

BILL NUMBER: AB 422 CHAPTERED 09/15/99

CHAPTER 37

FILED WITH SECRETARY OF STATE SEPTEMBER 15, 1999

APPROVED BY GOVERNOR SEPTEMBER 15, 1999

PASSED THE ASSEMBLY AUGUST 26, 1999

PASSED THE SENATE AUGUST 23, 1999

AMENDED IN SENATE JUNE 30, 1999

AMENDED IN SENATE JUNE 16, 1999

AMENDED IN ASSEMBLY MAY 25, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

INTRODUCED BY Assembly Member Steinberg

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FEBRUARY 12, 1999

An act to add Section 67302 to the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 422, Steinberg. Instructional materials: disabled students.

Under existing law, a publisher or manufacturer of instructional materials offered for adoption or sale in California is required to comply with specified requirements, including providing to the state, at no cost, the right to transcribe, reproduce, and distribute the material in braille, large print, recordings, or other accessible media for use by pupils with visual disabilities. This right includes computer diskette versions of instructional materials if made available to any other state, and those corrections and revisions as may be necessary.

This bill would require every individual, firm, partnership or corporation publishing or manufacturing printed instructional materials, as defined, for students

attending the University of California, the California State University, or a California Community College to provide to the university, college, or particular campus of the university or college, for use by students at no additional cost and in a timely manner, any printed instructional material in unencrypted electronic form upon the receipt of a written request, provided that the university or college complies with certain conditions.

This bill would require that the computer files or electronic versions of printed instructional material maintain their structural integrity, as defined, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary.

This bill would authorize the Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California to each establish one or more centers within their respective segments to process requests for electronic versions of instructional materials, as prescribed.

This bill would also require an individual, firm, partnership or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College to provide computer files or other electronic versions of the nonprinted instructional materials for use by students, subject to the same conditions for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional material that is compatible with braille translation and speech synthesis software.

This bill would provide that willful failure to comply with these requirements would be subject to sanctions under the law relating to full and equal access of disabled persons to public accommodations.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 67302 is added to the Education Code, to read:

67302. (a) An individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending the University of California, the California State University, or a California Community College, shall provide to the university, college, or particular campus of the university or college, for use by students attending the University of California, the California State University, or a California Community College, any printed instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the college or campus. Computer files or electronic versions of printed instructional materials shall maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary. The computer files or electronic versions of the printed instructional material shall be provided to the university, college, or particular campus of the university or college at no additional cost and in a timely manner, upon receipt of a written request that does all of the following:

(1) Certifies that the university, college, or particular campus of the university or college has purchased the printed instructional material for use by a student with a disability or that a student with a disability attending or registered to attend that university, college, or particular campus of the university or college has purchased the printed instructional material.

(2) Certifies that the student has a disability that prevents him or her from using standard instructional materials.

(3) Certifies that the printed instructional material is for use by the student in connection with a course in which he or she is registered or enrolled at the university, college, or particular campus of the university or college.

(4) Is signed by the coordinator of services for students with disabilities at the university, college, or particular campus of the university or college or by the campus or college official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university, college, or particular campus of the university or college.

(b) An individual, firm, partnership or corporation specified in subdivision (a) may also require that, in addition to the conditions enumerated above, the request shall include a statement signed by the student agreeing to both of the following:

(1) He or she will use the electronic copy of the printed instructional material in specialized format solely for his or her own educational purposes.

(2) He or she will not copy or duplicate the printed instructional material for use by others.

(c) If a college or university permits a student to directly use the electronic version of an instructional material, the disk or file shall be copy-protected or the college or university shall take other reasonable precautions to ensure that students do not copy or distribute electronic versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(d) An individual, firm, partnership or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College shall provide computer files or other electronic versions of the nonprinted instructional materials for use by students attending the University of California, the California State University, or a California Community College, subject to the same conditions set forth in subdivisions (a) and (b) for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted

instructional materials that is compatible with braille translation and speech synthesis software.

(e) For purposes of this section:

(1) "Instructional material or materials" means textbooks and other materials written and published primarily for use by students in postsecondary instruction that are required or essential to a student's success in a course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request pursuant to paragraph (4) of subdivision (a) in accordance with guidelines issued pursuant to subdivision (i). "Instructional material or materials" does not include nontextual mathematics and science materials until the time software becomes commercially available that permits the conversion of existing electronic files of the materials into a format that is compatible with braille translation software or alternative media for students with disabilities.

(2) "Printed instructional material or materials" means instructional material or materials in book or other printed form.

(3) "Nonprinted instructional materials" means instructional materials in formats other than print, and includes instructional materials that require the availability of electronic equipment in order to be used as a learning resource, including, but not necessarily limited to, software programs, video disks, and video and audio tapes.

(4) "Structural integrity" means all of the printed instructional material, including, but not limited to, the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs, or charts. If good faith efforts fail to produce an agreement

pursuant to subdivision (a) between the publisher or manufacturer and the university, college, or particular campus of the university or college, as to an electronic format that will preserve the structural integrity of the printed instructional material, the publisher or manufacturer shall provide the instructional material in ASCII text and shall preserve as much of the structural integrity of the printed instructional material as possible.

(5) "Specialized format" means braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities.

(f) Nothing in this section shall be construed to prohibit a university, college, or particular campus of the university or college from assisting a student with a disability by using the electronic version of printed instructional material provided pursuant to this section solely to transcribe or arrange for the transcription of the printed instructional material into braille. In the event a transcription is made, the campus or college shall have the right to share the braille copy of the printed instructional material with other students with disabilities.

(g) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each establish one or more centers within their respective segments to process requests for electronic versions of instructional materials pursuant to this section. If a segment establishes a center or centers, each of the following shall apply:

(1) The colleges or campuses designated as within the jurisdiction of a center shall submit requests for instructional material made pursuant to paragraph (4) of subdivision (a) to the center, which shall transmit the request to the publisher or manufacturer.

(2) If there is more than one center, each center shall make every effort to coordinate requests within its segment.

(3) The publisher or manufacturer of instructional material shall be required to honor and respond to only those requests submitted through a designated center.

(4) If a publisher or manufacturer has responded to a request for instructional materials by a center, or on behalf of all the centers within a segment, all subsequent requests for these instructional materials shall be satisfied by the center to which the request is made.

(h) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(i) The governing boards of the California Community Colleges, the California State University, and the University of California shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(1) The designation of materials deemed "required or essential to student success."

(2) The determination of the availability of technology for the conversion of nonprinted materials pursuant to subdivision (d) and the conversion of mathematics and science materials pursuant to paragraph (4) of subdivision (e).

(3) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (a) and (b).

(4) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(j) Failure to comply with the requirements of this section shall be a violation of Section 54.1 of the Civil Code.