchasing, and deploying the latest information and communications 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 communications 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 communications 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 communications 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 the latest and future technological innovations.

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 information and communications technology that is provided by such covered entities for use by employees, program participants, students, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth, acquired, or developed in-house 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, students, 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 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 alignment with federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255.

"Accessibility Conformance Report" means a completed Voluntary Product Accessibility Template

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59 (VPAT) or other document indicating the conformance of a product to accessibility standards such as
60 federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47
61 U.S.C. § 255. The Accessibility Conformance Report shall be completed by a digital accessibility subject
62 matter expert with significant experience with product evaluation or by a qualified neutral third party.

63 "Acquired" means obtained from a third party without the need to engage in the procurement
64 process.

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

67 "Digital accessibility" means technology that is designed in a way that allows for access by all users
68 regardless of the platform, including desktops, laptops, mobile platforms, and handheld devices. "Digital
69 accessibility" (i) includes the design of electronic documents, websites, applications, hardware, video,
70 audio, kiosks, copiers and printers, and other digital tools and (ii) allows for the integration and use of
71 assistive technologies such as screen readers, refreshable Braille displays, alternative input devices, and
72 tools that allow for the customization of a digital asset to achieve necessary levels of access.

73 "Equally effective alternate access plan" or "EEAAP" means a plan for information and
74 communications technology for persons with disabilities impacted by inaccessible ICT that is based on
75 (i) timeliness of delivery, (ii) accuracy of translation, and (iii) delivery in a manner and medium
76 appropriate to the disability of the person. Such alternate access plan, to be equally effective, is not
77 required to produce the identical result or level of achievement for persons with and without a disability
78 but must afford persons with a disability equal opportunity to obtain the same result, to gain the same
79 benefit, or to reach the same level of achievement in the most integrated setting appropriate to the
80 person's needs.

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

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

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

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

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

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

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

96 "Vendor Accessibility Roadmap" means a document prepared and provided by the vendor
97 highlighting the aspects and elements of the product that do not meet accessibility standards and
98 includes the timeline for these aspects and elements to meet such accessibility standards.

99 **§ 2.2-3502. Assurance of digital accessibility.**

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

109 **§ 2.2-3503. Procurement requirements.**

110 A. The An information and communications technology access clause specified in clause (iii) of
111 § 2.2-3502 shall be developed by the Secretary of Administration and shall require ~~compliance with the~~
112 nonvisual access standards established in subsection B a current vendor-paid and completed Accessibility
113 Conformance Report indicating the level of conformance with accessibility for the [~~ITC~~ ICT] being
114 procured by the covered entity. Any areas of nonconformance shall be documented with a vendor-paid
115 and completed Vendor Accessibility Roadmap highlighting areas requiring improved accessibility,
116 including a timeline for each nonconforming area's completion. The clause shall be included in all
117 future contracts for the procurement of information technology ICT by, or for the use of, entities
118 covered by this chapter for which negotiation or renegotiation is begun on or after the effective date of
119 this chapter.

120 B. At a minimum, the nonvisual access standards shall include the following: (i) the effective,

interactive control and use of the technology (including the operating system); applications programs, and format of the data presented; shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (a) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (b) nonvisual equivalence is not available. All future contracts for the procurement of ICT by, or for the use of, entities covered by this chapter [, except public institutions of higher education,] for which negotiation or renegotiation is begun on or after July 1, 2025 shall include provisions specifying that, if the vendor fails to modify the ICT areas identified to meet accessibility standards within [the agreed upon timeline or] 12 months after the [~~date of contract award~~ deployment of the ICT, whichever is earlier] , the covered entity shall either (i) require the vendor to provide the covered entity with a credit equal to 12 months of the contract's cost, not to exceed \$10,000, or (ii) cancel such contract and, if such cancellation is due to default or justifiable cause, require the vendor to reimburse the covered entity any outstanding contracting costs.

C. [A covered entity may stipulate additional specifications in any procurement and may require additional specifications for acquired or in-house developed ICT.

~~D.]~~ Such procurement procedure adopted pursuant to this section shall not supersede or conflict with any vendor 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.).

[D. The provisions of this section shall not apply to contracts for less than \$10,000 entered into by public institutions of higher education.]

§ 2.2-3504. Exclusions to digital accessibility.

A. The head of any covered entity or his designee who 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, acquisition, or in-house development only to the extent that the cost of the software or devices for the covered entity would increase the total cost of the procurement by more than five percent. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Administration an equally effective alternate access plan is developed for any affected persons with a disability impacted by the inaccessible ICT and is implemented [~~prior to~~ within 30 days of the] deployment of the ICT. [However, such exemption to the standard of accessibility and such an EEAAP shall only be used when there is no other way to conform to established accessibility requirements.] Any such EEAAPs developed and the Vendor Accessibility Roadmap required by § 2.2-3503 shall be reviewed annually.

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. Any such procurement, acquisition, or in-house developed digital tool requiring an EEAAP shall be documented by the head of the covered entity. Such documentation shall be maintained by the covered entity as directed by the appropriate records retention and disposition schedule pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.).

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. The requirements of this section shall not apply to localities with a population of less than 50,000.

§ 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 that 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 that the ICT and other products or services can be accessed by persons with disabilities.

B. The covered entity's 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

182 public website.

183 C. The head of each covered entity or his designee shall adopt and publish on such covered entity's
184 website a procedure for identifying barriers to access and a comprehensive grievance procedure that
185 provides for prompt and equitable resolution of complaints alleging any action that would be prohibited
186 by this chapter or any other law that protects the rights of persons with disabilities. These notifications
187 and the responses or resolutions for each shall be maintained by the covered entity in a manner
188 consistent with the appropriate records retention and disposition schedule created pursuant to the
189 Virginia Public Records Act (§ 42.1-76 et seq.).

190 2. That the provisions of this act shall become effective on July 1, 2025.