

HOUSE BILL NO. 2207

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation  
on January 30, 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~~ 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

27 government in the long run because it does not require post-implementation adaptations and does not expose  
28 the government to liability under various state and federal laws that require access for persons with  
29 disabilities; and (v) the goals of the state in obtaining and deploying the most advanced forms of  
30 information and communication technology properly include universal access so that ~~the segments of~~  
31 ~~society with particular needs (including individuals unable to use visual displays)~~ persons with disabilities  
32 will not continue to be left out of the information age.

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

44 **§ 2.2-3501. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

77 ~~"Public broadcasting services" means the acquisition, production, and distribution by public~~  
78 ~~broadcasting stations of noncommercial educational, instructional, informational, or cultural television~~

79 ~~and radio programs and information that may be transmitted by means of electronic communications, and~~  
80 ~~related materials and services provided by such stations.~~

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

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

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

85 **§ 2.2-3502. Assurance of digital accessibility.**

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

95 **§ 2.2-3503. Procurement requirements.**

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

105 specifications in any procurement and may require additional specifications for in-house developed or  
106 procured ICT.

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

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

120 **§ 2.2-3504. Exclusions to digital accessibility.**

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

130 2. Any such procurement shall be documented by the head of the covered entity together with  
131 documentation of any added cost to the covered entity for the development of any equally effective

132 alternative access plan. In addition, each covered entity shall prepare an internal document explaining how  
133 the procurement of the inaccessible ICT does not constitute a violation of state or federal laws, including  
134 the Virginians with Disabilities Act (§ 51.5-1 et seq.) and the Virginia Human Rights Act (§ 2.2-3900 et  
135 seq.). The requirements of this subdivision shall not apply to localities with a population of less than  
136 50,000.

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

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

147 **§ 2.2-3505. Designation of covered entity digital accessibility coordinator; grievance process.**

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

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

157 C. The head of each covered entity or his designee shall adopt and publish on such covered entity's  
158 website a comprehensive grievance procedure that provides for prompt and equitable resolution of

159 complaints alleging any action that would be prohibited by this chapter and any other law that protects the  
160 rights of persons with disabilities. Such grievance procedure adopted pursuant to this subsection shall not  
161 supersede or conflict with any vendor grievance procedure or policy adopted by a public institution of  
162 higher education under the Restructured Higher Education Financial and Administrative Operations Act  
163 (§ 23.1-1000 et seq.).

164 **3. That the provisions of this act shall become effective on January 1, 2024.**

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