

SENATE BILL 286

P2

(8lr2181)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Health and Government Operations* —

Introduced by **Senators Conway, Astle, Bates, Benson, Brochin, Cassilly, Currie, DeGrange, Eckardt, Edwards, Feldman, Ferguson, Guzzone, Hershey, Hough, Jennings, Kagan, Kasemeyer, Kelley, King, Klausmeier, Lee, Madaleno, Manno, Mathias, McFadden, Middleton, Miller, Norman, Oaks, Peters, Pinsky, Ramirez, Ready, Reilly, Robinson, Rosapepe, Salling, Serafini, Simonaire, Smith, Waugh, Young, and Zucker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **State Procurement – Information Technology – Nonvisual Access**

3 FOR the purpose of ~~requiring the Secretary of Information Technology to appoint an access~~
4 ~~technology officer in accordance with certain requirements; establishing the duties~~
5 ~~of the access technology officer; requiring the access technology officer to develop a~~
6 ~~provision for inclusion in all State procurement contracts that requires a certain~~
7 ~~determination to be made within a certain amount of time; requiring the access~~
8 ~~technology officer to notify a certain vendor under certain circumstances; providing~~
9 ~~that a certain vendor may be subject to certain liquidated damages under certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~circumstances; requiring a certain vendor that is found in violation of a certain~~
 2 ~~requirement to indemnify the State from liability under certain circumstances;~~
 3 ~~requiring the access technology officer, along with other parties, authorizing the~~
 4 ~~Secretary of Information Technology to designate an individual to develop a~~
 5 ~~nonvisual access clause in accordance with certain requirements; requiring the~~
 6 ~~Secretary of Information Technology, or the Secretary's designee, on or before a certain~~
 7 ~~date, to adopt new nonvisual access procurement standards that provide certain~~
 8 ~~individuals with certain nonvisual access and are consistent with certain federal~~
 9 ~~standards; requiring the Secretary, or the Secretary's designee, on or before a certain~~
 10 ~~date, to establish a certain process for determining if certain information technology~~
 11 ~~meets certain standards and enforcing certain provisions of this Act; requiring, on or~~
 12 ~~after a certain date, a certain nonvisual access clause to include a certain statement;~~
 13 ~~requiring a certain nonvisual access clause to be included in each invitation for bids~~
 14 ~~or request for proposals in each renewal of a certain contract under circumstances;~~
 15 ~~altering a certain exemption from the nonvisual access clause requirement; requiring~~
 16 ~~the Department of Information Technology, on or before a certain date, to adopt new~~
 17 ~~nonvisual access procurement standards that are consistent with certain federal~~
 18 ~~standards; altering a certain definition; and generally relating to information~~
 19 ~~technology and nonvisual access.~~

20 BY repealing and reenacting, with amendments,
 21 Article – State Finance and Procurement
 22 Section ~~3A-301, 3A-302, 3A-301, 3A-303,~~ and 3A-311
 23 Annotated Code of Maryland
 24 (2015 Replacement Volume and 2017 Supplement)

25 ~~BY adding to~~
 26 ~~Article – State Finance and Procurement~~
 27 ~~Section 3A-303.1~~
 28 ~~Annotated Code of Maryland~~
 29 ~~(2015 Replacement Volume and 2017 Supplement)~~

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 31 That the Laws of Maryland read as follows:

32 Article – State Finance and Procurement

33 3A-301.

34 (a) In this subtitle the following words have the meanings indicated.

35 (b) (1) “Development” means all expenditures for a new information
 36 technology system or an enhancement to an existing system including system:

37 (i) planning;

38 (ii) procurement;

1 (iii) creation;

2 (iv) installation;

3 (v) testing; and

4 (vi) initial training.

5 (2) “Development” does not include:

6 (i) ongoing operating costs, software or hardware maintenance,
7 routine upgrades, or modifications that merely allow for a continuation of the existing level
8 of functionality; or

9 (ii) expenditures made after a new or enhanced system has been
10 legally accepted by the user and is being used for the business process for which it was
11 intended.

12 (c) “Fund” means the Major Information Technology Development Project Fund.

13 (d) “Information technology” means all electronic information processing
14 hardware and software, including:

15 (1) maintenance;

16 (2) telecommunications; and

17 (3) associated consulting services.

18 (e) “Information technology services” means information provided by electronic
19 means by or on behalf of a unit of State government.

20 (f) “Major information technology development project” means any information
21 technology development project that meets one or more of the following criteria:

22 (1) the estimated total cost of development equals or exceeds \$1,000,000;

23 (2) the project is undertaken to support a critical business function
24 associated with the public health, education, safety, or financial well-being of the citizens
25 of Maryland; or

26 (3) the Secretary determines that the project requires the special attention
27 and consideration given to a major information technology development project due to:

28 (i) the significance of the project’s potential benefits or risks;

1 (ii) the impact of the project on the public or local governments;

2 (iii) the public visibility of the project; or

3 (iv) other reasons as determined by the Secretary.

4 (g) "Master plan" means the statewide information technology master plan.

5 (h) "Nonvisual access" means the ability~~],~~ through keyboard control, synthesized
6 speech, Braille, or other methods not requiring sight~~]~~ to receive, use, and manipulate
7 information and operate controls necessary to access information technology ~~IN A WAY~~
8 ~~THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY~~
9 ~~INDIVIDUALS WITH DISABILITIES, SO THAT THEY ARE ABLE TO ACQUIRE THE SAME~~
10 ~~INFORMATION, ENGAGE IN THE SAME INTERACTIONS, AND ENJOY THE SAME~~
11 ~~SERVICES AS USERS WITHOUT DISABILITIES, WITH SUBSTANTIALLY EQUIVALENT~~
12 ~~EASE OF USE, USING THE STANDARDS OF SECTION 508 OF THE FEDERAL~~
13 ~~REHABILITATION ACT OF 1973 IN ACCORDANCE WITH STANDARDS ADOPTED UNDER~~
14 ~~§ 3A-303(B) OF THIS SUBTITLE.~~

15 (i) "Resource sharing" means the utilization of a State resource by private
16 industry in exchange for the provision to the State of a communication service or other
17 consideration.

18 (j) "Systems development life cycle plan" means a plan that defines all actions,
19 functions, or activities to be performed by a unit of State government in the definition,
20 planning, acquisition, development, testing, implementation, operation, enhancement, and
21 modification of information technology systems.

22 ~~3A-303.~~

23 ~~The Secretary is responsible for carrying out the following duties:~~

24 ~~(1) developing, maintaining, revising, and enforcing information~~
25 ~~technology policies, procedures, and standards;~~

26 ~~(2) providing technical assistance, advice, and recommendations to the~~
27 ~~Governor and any unit of State government concerning information technology matters;~~

28 ~~(3) reviewing the annual project plan for each unit of State government to~~
29 ~~make information and services available to the public over the Internet;~~

30 ~~(4) developing and maintaining a statewide information technology master~~
31 ~~plan that will:~~

32 ~~(i) be the basis for the management and direction of information~~
33 ~~technology within the Executive Branch of State government;~~

1 (ii) ~~include all aspects of State information technology including~~
2 ~~telecommunications, data processing, and information management;~~

3 (iii) ~~consider interstate transfers as a result of federal legislation and~~
4 ~~regulation;~~

5 (iv) ~~work jointly with the Secretary of Budget and Management to~~
6 ~~ensure that information technology plans and budgets are consistent;~~

7 (v) ~~ensure that State information technology plans, policies, and~~
8 ~~standards are consistent with State goals, objectives, and resources, and represent a~~
9 ~~long range vision for using information technology to improve the overall effectiveness of~~
10 ~~State government; and~~

11 (vi) ~~include standards to assure nonvisual access to the information~~
12 ~~and services made available to the public over the Internet; [and]~~

13 (5) ~~adopting by regulation and enforcing nonvisual access standards to be~~
14 ~~used in the procurement of information technology services by or on behalf of units of State~~
15 ~~government; AND~~

16 (6) ~~APPOINTING AN ACCESS TECHNOLOGY OFFICER.~~

17 ~~3A-303.1.~~

18 (A) ~~THE ACCESS TECHNOLOGY OFFICER IS RESPONSIBLE FOR:~~

19 (1) ~~BEING DIRECTLY FAMILIAR WITH THE USE OF NONVISUAL ACCESS~~
20 ~~TECHNOLOGY SOFTWARE AND KNOWLEDGEABLE ABOUT INDUSTRY ACCEPTED~~
21 ~~ACCESSIBILITY GUIDELINES, INCLUDING THE STANDARDS OF SECTION 508 OF THE~~
22 ~~FEDERAL REHABILITATION ACT OF 1973 AND THE WORLD WIDE WEB CONSORTIUM~~
23 ~~WEB CONTENT ACCESSIBILITY GUIDELINES;~~

24 (2) ~~ENSURING THAT TECHNOLOGY PROCURED BY THE STATE IS~~
25 ~~ACCESSIBLE BY:~~

26 (I) ~~DEVELOPING, IMPLEMENTING, AND MAINTAINING AN~~
27 ~~INFORMATION AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY POLICY;~~

28 (II) ~~ESTABLISHING AND MAINTAINING, IN CONSULTATION WITH~~
29 ~~THE SECRETARY, AN ORGANIZATIONAL STRUCTURE THAT ENABLES AND~~
30 ~~FACILITATES PROGRESS IN INFORMATION AND COMMUNICATIONS TECHNOLOGY~~
31 ~~ACCESSIBILITY;~~

~~(III) INTEGRATING INFORMATION AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY CRITERIA INTO KEY PHASES OF DEVELOPMENT, PROCUREMENT, ACQUISITIONS, AND OTHER RELEVANT BUSINESS PROCESSES;~~

~~(IV) PROVIDING A PROCESS FOR ADDRESSING INACCESSIBLE INFORMATION AND COMMUNICATIONS TECHNOLOGY;~~

~~(V) ENSURING THE AVAILABILITY OF RELEVANT INFORMATION AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY SKILLS AND OTHER RESOURCES WITHIN THE ORGANIZATION; AND~~

~~(VI) MAKING INFORMATION REGARDING INFORMATION AND COMMUNICATIONS TECHNOLOGY ACCESSIBILITY POLICY, PLANS, AND PROGRESS AVAILABLE TO CUSTOMERS;~~

~~(3) CONDUCTING HANDS ON TESTING OF BOTH EMPLOYEE AND PUBLIC FACING ELECTRONIC INFORMATION TECHNOLOGY PRODUCTS TO CONFIRM THE PRODUCT'S CONFORMANCE TO APPLICABLE ACCESSIBILITY GUIDELINES FOR WEB-BASED APPLICATIONS ACCORDING TO WORLD WIDE WEB CONSORTIUM WEB CONTENT ACCESSIBILITY GUIDELINES 2.0 LEVEL AA;~~

~~(4) USING RELEVANT FUNCTIONAL ACCESS GUIDELINES AS ADOPTED BY THE U.S. ACCESS BOARD, WHICH INCORPORATE THE CORE PRINCIPLES OF SECTION 508 OF THE FEDERAL REHABILITATION ACT OF 1973 FOR NONWEB-BASED SOFTWARE OR HARDWARE;~~

~~(5) ENSURING THAT EMPLOYEES WITH DISABILITIES WHO USE ACCESS TECHNOLOGY SOFTWARE HAVE ACCESS TO THE TRAINING NECESSARY TO ENSURE PROFICIENCY WITH THE ACCESS TECHNOLOGY SOFTWARE AND THE ELECTRONIC INFORMATION TECHNOLOGY REQUIRED TO PERFORM THE RESPONSIBILITIES REQUIRED OF THEIR POSITIONS; AND~~

~~(6) REVIEWING ALL STATE PROCUREMENT CONTRACTS FOR PURCHASE OF ELECTRONIC INFORMATION TECHNOLOGY PRODUCTS TO ENSURE COMPLIANCE WITH SECTION 508 OF THE FEDERAL REHABILITATION ACT OF 1973 AND THE WORLD WIDE WEB CONSORTIUM WEB CONTENT ACCESSIBILITY GUIDELINES 2.0 LEVEL AA.~~

~~(B) (1) THE ACCESS TECHNOLOGY OFFICER SHALL DEVELOP A PROVISION FOR INCLUSION IN ALL STATE PROCUREMENT CONTRACTS THAT REQUIRES A DETERMINATION BY THE ACCESS TECHNOLOGY OFFICER WITHIN 18 MONTHS FROM CONTRACT COMMENCEMENT OF ANY BARRIERS TO ACCESS TO ELECTRONIC INFORMATION TECHNOLOGY PRODUCTS.~~

~~(2) IF THE ACCESS TECHNOLOGY OFFICER DETERMINES THAT AN ACCESS BARRIER IS PRESENT, THE ACCESS TECHNOLOGY OFFICER SHALL NOTIFY THE VENDOR IN WRITING AND REQUIRE THE VENDOR, AT THE VENDOR'S OWN EXPENSE, TO REMEDY THE DEFECT WITHIN 12 MONTHS.~~

~~(C) (1) IF THE VENDOR FAILS TO REMEDY THE ACCESS BARRIER WITHIN 12 MONTHS FROM THE DATE OF THE NOTIFICATION REQUIRED UNDER SUBSECTION (B)(2) OF THIS SECTION, THE VENDOR MAY BE SUBJECT TO LIQUIDATED DAMAGES APPLIED AT THE RATE OF 1% OF THE TOTAL PURCHASE PRICE OF THE CONTRACT FOR EACH DAY UNTIL THE PROBLEM IS REMEDIATED OR UNTIL THE FULL PRICE OF THE CONTRACT IS REFUNDED.~~

~~(2) A VENDOR THAT IS FOUND IN VIOLATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS REQUIRED TO INDEMNIFY THE STATE FOR LIABILITY RESULTING FROM THE USE OF INFORMATION TECHNOLOGY THAT IS FOUND TO BE INACCESSIBLE AFTER THE VENDOR HAS BEEN GIVEN THE OPPORTUNITY TO REMEDY THE ACCESS BARRIER FOR 12 MONTHS.~~

3A-303.

(A) The Secretary is responsible for carrying out the following duties:

(1) developing, maintaining, revising, and enforcing information technology policies, procedures, and standards;

(2) providing technical assistance, advice, and recommendations to the Governor and any unit of State government concerning information technology matters;

(3) reviewing the annual project plan for each unit of State government to make information and services available to the public over the Internet;

(4) developing and maintaining a statewide information technology master plan that will:

(i) be the basis for the management and direction of information technology within the Executive Branch of State government;

(ii) include all aspects of State information technology including telecommunications, data processing, and information management;

(iii) consider interstate transfers as a result of federal legislation and regulation;

(iv) work jointly with the Secretary of Budget and Management to ensure that information technology plans and budgets are consistent;

1 (v) ensure that State information technology plans, policies, and
2 standards are consistent with State goals, objectives, and resources, and represent a
3 long-range vision for using information technology to improve the overall effectiveness of
4 State government; and

5 (vi) include standards to assure nonvisual access to the information
6 and services made available to the public over the Internet; and

7 (5) adopting by regulation and enforcing nonvisual access standards to be
8 used in the procurement of information technology services by or on behalf of units of State
9 government IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

10 (B) ON OR BEFORE JANUARY 1, 2020, THE SECRETARY, OR THE
11 SECRETARY'S DESIGNEE, SHALL:

12 (1) ADOPT NEW NONVISUAL ACCESS PROCUREMENT STANDARDS
13 THAT:

14 (I) PROVIDE AN INDIVIDUAL WITH DISABILITIES WITH
15 NONVISUAL ACCESS IN A WAY THAT IS FULLY AND EQUALLY ACCESSIBLE TO AND
16 INDEPENDENTLY USABLE BY THE INDIVIDUAL WITH DISABILITIES SO THAT THE
17 INDIVIDUAL IS ABLE TO ACQUIRE THE SAME INFORMATION, ENGAGE IN THE SAME
18 INTERACTIONS, AND ENJOY THE SAME SERVICES AS USERS WITHOUT DISABILITIES,
19 WITH SUBSTANTIALLY EQUIVALENT EASE OF USE; AND

20 (II) ARE CONSISTENT WITH THE STANDARDS OF § 508 OF THE
21 FEDERAL REHABILITATION ACT OF 1973; AND

22 (2) ESTABLISH A PROCESS FOR THE SECRETARY OR THE
23 SECRETARY'S DESIGNEE TO:

24 (I) DETERMINE WHETHER INFORMATION TECHNOLOGY MEETS
25 THE NONVISUAL ACCESS STANDARDS ADOPTED UNDER ITEM (1) OF THIS
26 SUBSECTION; AND

27 (II) 1. FOR INFORMATION TECHNOLOGY PROCURED BY A
28 STATE UNIT BEFORE JANUARY 1, 2020, AND STILL USED BY THE STATE UNIT ON OR
29 AFTER JANUARY 1, 2020, WORK WITH THE VENDOR TO MODIFY THE INFORMATION
30 TECHNOLOGY TO MEET THE NONVISUAL ACCESS STANDARDS, IF PRACTICABLE; OR

31 2. FOR INFORMATION TECHNOLOGY PROCURED BY A
32 STATE UNIT ON OR AFTER JANUARY 1, 2020, ENFORCE THE NONVISUAL ACCESS
33 CLAUSE DEVELOPED UNDER § 3A-311 OF THIS SUBTITLE, INCLUDING THE

1 ENFORCEMENT OF THE CIVIL PENALTY DESCRIBED IN § 3A-311(A)(2)(III)1 OF THIS
 2 SUBTITLE.

3 3A-311.

4 (a) (1) The Secretary ~~AND ACCESS TECHNOLOGY OFFICER OR THE~~
 5 SECRETARY'S DESIGNEE, in consultation with other units of State government, and after
 6 public comment, shall develop a nonvisual access clause for use in the procurement of
 7 information technology and information technology services that specifies that the
 8 technology and services:

9 ~~(1)~~ (I) must provide equivalent access for effective use by both visual
 10 and nonvisual means;

11 ~~(2)~~ (II) will present information, including prompts used for interactive
 12 communications, in formats intended for both visual and nonvisual use;

13 ~~(3)~~ (III) can be integrated into networks for obtaining, retrieving, and
 14 disseminating information used by individuals who are not blind or visually impaired; and

15 ~~(4)~~ (IV) shall be obtained, whenever possible, without modification for
 16 compatibility with software and hardware for nonvisual access.

17 (2) ON OR AFTER JANUARY 1, 2020, THE NONVISUAL ACCESS CLAUSE
 18 DEVELOPED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION SHALL
 19 INCLUDE A STATEMENT THAT:

20 (I) WITHIN 18 MONTHS AFTER THE AWARD OF THE
 21 PROCUREMENT, THE SECRETARY, OR THE SECRETARY'S DESIGNEE, WILL
 22 DETERMINE WHETHER THE INFORMATION TECHNOLOGY MEETS THE NONVISUAL
 23 ACCESS STANDARDS ADOPTED IN ACCORDANCE WITH § 3A-303(B) OF THIS
 24 SUBTITLE;

25 (II) IF THE INFORMATION TECHNOLOGY DOES NOT MEET THE
 26 NONVISUAL ACCESS STANDARDS, THE SECRETARY, OR THE SECRETARY'S DESIGNEE,
 27 WILL NOTIFY THE VENDOR IN WRITING THAT THE VENDOR, AT THE VENDOR'S OWN
 28 EXPENSE, HAS 12 MONTHS AFTER THE DATE OF THE NOTIFICATION TO MODIFY THE
 29 INFORMATION TECHNOLOGY IN ORDER TO MEET THE NONVISUAL ACCESS
 30 STANDARDS; AND

31 (III) IF THE VENDOR FAILS TO MODIFY THE INFORMATION
 32 TECHNOLOGY TO MEET THE NONVISUAL ACCESS STANDARDS WITHIN 12 MONTHS
 33 AFTER THE DATE OF THE NOTIFICATION, THE VENDOR:

34 1. MAY BE SUBJECT TO A CIVIL PENALTY OF:

1 A. FOR A FIRST OFFENSE, A FINE NOT EXCEEDING
 2 \$5,000; AND

3 B. FOR A SUBSEQUENT OFFENSE, A FINE NOT EXCEEDING
 4 \$10,000; AND

5 2. SHALL INDEMNIFY THE STATE FOR LIABILITY
 6 RESULTING FROM THE USE OF INFORMATION TECHNOLOGY THAT DOES NOT MEET
 7 THE NONVISUAL ACCESS STANDARDS.

8 (b) (1) Except as provided in paragraph (2) of this subsection, the nonvisual
 9 access clause required under subsection (a) of this section shall be included in each
 10 invitation for bids or request for proposals and in each procurement contract or modification
 11 OR RENEWAL of a contract issued under Title 13 of this article, without regard to the
 12 method chosen under Title 13, Subtitle 1 of this article for the purchase of new or upgraded
 13 information technology and information technology services.

14 (2) Except as provided in subsection (a)(4) of this section, the nonvisual
 15 access clause required under paragraph (1) of this subsection is not required if:

16 (i) the information technology is not available with nonvisual access
 17 because the essential elements of the information technology are visual and nonvisual
 18 equivalence cannot be developed; or

19 (ii) the cost of modifying the information technology for compatibility
 20 with software and hardware for nonvisual access would increase the price of the
 21 procurement by more than [5%] 15%.

22 ~~(C) ON OR BEFORE JANUARY 1, 2019, THE DEPARTMENT SHALL ADOPT~~
 23 ~~NEW NONVISUAL ACCESS PROCUREMENT STANDARDS THAT ARE CONSISTENT WITH~~
 24 ~~THE STANDARDS OF SECTION 508 OF THE FEDERAL REHABILITATION ACT OF 1973.~~

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 26 October 1, 2018.