

CHAPTER 402

GOVERNMENT - STATE

HOUSE BILL 21-1110

BY REPRESENTATIVE(S) Ortiz, Bacon, Caraveo, Duran, Michaelson Jenet, Roberts, Titone, Woodrow, Amabile, Benavidez, Bernett, Bird, Boesenecker, Cutter, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, McCluskie, McCormick, McLachlan, Mullica, Ricks, Sirota, Tipper, Weissman, Young, Garnett, Herod, Valdez A., Valdez D.;

also SENATOR(S) Danielson, Bridges, Buckner, Coram, Donovan, Fenberg, Fields, Ginal, Gonzales, Hansen, Kolker, Lee, Moreno, Pettersen, Priola, Rankin, Story, Winter, Zenzinger, Garcia.

AN ACT

CONCERNING ADDING LANGUAGE TO RELEVANT COLORADO STATUTES RELATED TO PERSONS WITH DISABILITIES TO STRENGTHEN PROTECTIONS AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-34-301, **amend** (5.4) as follows:

24-34-301. Definitions. As used in parts 3 to 8 of this article 34, unless the context otherwise requires:

(5.4) "~~Public entity" has the same meaning as set forth in Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12131, and its related amendments and implementing regulations.~~ MEANS:

(a) ANY STATE OR LOCAL GOVERNMENT; OR

(b) ANY DEPARTMENT, AGENCY, SPECIAL DISTRICT, OR OTHER INSTRUMENTALITY OF A STATE OR LOCAL GOVERNMENT.

SECTION 2. In Colorado Revised Statutes, 24-34-802, **amend** (1), (2)(a) introductory portion, and (2)(a)(III); and **add** (5) as follows:

24-34-802. Violations - penalties - immunity. (1) (a) It is a discriminatory practice and unlawful for any person, AS DEFINED IN SECTION 24-34-301, to

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

discriminate against ~~any~~ AN individual or group OF INDIVIDUALS because ~~such~~ THE person ~~or group~~ has opposed any practice, made a discriminatory practice based on disability pursuant to part 5, 6, or 8 of this ~~article~~ ARTICLE 34, or because ~~such~~ THE person ~~or group~~ has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to part 5, 6, or 8 of this ~~article~~ ARTICLE 34.

(b) AN INDIVIDUAL WITH A DISABILITY, AS DEFINED IN SECTION 24-34-301 (5.6), MUST NOT, BY REASON OF THE INDIVIDUAL'S DISABILITY, BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF SERVICES, PROGRAMS, OR ACTIVITIES PROVIDED BY A PUBLIC ENTITY, AS DEFINED IN SECTION 24-34-301, OR A STATE AGENCY, AS DEFINED IN SECTION 24-37.5-102, OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH PUBLIC ENTITY OR STATE AGENCY.

(c) DISCRIMINATION PURSUANT TO THIS SECTION INCLUDES THE FAILURE OF A PUBLIC ENTITY OR STATE AGENCY, AS THOSE TERMS ARE DEFINED IN SECTION 24-34-301, TO DEVELOP AN ACCESSIBILITY PLAN USING THE ACCESSIBILITY STANDARDS ESTABLISHED PURSUANT TO SECTION 24-85-103 (2.5) AND FULLY COMPLY, ON OR BEFORE JULY 1, 2024, WITH THE ACCESSIBILITY STANDARDS FOR INDIVIDUALS WITH A DISABILITY ESTABLISHED BY THE OFFICE OF INFORMATION TECHNOLOGY PURSUANT TO SECTION 24-85-103 (2.5). LIABILITY FOR NONCOMPLIANCE AS TO CONTENT LIES WITH THE PUBLIC ENTITY OR STATE AGENCY THAT MANAGES THE CONTENT. LIABILITY FOR NONCOMPLIANCE OF THE PLATFORM HOSTING THE CONTENT LIES WITH THE PUBLIC ENTITY OR STATE AGENCY THAT MANAGES THE PLATFORM.

(2) (a) ~~A qualified~~ AN individual with a disability, as defined in section 24-34-301 (5.6), who is subject to a violation of subsection (1) of this section or of section 24-34-502, 24-34-502.2, 24-34-601, or 24-34-803 based on ~~his or her~~ THE INDIVIDUAL'S disability may bring a civil suit in a court of competent jurisdiction and, EXCEPT AS PROVIDED IN SECTION 24-85-103, is entitled to any of the following remedies:

(III) A statutory fine ~~not to exceed~~ OF three thousand five hundred dollars, PAYABLE TO EACH PLAINTIFF FOR EACH VIOLATION.

(5) AN AGENCY IN THE STATE WITH THE AUTHORITY TO PROMULGATE RULES RELATED TO PROTECTIONS FOR PERSONS WITH DISABILITIES SHALL NOT PROMULGATE A RULE THAT PROVIDES LESS PROTECTION THAN THAT PROVIDED BY THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED.

SECTION 3. In Colorado Revised Statutes, **amend** 24-85-101 as follows:

24-85-101. Legislative declaration. The general assembly hereby finds that the state needs to improve ~~nonvisual~~ access to information, ~~whether by speech, Braille, or other appropriate means~~ INCLUDING ELECTRONIC INFORMATION, FOR INDIVIDUALS WITH A DISABILITY.

SECTION 4. In Colorado Revised Statutes, 24-85-102, **amend** the introductory portion; and **add** (1.5), (2.3), (2.7), (5.3), and (5.5) as follows:

24-85-102. Definitions. As used in this ~~article~~ ARTICLE 85, unless the context otherwise requires:

(1.5) "ACCESSIBLE" OR "ACCESSIBILITY" MEANS PERCEIVABLE, OPERABLE, AND UNDERSTANDABLE DIGITAL CONTENT THAT ENABLES AN INDIVIDUAL WITH A DISABILITY TO ACCESS THE SAME INFORMATION, ENGAGE IN THE SAME INTERACTIONS, AND ENJOY THE SAME SERVICES OFFERED TO OTHER INDIVIDUALS, WITH THE SAME PRIVACY, INDEPENDENCE, AND EASE OF USE AS EXISTS FOR INDIVIDUALS WITHOUT A DISABILITY.

(2.3) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS.

(2.7) "INDIVIDUAL WITH A DISABILITY" HAS THE SAME MEANING AS "QUALIFIED INDIVIDUAL WITH A DISABILITY" AS DEFINED IN SUBSECTION (5.5) OF THIS SECTION.

(5.3) "OFFICE OF INFORMATION TECHNOLOGY" MEANS THE OFFICE OF INFORMATION TECHNOLOGY CREATED IN SECTION 24-37.5-103.

(5.5) "QUALIFIED INDIVIDUAL WITH A DISABILITY" OR "INDIVIDUAL WITH A DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS.

SECTION 5. In Colorado Revised Statutes, **amend** 24-85-103 as follows:

24-85-103. Accessibility standards for individuals with a disability. (1) The chief information officer in the office of information technology ~~created in section 24-37.5-103~~, shall maintain ~~nonvisual access~~ ACCESSIBILITY standards FOR AN INDIVIDUAL WITH A DISABILITY for information technology systems employed by state agencies that:

(a) Provide ~~blind or visually impaired individuals~~ AN INDIVIDUAL WITH A DISABILITY with access to information stored electronically by state agencies by ensuring compatibility with adaptive technology systems so that ~~blind and visually impaired individuals have~~ AN INDIVIDUAL WITH A DISABILITY HAS full and equal access when needed; and

(b) Are designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use, such as the use of text-only options.

(1.5) THE CHIEF INFORMATION OFFICER IN THE OFFICE OF INFORMATION TECHNOLOGY SHALL, CONSISTENT WITH THE RESPONSIBILITIES OF THE OFFICE, PROMOTE AND MONITOR THE ACCESS STANDARDS FOR INDIVIDUALS WITH A DISABILITY IN THE STATE'S INFORMATION TECHNOLOGY INFRASTRUCTURE, INCLUDING BUT NOT LIMITED TO ARCHITECTURE. EACH STATE AGENCY IS DIRECTED TO COMPLY WITH THE ACCESS STANDARDS FOR INDIVIDUALS WITH A DISABILITY, ESTABLISHED BY THE OFFICE OF INFORMATION TECHNOLOGY PURSUANT TO SUBSECTION (2.5) OF THIS SECTION, IN THE CREATION AND PROMULGATION OF ANY

ONLINE CONTENT AND MATERIALS USED BY SUCH STATE AGENCY.

(2) The chief information officer in the office of information technology ~~created in section 24-37.5-103~~, shall consult with state agencies and representatives of individuals ~~who are blind or visually impaired~~ WITH A DISABILITY in maintaining the ~~nonvisual access~~ ACCESSIBILITY standards FOR INDIVIDUALS WITH A DISABILITY described in subsection (1) of this section and the procurement criteria described in section 24-85-104.

(2.5) THE CHIEF INFORMATION OFFICER IN THE OFFICE OF INFORMATION TECHNOLOGY SHALL ESTABLISH ACCESSIBILITY STANDARDS FOR INDIVIDUALS WITH A DISABILITY USING THE MOST RECENT WEB CONTENT ACCESSIBILITY GUIDELINES PROMULGATED AND PUBLISHED BY THE WORLD WIDE WEB CONSORTIUM WEB ACCESSIBILITY INITIATIVE OR THE INTERNATIONAL ACCESSIBILITY GUIDELINES WORKING GROUP, OR ANY SUCCESSOR GROUP OR ORGANIZATION, OR ANY SUBSEQUENT UPDATES OR REVISIONS TO SUCH GUIDELINES BY ANY SUCCESSOR GROUP OR ORGANIZATION.

(3) (a) The head of each state agency, AS THAT TERM IS DEFINED IN SECTION 24-37.5-102, shall establish a written plan, as part of its annual information technology plan, and develop any proposed budget requests for implementing the ~~nonvisual access~~ ACCESSIBILITY standards FOR INDIVIDUALS WITH A DISABILITY for its agency at facilities accessible by the public. EACH SUCH STATE AGENCY SHALL FOLLOW UP ON THE PLAN AS FOLLOWS:

(I) ON OR BEFORE JULY 1, 2022, THE STATE AGENCY SHALL SUBMIT ITS WRITTEN ACCESSIBILITY PLAN TO THE OFFICE OF INFORMATION TECHNOLOGY. THE OFFICE OF INFORMATION TECHNOLOGY SHALL WORK COLLABORATIVELY WITH THE STATE AGENCY TO REVIEW THE SECTIONS OF THE AGENCY'S PLAN RELATED TO ACCESSIBILITY STANDARDS FOR INDIVIDUALS WITH A DISABILITY AND ESTABLISH IMPLEMENTATION METHODOLOGY; AND

(II) ON OR BEFORE JULY 1, 2024, EACH STATE AGENCY SHALL FULLY IMPLEMENT THE SECTIONS OF THE AGENCY'S PLAN RELATED TO ACCESSIBILITY STANDARDS FOR INDIVIDUALS WITH A DISABILITY. ANY STATE AGENCY NOT IN COMPLIANCE AFTER JULY 1, 2024, IS IN VIOLATION OF SECTION 24-34-802 AND IS SUBJECT TO THE REMEDIES FOR NONCOMPLIANCE SET FORTH IN SECTION 24-34-802.

SECTION 6. In Colorado Revised Statutes, **amend** 24-85-104 as follows:

24-85-104. Procurement requirements - criteria - implementation. (1) The office of information technology ~~created in section 24-37.5-103~~, shall approve minimum standards and criteria to be used in approving or rejecting procurements by state agencies for adaptive technologies for nonvisual OR OTHER DISABILITY access uses.

(2) Nothing in this ~~article shall require~~ ARTICLE 85 REQUIRES the installation of software or peripheral devices used for ~~nonvisual access~~ ACCESSIBILITY FOR AN INDIVIDUAL WITH A DISABILITY when the information technology is being used by individuals who are not ~~blind or visually impaired~~ DISABLED. Nothing in this ~~article shall be construed to require~~ ARTICLE 85 REQUIRES the purchase of ~~nonvisual~~

adaptive equipment by a state agency.

(3) Notwithstanding ~~the provisions of~~ subsection (2) of this section, the applications, programs, and underlying operating systems, including the format of the data, used for the manipulation and presentation of information ~~shall~~ MUST permit the installation and effective use of and ~~shall be compatible~~ BE COMPATIBLE with ~~nonvisual access~~ software and peripheral devices THAT PROVIDE ACCESSIBILITY TO AN INDIVIDUAL WITH A DISABILITY.

(4) Compliance with the procurement requirements of this section ~~with regard to information technology purchased prior to July 1, 2001, shall~~ MUST be achieved at the time of procurement of an upgrade or replacement of existing information technology equipment or software.

SECTION 7. Appropriation. For the 2021-22 state fiscal year, \$312,922 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.9 FTE. To implement this act, the office may use this appropriation for enterprise solutions.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 30, 2021