

Chapter 632

(Senate Bill 286)

AN ACT concerning

State Procurement – Information Technology – Nonvisual Access

FOR the purpose of ~~requiring the Secretary of Information Technology to appoint an access technology officer in accordance with certain requirements; establishing the duties of the access technology officer; requiring the access technology officer to develop a provision for inclusion in all State procurement contracts that requires a certain determination to be made within a certain amount of time; requiring the access technology officer to notify a certain vendor under certain circumstances; providing that a certain vendor may be subject to certain liquidated damages under certain circumstances; requiring a certain vendor that is found in violation of a certain requirement to indemnify the State from liability under certain circumstances; requiring the access technology officer, along with other parties, authorizing the Secretary of Information Technology to designate an individual to develop a nonvisual access clause in accordance with certain requirements; *requiring the Secretary of Information Technology, or the Secretary's designee, on or before a certain date, to adopt new nonvisual access procurement standards that provide certain individuals with certain nonvisual access and are consistent with certain federal standards; requiring the Secretary, or the Secretary's designee, on or before a certain date, to establish a certain process for determining if certain information technology meets certain standards and enforcing certain provisions of this Act; requiring, on or after a certain date, a certain nonvisual access clause to include a certain statement; requiring a certain nonvisual access clause to be included in each invitation for bids or request for proposals in each renewal of a certain contract under circumstances;* altering a certain exemption from the nonvisual access clause requirement; ~~requiring the Department of Information Technology, on or before a certain date, to adopt new nonvisual access procurement standards that are consistent with certain federal standards;~~ altering a certain definition; and generally relating to information technology and nonvisual access.~~

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

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

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

Article – State Finance and Procurement

3A-301.

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

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

- (i) planning;
- (ii) procurement;
- (iii) creation;
- (iv) installation;
- (v) testing; and
- (vi) initial training.

(2) “Development” does not include:

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

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

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

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

- (1) maintenance;
- (2) telecommunications; and
- (3) associated consulting services.

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

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

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

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

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

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

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

(iii) the public visibility of the project; or

(iv) other reasons as determined by the Secretary.

(g) “Master plan” means the statewide information technology master plan.

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

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

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

~~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;~~
 - ~~(v) ensure that State information technology plans, policies, and standards are consistent with State goals, objectives, and resources, and represent a long range vision for using information technology to improve the overall effectiveness of State government; and~~
 - ~~(vi) include standards to assure nonvisual access to the information and services made available to the public over the Internet; [and]~~~~
- ~~(5) adopting by regulation and enforcing nonvisual access standards to be used in the procurement of information technology services by or on behalf of units of State government; AND~~
- ~~(6) APPOINTING AN ACCESS TECHNOLOGY OFFICER.~~

~~3A-303.1.~~

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

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

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

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

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

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

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

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

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

(1) ADOPT NEW NONVISUAL ACCESS PROCUREMENT STANDARDS THAT:

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

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

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

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

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

2. FOR INFORMATION TECHNOLOGY PROCURED BY A STATE UNIT ON OR AFTER JANUARY 1, 2020, ENFORCE THE NONVISUAL ACCESS CLAUSE DEVELOPED UNDER § 3A-311 OF THIS SUBTITLE, INCLUDING THE ENFORCEMENT OF THE CIVIL PENALTY DESCRIBED IN § 3A-311(A)(2)(III)1 OF THIS SUBTITLE.

3A-311.

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

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

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

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

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

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

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

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

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

1. MAY BE SUBJECT TO A CIVIL PENALTY OF:

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 15, 2018.