Amendments to Information Technology Access Act

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3500, 2.2-3501, 2.2-3502, 2.2-3503, and 2.2-3504 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 2 of Title 2.2 a section numbered 2.2-3505 as follows:

§ 2.2-3500. Policy

It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) all persons with disabilities have the right to full participation in the life of the Commonwealth, including the use of information and communications technologies (ICT) that are 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 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 technologies.

“Accessibility” as used in this Chapter means conformance with Section 508 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794d and Section 255 of the federal Telecommunications Act, 47 U.S.C. § 255.

“Acquired” or “acquisition” indicates the digital product or service obtained did not go through the covered entity’s procurement process.

“Covered entity” means all state agencies, public institutions of higher education, local school divisions and their sponsored programs, and political subdivisions of the Commonwealth.

“Covered entity digital accessibility coordinator” means the person at each covered entity responsible for ensuring compliance with this Chapter and other Federal laws and laws of the Commonwealth including, but not limited to, the Virginians with Disabilities Act at § 51.5-40 *et. seq.* and the Virginia Human Rights Act that require such covered entity to ensure its digital tools and other products and services can be accessed by persons with disabilities.

“Digital accessibility” means technology is designed in a way that allows it to be accessed by all users regardless of the platform, including desktops, laptops, mobile platforms, and hand-held devices. This includes the design of electronic documents, websites, applications, hardware, video, audio, kiosks, copiers and printers, and other digital tools. It also allows for the integration and use of assistive technologies such as screen readers, refreshable braille displays, alternative input devices, and tools that allow for customization of a digital asset to achieve necessary levels of access.

“Head of each covered entity” is a person responsible for making executive decisions on behalf of the covered entity.

“Information and communications technology (ICT)” means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display, including via the Internet.

“Persons with a disability” has the meaning set forth in § 51.5-40.1.

“Procured” indicates a product or service that went through a covered entity’s procurement process.

§ 2.2-3502. Assurance of digital accessibility

In general, the head of each covered entity shall ensure that ICT used by employees, program participants, or members of the general public who have a disability: (i) provides access (including interactive use of the equipment and services) that is equivalent to that provided to individuals who do not have a disability; (ii) is designed to present information (including prompts used for interactive communications) in formats accessible or adaptable to both persons with and without disabilities; and (iii) conforms with accessibility when developed in-house by a covered entity; or (iv) has been purchased or acquired under a contract that includes the technology access clause required pursuant to § 2.2-3503.

§ 2.2-3503. Procurement requirements

A. The technology access clause specified in clause (iv) of § 2.2-3502 shall be developed by the Secretary of Administration and shall require a vendor-paid and provided Accessibility Conformation Report (ACR) indicating the level of conformance with accessibility for the ICT being procured or acquired by the covered entity. Any areas of non-conformance shall be documented with a vendor-paid and provided product enhancement roadmap highlighting areas of improved accessibility, including a timeline for each non-conforming area’s completion. The clause shall be included in all future contracts for the procurement or acquisition of ICT by, or for the use of, entities covered by this Chapter on or after the effective date of this Chapter. A covered entity may stipulate additional specifications in any procurement or acquisition and may require additional specifications for in-house developed ICT.

§ 2.2-3504. Exclusion

A. After consulting with the covered entity’s digital accessibility coordinator, the head of any covered entity that permits the procurement, acquisition, or in-house development of ICT that does not otherwise conform to the standard of accessibility, may approve the procurement, acquisition, or in-house development only to the extent that the cost of conformance would increase the total cost by more than five percent. Documented confirmation of any exceptions should consider the added cost to the covered entity of any violation of Federal laws or laws of the Commonwealth including, but not limited to, the Virginians with Disabilities Act at § 51.5-40 *et. seq*. and the Virginia Human Rights Act that may require the procurement of ICT that is accessible for persons with disabilities and outline responsibility for development of an alternative access plan, for example, an Equally Effective Alternative Access Plan (EEAAP), borne by the covered entity to ensure equitable access for all persons.

B. All exclusions specified in subsection A with respect to procurement or acquisition shall be reported annually to the Secretary of Administration along with a calculation showing the five percent differential and the cost to the covered entity, who shall publish a list of such exclusions along with the five percent calculations on its publicly-available website.

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

A. The head of each covered entity shall designate an employee to serve as the entity’s digital accessibility coordinator. The digital accessibility coordinator shall be responsible for developing and implementing the entity’s digital accessibility policy and preparing a digital accessibility report for the entity by the end of each fiscal year. Such person, as well as their name, phone number, email address, and office address, shall be listed on each covered entity’s publicly-available website.

B. Guidance documents to assist with policy and report content and creation shall be developed by supporting agencies and organizations.

C. The head of each covered entity shall adopt and publish on its publicly-available website grievance procedures providing 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.

2. Because Federal law and other laws of the Commonwealth, including, but not limited to, the Virginians with Disabilities Act at § 51.5-40, *et. seq.* and the Virginia Human Rights Act, already require each covered entity to ensure access to persons with disabilities, the Commonwealth will not expend any additional funds to hire additional personnel to serve as the covered entity digital accessibility coordinator at any covered entity unless authorized by another act; however, a covered entity may choose to hire a new employee to serve in this capacity using existing funds.

3. The provisions of these amendments to this Chapter shall become effective January 1, 2024.