

HOUSE BILL NO. 239
INTRODUCED BY B. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ACCESS TO INFORMATION TECHNOLOGY FOR INDIVIDUALS WHO ARE BLIND OR VISUALLY IMPAIRED THROUGH THE PURCHASE OF TECHNOLOGY IN ACCORDANCE WITH STANDARDS FOR EQUIVALENT ACCESS BY BOTH VISUAL AND NONVISUAL MEANS; PROVIDING FOR CONTRACT REQUIREMENTS; PROVIDING A REMEDY FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Findings -- policy. (1) The legislature finds that:

(a) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology;

(b) the use of interactive visual display terminals by THE state ~~and state-assisted organizations~~ is becoming a widespread means of access for public employees and the public to obtain information available electronically, but nonvisual access, whether by speech, Braille, or other appropriate means, has ~~been overlooked in purchasing and deploying the latest~~ NOT BEEN SYSTEMATICALLY INCORPORATED INTO THE PROCUREMENT PROCESS FOR NEW information technology;

(c) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment;

(d) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and the use of the information presented are possible by both visual and nonvisual means; ~~and~~

(e) the goals of the state in obtaining and deploying ~~the most advanced~~ NEW forms of technology properly include universal access so that segments of society with particular needs, including individuals who are unable to use visual displays, will not be left out of the information age; AND

(F) ALTHOUGH ACCESS TO PROGRAMS, TECHNOLOGY, AND INFORMATION IS PROVIDED FOR UNDER OTHER STATE AND FEDERAL LAW AND, IN MANY INSTANCES, COMPELS THE INSTALLATION AND AVAILABILITY OF NONVISUAL TECHNOLOGY ADAPTATIONS, ACCESS TO INFORMATION TECHNOLOGY IS MOST EFFECTIVELY ACCOMPLISHED AT THE POINT OF

PROCUREMENT, ENSURING THAT FUNDS ARE EXPENDED ON INFORMATION TECHNOLOGY DESIGNED TO BE READILY ADAPTABLE FOR NONVISUAL ACCESS.

(2) It is the policy of this state that all STATE programs and activities ~~that are supported in whole or in part by public funds~~ be conducted in accordance with the following principles:

(a) Individuals who are blind or visually impaired have the right to full participation in the life of the state, including the use of ~~advanced~~ INFORMATION technology that is provided by the state ~~or state-assisted organizations~~ for use by employees, program participants, and the public.

(b) Technology purchased in whole or in part with funds provided by the state that is to be used for the creation, storage, retrieval, or dissemination of information and that is intended for use by employees, program participants, and the public must be accessible to and usable by individuals who are blind or visually impaired.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6 5], unless the context requires otherwise, the following definitions apply:

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

(2) "Blind or visually impaired" means an individual who has:

(a) 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;

(b) a medically indicated expectation of visual deterioration; or

(c) 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.

~~— (3) "Covered entity" means the state or any state-assisted organization.~~

~~(4)~~(3) "Information technology" means all electronic information processing hardware and software, including telecommunications.

~~(5)~~(4) "Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

(5) "READILY ADAPTABLE" MEANS THAT ALL CRITICAL COMPONENTS OF INFORMATION MAY BE RENDERED BY THE INFORMATION TECHNOLOGY IN EQUIVALENT NONVISUAL FORMATS AND THAT THE INSTALLATION OR OPERATION OF SOFTWARE OR HARDWARE ADAPTATIONS FOR SPEECH, BRAILLE, OR OTHER NONVISUAL FORMATS DO NOT REQUIRE EXTRAORDINARY ALTERATIONS TO THE INFORMATION TECHNOLOGY.

~~— (6) "State" means state government or any department, agency, or other public body or instrumentality of state government.~~

~~(7) "State-assisted organization" means a college, nonprofit organization, political subdivision, school district, or other entity supported in whole or in part by state funds.~~

(6) "STATE AGENCY" MEANS A DEPARTMENT, BOARD, COMMISSION, OFFICE, BUREAU, INSTITUTION, UNIVERSITY SYSTEM ENTITY, OR UNIT OF STATE GOVERNMENT RECOGNIZED IN THE STATE BUDGET.

~~(8)(7) "Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.~~

(8) "UNDUE BURDEN" MEANS COMPLIANCE MAY BE ACCOMPLISHED ONLY BY INCURRING AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN OR BY FUNDAMENTALLY ALTERING A PROGRAM OR ACTIVITY.

NEW SECTION. Section 3. Assurance of nonvisual access. ~~In general, the head of each covered entity shall ensure that information technology equipment and software used by employees, program participants, or members of the public~~ WHEN INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE ARE PROCURED FOR USE BY EMPLOYEES, PROGRAM PARTICIPANTS, OR MEMBERS OF THE PUBLIC, THE STATE AGENCY HEAD SHALL ENSURE THAT THE EQUIPMENT OR SOFTWARE:

- (1) ~~provide~~ PROVIDES blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired;
- (2) ~~are~~ IS designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and
- (3) ~~have~~ HAS been purchased under a contract that includes the technology access clause required by [section 4].

NEW SECTION. Section 4. Procurement requirements. (1) The technology access clause, referred to in [section 3(3)], must be developed by the department of administration and must require compliance with nonvisual access standards developed by the state. The ACCESS clause AND THE NONDISCRIMINATION LANGUAGE REQUIRED IN 49-3-207 must be inserted in all contracts for the procurement of information technology by, or for the use of, ~~covered entities~~ STATE AGENCIES.

(2) The nonvisual access standards developed pursuant to subsection (1) must include specifications that are necessary to fulfill the assurances contained in [section 3] and must include the following minimum specifications:

- (a) Effective, interactive control and use of the technology, including the operating system, applications programs, and format of the data presented, are readily ~~achievable by~~ ADAPTABLE TO nonvisual means.

(b) The technology equipped for nonvisual access must be compatible with information technology used by other individuals with whom the blind or visually impaired individual may interact OR EXCHANGE ELECTRONIC INFORMATION.

(c) Nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public.

(d) The technology for nonvisual access must 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.

NEW SECTION. Section 5. Implementation. (1) For the purposes of ensuring the effective phasing in of nonvisual access technology procurement, the head of any ~~covered entity~~:

~~— (a) STATE AGENCY may not approve exclusion of the technology access clause required by [section 4] from any contract with respect to the compatibility of standard operating systems and software with nonvisual access software and peripheral devices or with respect to the initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software;~~

~~— (b) may, with respect to nonvisual access software or peripheral devices obtained during a 3-year period beginning on [the effective date of this act], approve the exclusion of the technology access clause, to the extent that the cost of the software or devices for the covered entity exceeds:~~

~~— (i) \$50,000 for the first year;~~

~~— (ii) \$100,000 for the second year; and~~

~~— (iii) \$250,000 for the third year.~~

(2) This section does not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(3) Notwithstanding subsection (2), the applications programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information must permit the installation and effective use of nonvisual access software and peripheral devices.

(4) Compliance with [sections 1 through 6 5] with regard to information technology purchased prior to [the effective date of this act] must be achieved at the time of procurement of an upgrade or replacement of existing equipment or software.

(5) UNTIL JULY 1, 2003, A STATE AGENCY MAY BE EXEMPTED FROM THE REQUIREMENTS OF [SECTION 4] IF THE COST WOULD CAUSE THE STATE AGENCY'S BUDGET TO EXCEED LEGISLATIVE APPROPRIATIONS.

~~(6) A STATE AGENCY MAY BE EXEMPTED FROM THE PROVISIONS OF [SECTIONS 1 THROUGH 5] IF THE STATE AGENCY CAN SHOW MAKES A GOOD FAITH DETERMINATION THAT COMPLIANCE WOULD RESULT IN AN UNDUE BURDEN.~~

~~NEW SECTION. **Section 6. Injunction.** (1) A person injured by a violation of [sections 1 through 6] may maintain an action for injunctive relief to enforce the terms of [sections 1 through 6].~~

~~(2) An action brought pursuant to subsection (1) must be commenced within 4 years after the cause of action accrues. For the purposes of this subsection, a cause of action accrues at the time of the latest violation.~~

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 6 5] are intended to be codified as an integral part of Title 18, chapter 5, and the provisions of Title 18, chapter 5, apply to [sections 1 through 6 5].

NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2001.

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