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HOUSE BILL NO. 2541

Offered January 13, 2025

Prefiled January 9, 2025

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.*

Patrons—Tran and Lopez

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. Findings; 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 adaptions 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 (VPAT) or other document indicating the conformance of a product to accessibility standards such as federal

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Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255. The Accessibility Conformance Report shall be completed by a digital accessibility subject matter expert with significant experience with product evaluation or by a qualified neutral third party.

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

"Covered entity" means all state agencies, *public school divisions,* public institutions of higher education, 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 handheld devices. "Digital accessibility" (i) includes the design of electronic documents, websites, applications, hardware, software, video, audio, kiosks, copiers and printers, and other digital tools and (ii) allows for the integration and use of assistive technologies such as screen readers, refreshable Braille displays, alternative input devices, and tools that allow for the customization of a digital asset to achieve necessary levels of access.

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

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

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

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

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

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

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

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

§ 2.2-3502. Assurance of digital accessibility.

In general, the head of each covered entity *or his designee* shall ensure that ~~information technology equipment and software~~ *the ICT* used by ~~blind or visually impaired~~ employees, program participants, *students,* or members of the general public *who have a disability* (i) ~~provide~~ *provides* access (including interactive use of the equipment, *digital tools,* and services) that is equivalent to that provided to individuals who ~~are not blind or visually impaired~~ *do not have a disability*; (ii) ~~are~~ *is* designed to present information (including prompts used for interactive communications) in formats *accessible or* adaptable to both ~~visual and nonvisual use~~ *persons with and without disabilities*; and (iii) ~~have been purchased under a contract that includes the technology access clause required pursuant to § 2.2-3503~~ *conforms with the accessibility requirements as provided in 28 C.F.R. § 35.200 whether developed in-house by a covered entity or procured.*

§ 2.2-3503. Procurement requirements.

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

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.~~ *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.).*

§ 2.2-3504. Exclusions to digital accessibility.

~~A.~~ The head of any covered entity ~~may, with respect to nonvisual access software or peripheral devices, approve the exclusion of the technology access clause 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~~ *or his designee shall report to the appropriate executive branch agency any non-accessible technology that is included in the exceptions found in 28 C.F.R. § 35.201. Each executive branch agency shall report annually to the General Assembly on such non-accessible technology and provide an estimate on the fiscal impact involved in bringing such technology into compliance with federal and state laws and regulations.*

~~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.~~

~~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.

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. The covered entity's digital accessibility coordinator shall also be responsible for developing and implementing the covered entity's digital accessibility policy.

B. Each covered entity shall publish, in a conspicuous and easily accessible location on its website, the name, phone number, email address, and office address of the covered entity's digital accessibility coordinator or other person to whom reports of barriers to digital accessibility may be reported. The digital accessibility coordinator or other person designated by the covered entity shall develop procedures to review and respond to reports of barriers to digital accessibility.

2. That the provisions of § 2.2-3503 of the Code of Virginia, as amended by this act, shall only apply to contracts entered into or renewed on or after the effective dates of this act in accordance with the third and fourth enactments.

3. That the provisions of this act shall apply to (i) a covered entity, as defined in § 2.2-3501 of the Code of Virginia, as amended by this act, with a population of 50,000 or more persons, (ii) institutions of higher education, and (iii) state public bodies beginning April 24, 2026.

4. That the provisions of this act shall apply to special district governments, as defined in 28 C.F.R. § 35.104, and covered entities, as defined in § 2.2-3501 of the Code of Virginia, as amended by this act, with a population of less than 50,000 persons, beginning April 26, 2027.

5. That for the purposes of the third and fourth enactments of this act, the provisions of this act shall apply to local school districts as it applies to the locality within which the school district sits.

6. That executive branch agencies required to report to the General Assembly pursuant to the provisions of § 2.2-3504 of the Code of Virginia, as amended by this act, shall provide guidance to the General Assembly on how to prioritize systems and applications by December 1, 2025.