

State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0293/7
GMM...:kyf

(P1)

IN 1117

Wanted Thursday 11/19

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2011 ASSEMBLY BILL 322

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AN ACT ...; relating to: accessible instructional materials for students with disabilities enrolled in institution of higher education.

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Analysis by the Legislative Reference Bureau

Current law

Under current state law, the University of Wisconsin System (UW System) and the Technical College System (TCS) may not deny to a student admission to, participation in, or the benefits of, or discriminate against a student in, any service, program, course, or facility because of the student's disability. In addition, under current federal law, a college, university, or other postsecondary institution, including a private postsecondary institution, may not exclude a student from participation in, deny a student the benefits of, or subject a student to discrimination under any program or activity receiving federal financial assistance. Federal regulations specify that a postsecondary institution receiving federal financial assistance must ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

X **The substitute amendment**

Request for instructional material in alternative or electronic format.

This substitute amendment permits an institution or college campus within the UW System, a technical college within the TCS, or a private, nonprofit institution of higher education that is a member of the Wisconsin Association of Independent Colleges and Universities (institution of higher education), on behalf of a student who is blind or visually impaired, or who has a specific learning disability or other disability affecting the activity of reading, and who needs auxiliary aids and services to read (student with a disability), to request a publisher to provide instructional material in either of the following formats:

1. Braille, large print texts, audio recordings created with the use of text-to-speech technology, electronic formats used with screen reader devices or other assistive technology, digital texts, or digital talking books that are required by a student with a disability to make instructional material accessible to the student (alternative format).

2. A computer file or other digital medium embodying instructional material that can be made into an alternative format or that is capable of serving as an alternative format, if used with a screen reader device or other assistive technology (electronic format).

X Under the substitute amendment, a request for instructional material in alternative format or electronic format (request) must certify: 1) that a copy of the instructional material in a standard format has been purchased for use by a student with a disability; 2) that the student is a student with a disability; 3) that the instructional material is for use by the student in connection with a course at the institution of higher education in which the student is enrolled; and 4) if requested by the publisher, whether the institution of high education has in its possession a copy of the instructional material in electronic format and, if so, whether that copy is capable, if used with assistive technology, of serving as an alternative format suitable for the needs of the student with a disability or of being converted, using generally available technology, into the particular alternative format needed by the student. In addition, the publisher may require the student to sign a statement agreeing that the student will use the instructional material in alternative format solely for his or her own educational purposes and that the student will not copy or distribute the instructional material in alternative format for use by others. er

Provision of instructional material in alternative or electronic format.

The substitute amendment requires a publisher, in response to a request, to do one of the following:

1. Provide to the requester a copy of the instructional material in alternative format.

2. Provide to the requester access to the instructional material in alternative format by providing an Internet password, delivering a computer disk or file, or providing that access in any other appropriate matter.

3. Provide to the requester a copy of the instructional material in electronic format.

4. At its option, grant to the institution of higher education permission to convert the instructional material into the particular alternative format needed by the student with a disability.

5. If the publisher is unable to provide the instructional material in alternative format or electronic format or grant permission to convert the instructional material into alternative format because the publisher does not own or control some or all of the copyright in the instructional material, provide to the requester the name of the person that is able to fulfill the request.

Within five days after receiving a request, the publisher must respond to the request by providing a notice advising the requester as to which of the actions, if any, permitted under the substitute amendment the publisher intends to take. If the publisher provides notice that the publisher intends to provide a copy of the instructional material in electronic format, the publisher must provide the material in that format no later than seven days after providing that notice. If the publisher provides notice that the publisher intends to provide a copy of, or access to, the instructional material in alternative format, the publisher must provide that material or that access no later than 14 days after providing that notice.

Under the substitute amendment, instructional material provided by a publisher in electronic format must: 1) maintain the structural integrity of the original instructional material, which means that all of the information provided in printed instructional material, including the text of sidebars; the table of contents; chapter headings and subheadings; footnotes; indexes; glossaries; bibliographies; nontextual elements, such as pictures, illustrations, graphs, charts, and screenshots; and any other data that are pertinent to the instructional material, is included when that printed instructional material is provided in alternative format or electronic format; 2) be compatible with an assistive technology that is suitable for the needs of the student with a disability or, if the student needs an embossed Braille version of the instructional material, be compatible with commonly used Braille translation or speech synthesis software; and 3) include corrections and revisions that have been generally published with respect to the instructional material.

Use of instructional material in alternative or electronic format. The substitute amendment permits an institution of higher education to create a copy of instructional material in alternative format if any of the following apply:

1. The publisher grants permission to convert the instructional material into alternative format.

2. The publisher indicates that the publisher does not intend to provide a copy of the instructional material in alternative format or electronic format because the institution of higher education already possesses a copy of the instructional material in electronic format that is capable of serving as an alternative format or of being converted in an alternative format.

3. The publisher does not respond to a request within five days after receipt of the request as required under the substitute amendment or does not fulfill the request within seven or 14 days after providing notice of its intent as required under the substitute amendment.

1. The publisher provides a copy of the instructional material in electronic format.

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for each student for whom the instructional material is provided

however

The substitute amendment requires an institution of higher education that has in its possession a copy of instructional material in alternative format or electronic format that has been provided by a publisher or that has been created by the institution to satisfy all subsequent requests for instructional material in that format from its own students without requesting the publisher to provide that material and permits the institution, if requested, to provide instructional material in that format to another institution of higher education for use by a student of that other institution. The substitute amendment requires, however, the institution of higher education to provide to the publisher the same certification and statement that is required for an original request.

Applicability of public accommodations law. In addition, current law prohibits any person from denying to another the full and equal enjoyment of any public place of accommodation or amusement because of disability (public accommodations law). This substitute amendment provides that a publisher of instructional material is considered to be a public place of accommodation or amusement for the sole purpose of enforcement of the substitute amendment and that any publisher that refuses to provide instructional material as required under the substitute amendment is in violation of the public accommodations law.

Nonapplicability of substitute amendment. The requirements and prohibitions created in the substitute amendment, however, do not apply to a publisher or manufacturer of instructional material that is a member of a nationwide exchange network that facilitates the delivery of instructional material in alternative format to students with disabilities, if that material is delivered within seven days after a request for the material. The substitute amendment also does not apply if instructional material in the particular format needed by a student with a disability is commercially available from the publisher of the material.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 106.52 (1) (e) 1. of the statutes is amended to read:

2 106.52 (1) (e) 1. "Public place of accommodation or amusement" shall be
3 interpreted broadly to include, but not be limited to, places of business or recreation;
4 lodging establishments; restaurants; taverns; barber or cosmetologist, aesthetician,
5 electrologist or manicuring establishments; nursing homes; clinics; hospitals;
6 cemeteries; and any place where accommodations, amusement, goods, or services are
7 available either free or for a consideration, subject to ~~subd.~~ subds. 1m. and 2.

8 SECTION 2. 106.52 (1) (e) 1m. of the statutes is created to read:

1 106.52 (1) (e) 1m. For the sole purpose of enforcement of s. 106.57, “public place
2 of accommodation or amusement” includes a publisher, as defined in s. 106.57 (1) (f).

3 **SECTION 3.** 106.52 (3) (a) 6. of the statutes is created to read:

4 106.52 (3) (a) 6. Refuse to provide instructional material in electronic format
5 in violation of s. 106.57.

6 **SECTION 4.** 106.57 of the statutes is created to read:

7 **106.57 Postsecondary education; accessible instructional material for**
8 **students with disabilities. (1) DEFINITIONS.** In this section:

9 (a) “Alternative format” means Braille, large print texts, audio recordings
10 created with the use of text-to-speech technology, electronic formats used with
11 screen reader devices or other assistive technology, digital texts, or digital talking
12 books that are required by a student with a disability to make instructional material
13 accessible to the student.

14 (b) “Electronic format” means a computer file or other digital medium
15 embodying instructional material that can be made into an alternative format or
16 that is capable of serving as an alternative format, if used with a screen reader device
17 or other assistive technology.

18 (c) “Institution of higher education” means an institution or college campus
19 within the University of Wisconsin System, a technical college within the technical
20 college system, or a private, nonprofit institution of higher education that is a
21 member of the Wisconsin Association of Independent Colleges and Universities.

22 (d) “Instructional material” means a textbook or other material written and
23 published in print format primarily for use by students in postsecondary instruction
24 that is required or essential to the success of a student with a disability in a course
25 of study in which the student is enrolled, as determined by the instructor of the

1 course in consultation with the person specified in sub. (2) (b) who requests that
2 material in alternative format or electronic format under sub. (2) (a).

3 (e) "Maintain the structural integrity" means to include all of the information
4 provided in the original instructional material, including the text of sidebars; the
5 table of contents; chapter headings and subheadings; footnotes; indexes; glossaries;
6 bibliographies; nontextual elements, such as pictures, illustrations, graphs, charts,
7 and screenshots; and any other data that are pertinent to the instructional material,
8 when that original instructional material is provided in alternative format or
9 electronic format.

10 (f) "Publisher" means a person that is in the business, whether for profit or not
11 for profit, of selling instructional material in which the person owns or controls some
12 or all of the copyright. "Publisher" does not include a person that is a member of a
13 nationwide exchange network that facilitates and supports the delivery of
14 instructional material in alternative format to students with disabilities, if that
15 material is delivered to those students through that network within 7 working days
16 after a request for that material is made.

17 (g) "Student with a disability" means a student enrolled in an institution of
18 higher education who is blind or visually impaired, or who has a specific learning
19 disability or other disability affecting the activity of reading, and who needs
20 auxiliary aids and services, as defined in 42 USC 12103 (1), to read.

21 (h) "Writing" includes facsimile transmission or electronic mail.

22 **(2) REQUEST FOR INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT.**

23 (a) Except as provided in this paragraph, an institution of higher education, on
24 behalf of a student with a disability, may request a publisher to provide instructional
25 material in alternative format or electronic format by submitting to the publisher a

1 request that complies with par. (b) and with any additional requirement imposed by
2 the publisher under par. (c). An institution of higher education may not request a
3 publisher to provide instructional material under this paragraph if the instructional
4 material in the particular format needed by the student is commercially available
5 from the publisher of the material.

6 (b) A request under par. (a) for instructional material in alternative format or
7 electronic format shall be prepared and signed by the coordinator of services for
8 students with disabilities at the institution of higher education or by another
9 employee of the institution of higher education who is responsible for providing
10 services or accommodations for students with disabilities or for monitoring
11 compliance with the federal Americans with Disabilities Act, 42 USC 12101 to 12213,
12 or the federal Rehabilitation Act of 1973, 29 USC 701 to 796L, on behalf of the
13 institution of higher education, shall provide notice to the publisher of the
14 publisher's duties under this section, and shall certify all of the following:

15 1. That a copy of the instructional material in standard format has been
16 purchased for use by a student with a disability by the student or by the institution
17 of higher education in which the student is enrolled. The institution of higher
18 education shall keep records sufficient to verify that a separate copy of ~~that~~
19 in standard format instructional material has been purchased for each student with a disability, and a
20 publisher has the right to inspect, or receive copies of, those records that relate to
21 instructional material published by the publisher.

22 2. That the student is a student with a disability.

23 3. That the instructional material is for use by the student with a disability in
24 connection with a course at the institution of higher education in which the student
25 is enrolled.

for whom instructional material in alternative
format or electronic format is requested
under par. (a)

① 4. If requested by the publisher, whether the institution of high^{er} education has
2 in its possession a copy of the instructional material in electronic format and, if so,
3 whether that copy is capable, if used with assistive technology, of serving as an
4 alternative format suitable for the needs of the student with a disability or of being
5 converted, using generally available technology, into the particular alternative
6 format needed by the student.

7 (c) A publisher may require a request under par. (a) to also be accompanied by
8 a statement signed by the student or, if the student is a minor, the student's parent,
9 guardian, or legal custodian agreeing to all of the following:

10 1. That the student will use the instructional material in alternative format
11 solely for his or her own educational purposes.

12 2. That the student will not copy or distribute the instructional material in
13 alternative format for use by others.

14 **(3) PROVISION OF INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT.**

15 (a) In response to a request under sub. (2) (a), on behalf of a student with a disability,
16 for instructional material in alternative format or electronic format, a publisher
17 shall do one of the following:

18 1. Provide to the requester a copy of the instructional material in alternative
19 format.

20 2. Provide to the requester access to the instructional material in alternative
21 format by providing an Internet password, delivering a computer disk or file, or
22 providing that access in any other appropriate matter.

23 3. Provide to the requester a copy of the instructional material in electronic
24 format.

1 4. At its option, grant to the institution of higher education permission to
2 convert the instructional material into the particular alternative format needed by
3 the student with a disability.

4 5. If the publisher is unable to act under subd. 1. to 4. because the publisher
5 does not own or control some or all of the copyright in the instructional material,
6 provide to the requester the name of the person that is able to fulfill the request.

7 (b) Within 5 days after receipt of a request under sub. (2) (a), a publisher shall
8 respond to the request by providing to the requester one of the following notices in
9 writing:

10 1. A notice advising the requester as to which of the actions under par. (a) 1.
11 to 3. the publisher intends to take.

12 2. If the request indicates that the institution of high education has in its
13 possession a copy of the instructional material in electronic format and that the copy
14 is capable of serving as an alternative format suitable for the needs of the student
15 with a disability or of being converted into the particular alternative format needed
16 by the student, a notice advising the requester that the publisher intends to take
17 none of the actions under par. (a).

18 3. If the publisher does not possess a copy of the instructional material in
19 alternative format or electronic format or if the publisher does not possess technology
20 that will maintain the structural integrity of the instructional material, a notice
21 advising the requester that the publisher intends to take none of the actions under
22 par. (a) 1. to 3. If this subdivision applies, the publisher may grant permission to
23 convert the instructional material into alternative format as provided in par. (a) 4.

1 4. If the publisher is unable to act under par. (a) 1. to 4. because the publisher
2 does not own or control some or all of the copyright in the instructional material,
3 notice of the name of the person that is able to fulfill the request.

4 (c) 1. If the publisher provides notice under par. (b) 1. that the publisher intends
5 to provide a copy of the instructional material in electronic format as provided in par.
6 (a) 3., the publisher shall provide the material in that format no later than 7 days
7 after providing that notice.

8 2. If the publisher provides notice under par. (b) 1. that the publisher intends
9 to provide a copy of the instructional material in alternative format as provided in
10 par. (a) 1. or to provide access to the instructional material in alternative format as
11 provided in par. (a) 2., the publisher shall provide the material in that format or
12 provide that access no later than 14 days after providing that notice.

13 (d) Instructional material provided by a publisher in alternative format or
14 electronic format shall meet all of the following requirements:

15 1. To the extent possible, maintain the structural integrity of the original
16 instructional material, except that this requirement does not apply to nontextual
17 instructional material unless the publisher possesses technology that will maintain
18 the structural integrity of the nontextual instructional material. If the publisher
19 does not have technology that will maintain the structural integrity of the original
20 instructional material, the publisher shall so notify the institution of higher
21 education under par. (b) 3. and may grant permission to the institution of higher
22 education to convert the instructional material into alternative format as provided in par. (a) 4.

23 2. Be compatible with ^{e an} assistive technology that is suitable for the needs of
24 the student with a disability or, if the student needs an embossed Braille version of

the publisher provides a copy of the instructional material in electronic format under par. (a) 3.;

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the instructional material, be compatible with commonly used Braille translation ~~and~~ speech synthesis software.

3. Include corrections and revisions that have been generally published with respect to the instructional material.

(e) 1. Subject to subd. 2., an institution of higher education may create a copy of instructional material requested under sub. (2) in alternative format if the publisher grants permission to convert the instructional material into alternative format as provided in par. (a) 4.; the publisher responds to the request as provided in par. (b) 2.; the publisher does not respond to the request as required under par. (b); or the publisher does not fulfill the request as provided in par. (c) 1. or 2.

2. An institution of higher education may not create a copy of instructional material in alternative format if the instructional material in the particular alternative format needed by a student with a disability is commercially available from the publisher of the material.

(f) A publisher that sells instructional materials for use by students enrolled in institutions of higher education shall provide the name and contact information of its office or employee who is designated to handle requests under sub. (2) (a) to the persons specified in sub. (2) (b) for those institutions. A publisher may provide that information either by posting that information on its Internet site or by providing that information in writing to those persons. If a publisher fails to provide that information, a person specified in sub. (2) (b) may request that information, or may request instructional material under sub. (2) (a), by sending the request to the publisher at the address of the publisher's principal place of business, directed to the attention of the publisher's rights and permissions department.

1 (g) Nothing in this subsection may be construed to require a publisher to incur
2 an investment that the publisher cannot reasonably recoup. If a publisher has not
3 previously produced a digital version of fully typeset and edited instructional
4 material, including instructional material produced through a method that does not
5 require the creation of a digital file, the publisher may condition its provision of the
6 instructional material in alternative format or electronic format on payment of
7 reasonable compensation for the expense of creating that format.

8 (4) USE OF INSTRUCTIONAL MATERIALS IN ALTERNATIVE OR ELECTRONIC FORMAT. (a)

9 1. Subject to subds. 2. and 3., if an institution of higher education has in its
10 possession a copy of instructional material in alternative format or electronic format
11 that has been provided by a publisher under sub. (3) (c) or that has been created by
12 the institution of higher education under sub. (3) (e), the institution of higher
13 education shall satisfy all subsequent requests for instructional material in that
14 format from its own students without requesting the publisher to provide that
15 material and may, if requested, provide instructional material in that format to
16 another institution of higher education for use by a student of that other institution.

17 2. If requested by a publisher, an institution of higher education that satisfies
18 a request for or provides instructional material under subd. 1. shall, for each student
19 for whom instructional material is provided, provide to the publisher the information
20 specified in sub. (2) (b) 1. to 4. and the statement specified in sub. (2) (c).

21 3. An institution of higher education may not satisfy a request for or provide
22 instructional material under subd. 1. if the institution receives notice that an
23 alternative format or an electronic format of the instructional material in the same
24 specifications is commercially available from the publisher of the material.

1 (b) An institution of higher education in possession of a copy of instructional
 2 material in alternative format or electronic format that has been provided by a
 3 publisher under sub. (3) (c) or that has been created by the institution of higher
 4 education under sub. (3) (e) shall take reasonable precautions to ensure that the
 5 format is not distributed to ^(any) 3rd parties, except as permitted under par. (a) 1. or
 6 (c), and shall, to the extent possible, maintain in effect all copy-protection measure
 7 embedded in the alternative format or electronic format by the publisher.

8 (c) An institution of higher education may contract with a 3rd party to assist
 9 the institution in creating instructional material in alternative format as permitted
 10 under sub. ³ (e) or as otherwise permitted by the publisher. If an institution of
 11 higher education contracts with a 3rd party under this paragraph, the contract shall
 12 provide all of the following:

13 1. That the electronic format from which the alternative format is created may
 14 not be further distributed by the 3rd party.

15 2. That any alternative format made from the electronic format may be
 16 provided only to the institution.

17 3. That all files provided by the institution to the 3rd party shall be returned
 18 to the institution.

19 4. That the 3rd party may not retain, and must destroy, any copies of its work
 20 product, including any interim work files.

21 5. That both the institution and the publisher shall have the power to enforce
 22 the contract. contractual provisions specified in subs. 1. to 4

23 (d) If an institution of higher education permits a student with a disability to
 24 directly use an electronic format version of instructional material, the disc or file of
 25 the electronic format version shall be copy protected, or the institution of higher

1 education shall take reasonable precautions to ensure that the student does not copy
2 or distribute the electronic format version in violation of the federal Copyright Act,
3 17 USC 101 to 1332.

4 (e) Nothing in this section shall be construed to authorize any use of
5 instructional materials that would constitute an infringement of copyright under the
6 federal Copyright Act, 17 USC 101 to 1332.

7 (5) PUBLISHER A PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. A publisher is
8 considered to be a public place of accommodation or amusement under s. 106.52
9 solely for the purpose of enforcement of this section. Any publisher that refuses to
10 provide instructional material in electronic format as required under this section is
11 in violation of s. 106.52 (3).

12 (END)

Malaise, Gordon

From: Verette, Natalie
Sent: Wednesday, February 08, 2012 12:18 PM
To: Malaise, Gordon
Cc: Schmidt, Dan
Subject: FW: AB 322
Attachments: Wisc AB 322 - Legislative Staff Revision with WSS Edits.docx; First Amendment analysis of revised bill.docx

Hi Gordon,

The advocates are comfortable with the most recent revisions from the publishers (attached). Could you please draft this as a P2 so we can get final sign off from both sides before introducing it as Sub?

Please let me know if you have any questions. Thanks for all of your help.

Natalie

From: William Strong [mailto:WStrong@kcslegal.com]
Sent: Friday, January 27, 2012 4:37 PM
To: Verette, Natalie
Cc: Bruce Hildebrand; Ed McCoyd
Subject: AB 322

Hi Natalie. I'm attaching a markup, as well as a First Amendment analysis, of the revised bill you sent us. Would you mind circulating to Rep. Knilans and everyone else that should see it?

I want everyone at your end to know, by the way, that we appreciate the effort that went into preparing your revision. I will be the first to admit that it actually is better organized than the draft we sent you.

The edits I have made here include both substantive edits and, in a few cases, edits for clarity. The substantive ones come after consultation with numerous people on our end, and represent a very careful consideration of what you proposed. In some cases they will be self-explanatory, but where I thought it would be necessary or helpful I have inserted "comments."

We look forward to hearing from you in due course.

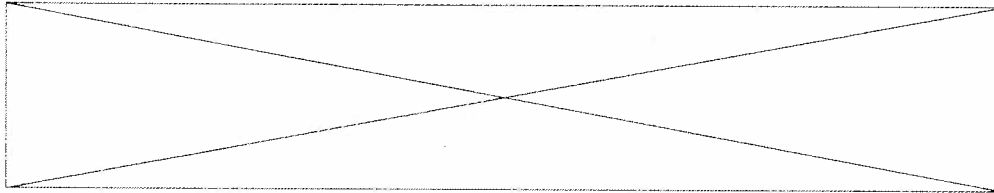
Have a good weekend.

Bill Strong

Applicable U.S. Treasury Regulations require that we inform you that any Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This is a private message. If it is not intended for you, please do not read, copy, or use it and do not disclose it to others. Please notify us of the delivery error by replying to this message and then delete it from your system.
Thank you.

2011 Special Session
2011 - 2012 LEGISLATURE



Accessible instructional materials for higher education students

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2011 ASSEMBLY BILL 322**

AN ACT *to create* 106.57 of the statutes; **relating to:** accessible instructional materials for students with disabilities enrolled in institutions of higher education.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 106.57 of the statutes is created to read:

106.57 Postsecondary education; accessible instructional material for students with disabilities. (1) DEFINITIONS. In this section:

(a) "Alternative format" means Braille, large print texts, audio recordings created with the use of text-to-speech technology, electronic formats used with screen reader devices or other assistive technology, or digital talking books that

Deleted: *to amend* 106.52 (1) (e) 1.; and

Deleted: 106.52 (1) (e) 1m., 106.52 (3) (a) 6. and

Comment [WS1]: Legislative analysis omitted from this markup for the sake of brevity.

Comment [WS2]: See First Amendment Analysis of Revised Bill, which accompanies this markup

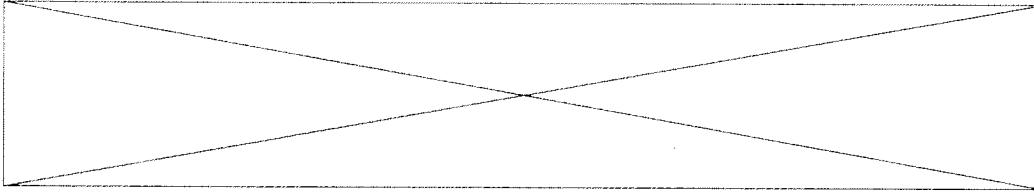
Deleted: SECTION 1. 106.52 (1) (e) 1. of the statutes is amended to read:

Deleted: ¶ 106.52 (1) (e) 1. "Public place of accommodation or amusement" shall be interpreted broadly to include, ~~but not be limited to,~~ places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist, aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods, or services are available either free or for a consideration, subject to ~~subd.~~ ~~subds.~~ 1m. and 2.¶ SECTION 2. 106.52 (1) (e) 1m. of the statutes is created to read:¶ 106.52 (1) (e) 1m. For the sole purpose of enforcement of s. 106.57, "public place of accommodation or amusement" includes a publisher, as defined in s. 106.57 (1) (f).¶ SECTION 3. 106.52 (3) (a) 6. of the statutes is created to read:¶ 106.52 (3) (a) 6. Refuse to provide instructional material in electronic format in violation of s. 106.57.

Deleted: 4

Comment [WS3]: As we understand the term "digital text," it would include things that could be used on any iPad or other device. The publishers want to keep this statute within the realm of "specialized formats" as used in the Chafee Amendment (17 USC §121).

Deleted: digital texts.



are required by a student with a disability to make instructional material accessible to the student.

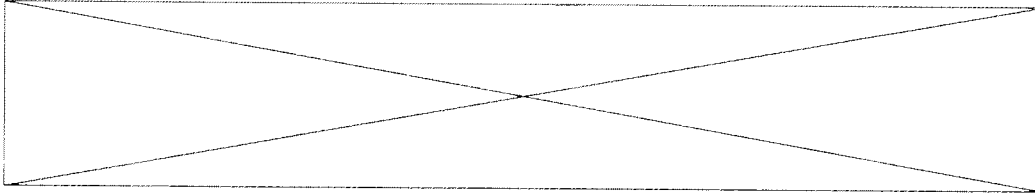
(b) "Electronic format" means a computer file or other digital medium embodying instructional material that can be made into an alternative format or that is capable of serving as an alternative format, if used with a screen reader device or other assistive technology.

(c) "Institution of higher education" means an institution or college campus within the University of Wisconsin System, a technical college within the technical college system, or a private, nonprofit institution of higher education that is a member of the Wisconsin Association of Independent Colleges and Universities.

Comment [WS4]: Change noted. We are OK with this.

(d) "Instructional material" means a textbook or other material written and published in print format primarily for use by students in postsecondary instruction that is required or essential to the success of a student with a disability in a course of study in which the student is enrolled, as determined by the instructor of the course in consultation with the person specified in sub. (2) (b) who requests that material in alternative format or electronic format under sub. (2) (a).

(e) "Maintain the structural integrity" means to include all of the information provided in the original instructional material, including the text of



sidebars; the table of contents; chapter headings and subheadings; footnotes; indexes; glossaries; bibliographies; nontextual elements, such as pictures, illustrations, graphs, charts, and screenshots; and any other data that are pertinent to the instructional material, when that original instructional material is provided in alternative format or electronic format.

(f) "Publisher" means a person that is in the business, whether for profit or not for profit, of selling instructional material in which the person owns or controls some or all of the copyright. "Publisher" does not include a person that is a member of a nationwide exchange network that facilitates and supports the delivery of instructional material in alternative format to students with disabilities, if that material is delivered to those students through that network within 7 working days after a request for that material is made.

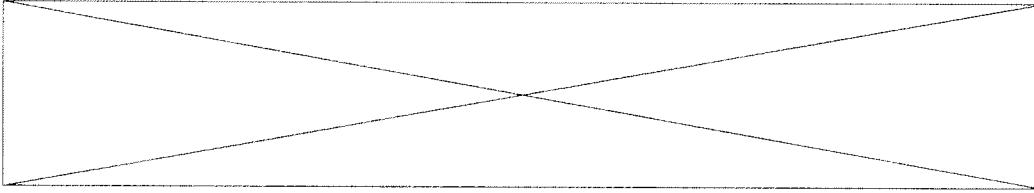
(g) "Student with a disability" means a student enrolled in an institution of higher education who is blind or visually impaired, or who has a specific learning disability, or other physical condition that prevents the student from using the instructional materials in standard print format, and who needs reasonable accommodations to read.

Deleted: or other disability affecting the activity of reading, and who needs auxiliary aids and services, as defined in 42 USC 12103 (1), to read

Comment [W55]: We would like to restore this definition from our draft. It is closer to the language in other state e-text laws and closer in spirit to Chafee. Your alternative language seems overbroad to us.

(h) "Writing" includes facsimile transmission or electronic mail.

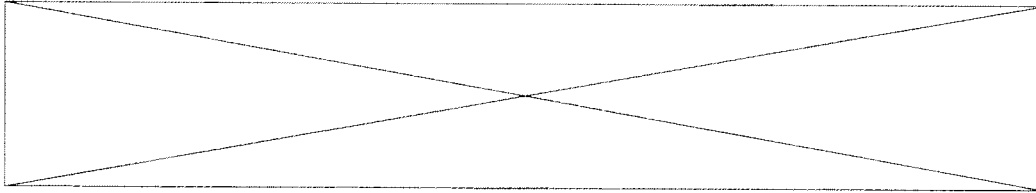
(2) REQUEST FOR INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) Except as provided in this paragraph, an institution of higher



education, on behalf of a student with a disability, may request a publisher to provide instructional material in alternative format or electronic format by submitting to the publisher a request that complies with par. (b) and with any additional requirement imposed by the publisher under par. (c). An institution of higher education may not request a publisher to provide instructional material under this paragraph if the instructional material in the particular format needed by the student is commercially available from the publisher of the material.

(b) A request under par. (a) for instructional material in alternative format or electronic format shall be prepared and signed by the coordinator of services for students with disabilities at the institution of higher education or by another employee of the institution of higher education who is responsible for providing services or accommodations for students with disabilities or for monitoring compliance with the federal Americans with Disabilities Act, 42 USC 12101 to 12213, or the federal Rehabilitation Act of 1973, 29 USC 701 to 796L, on behalf of the institution of higher education, shall provide notice to the publisher of the publisher's duties under this section, and shall certify all of the following:

1. That a copy of the instructional material in standard format has been purchased for use by a student with a disability by the student or by the institution of higher education in which the student is enrolled. The institution of higher education shall keep records sufficient to verify that a separate copy of



instructional material in standard format has been purchased for each student with a disability for whom instructional material in alternative format or electronic format is requested under par. (a), and a publisher has the right to inspect, or receive copies of, those records that relate to instructional material published by the publisher.

2. That the student is a student with a disability.

3. That the instructional material is for use by the student with a disability in connection with a course at the institution of higher education in which the student is enrolled.

4. Whether the institution of higher education has in its possession a copy of the instructional material in electronic format and, if so, whether that copy is capable, if used with assistive technology, of serving as an alternative format suitable for the needs of the student with a disability or of being converted, using generally available technology, into the particular alternative format needed by the student.

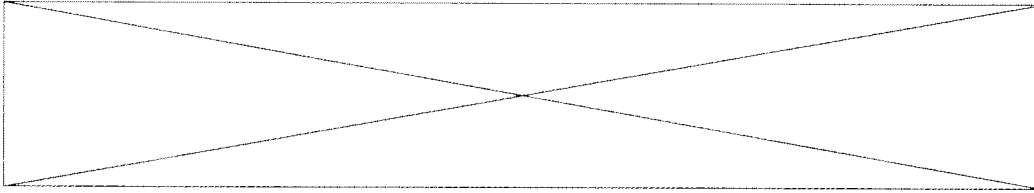
Comment [WS6]: This would unfairly shift the burden to publishers. Big houses may put procedures in place to make such requests routinely, but small houses won't know to ask. Furthermore, it may slow down the whole process because it adds an extra back-and-forth step, and a publisher's compliance with the timetable in the bill becomes dependent on the school's response to the inquiry.

Deleted: If requested by the publisher,

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(c) A publisher may require a request under par. (a) to also be accompanied by a statement signed by the student or, if the student is a minor, the student's parent, guardian, or legal custodian agreeing to all of the following:

1. That the student will use the instructional material in alternative format solely for his or her own educational purposes.



2. That the student will not copy or distribute the instructional material in alternative format for use by others.

(3) PROVISION OF INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) In response to a request under sub. (2) (a), on behalf of a student with a disability, for instructional material in alternative format or electronic format, a publisher shall do one of the following:

1. Provide to the requester a copy of the instructional material in alternative format, by delivering a computer disk or file.

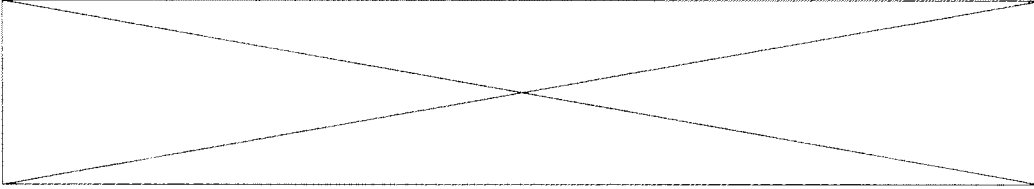
2. Provide to the requester access to the instructional material in alternative format by providing an Internet password, or providing that access in any other appropriate matter.

Deleted: delivering a computer disk or file.

3. Provide to the requester a copy of the instructional material in electronic format.

4. At its option, grant to the institution of higher education permission to convert the instructional material into the particular alternative format needed by the student with a disability.

5. If the publisher believes it is unable to act under subd. 1. to 4. because the publisher does not own or control some or all of the copyright in the instructional material, provide to the requester the name of the person that, to the best of its knowledge, is able to fulfill the request.



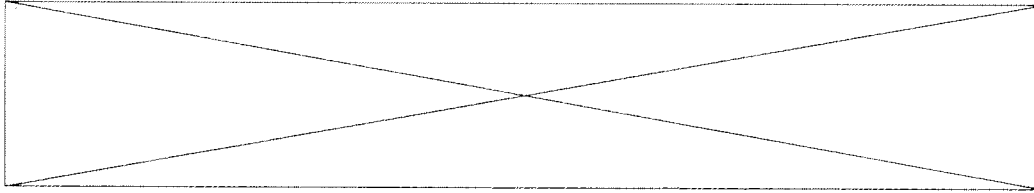
(b) Within 7 days after receipt of a request under sub. (2) (a), a publisher shall respond to the request by providing to the requester one of the following notices in writing:

1. A notice advising the requester as to which of the actions under par. (a) 1. to 3. the publisher intends to take.

2. If the request indicates that the institution of higher education has in its possession a copy of the instructional material in electronic format and that the copy is capable of serving as an alternative format suitable for the needs of the student with a disability or of being converted into the particular alternative format needed by the student, a notice advising the requester that the publisher intends to take none of the actions under par. (a) ³ ~~Alternatively, if~~ ^{FL} this subdivision applies, the publisher may grant permission to convert the instructional material into alternative format as provided in par. (a) 4.

3. If the publisher does not possess a copy of the instructional material in alternative format or electronic format or if the publisher does not possess technology that will maintain the structural integrity of the instructional material, a notice advising the requester that the publisher intends to take none of the actions under par. (a) 1. to 3. If this subdivision applies, the publisher may grant permission to convert the instructional material into alternative format as provided in par. (a) 4.

Comment [WS7]: Five days could include a 3-day weekend. Seven days gives the publisher 4 or 5 working days.
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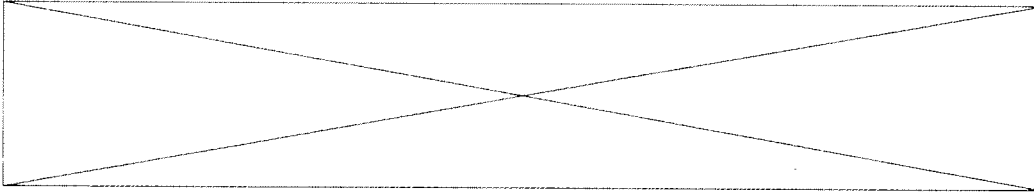
4. If the publisher believes it is unable to act under par. (a) 1. to 4. because the publisher does not own or control some or all of the copyright in the instructional material, notice of the name of the person that, to the best of its knowledge, is able to fulfill the request.

(c) 1. If the publisher provides notice under par. (b) 1. that the publisher intends to provide a copy of the instructional material in electronic format as provided in par. (a) 3., the publisher shall provide the material in that format no later than 7 days after providing that notice.

2. If the publisher provides notice under par. (b) 1. that the publisher intends to provide a copy of the instructional material in alternative format as provided in par. (a) 1. or to provide access to the instructional material in alternative format as provided in par. (a) 2., the publisher shall provide the material in that format or provide that access no later than 14 days after providing that notice.

(d) Instructional material provided by a publisher in alternative format or electronic format shall meet all of the following requirements:

1. To the extent possible, maintain the structural integrity of the original instructional material, except that this requirement does not apply to nontextual instructional material unless the publisher possesses technology that will maintain the structural integrity of the nontextual instructional material. If the



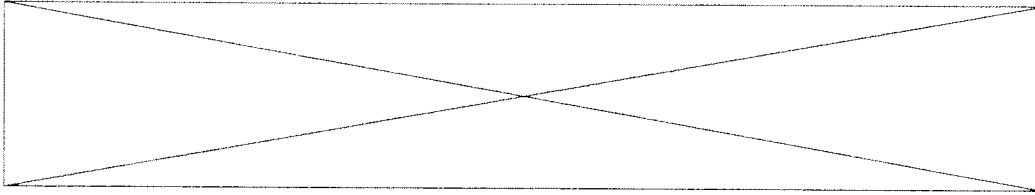
publisher does not have technology that will maintain the structural integrity of the original instructional material, the publisher shall so notify the institution of higher education under par. (b) 3. and may grant permission to the institution of higher education to convert the instructional material into alternative format as provided in par. (a) 4.

2. Be compatible with an assistive technology that is suitable for the needs of the student with a disability or, if the student needs an embossed Braille version of the instructional material, be compatible with commonly used Braille translation software.

3. Include corrections and revisions that have been generally published with respect to the instructional material.

(e) 1. Subject to subd. 2., an institution of higher education may create an alternative format of instructional material with respect to which a request has been made under sub. (2), in any of the following circumstances: the publisher provides a copy of the instructional material in electronic format under par. (a) 3.; the publisher grants permission to convert the instructional material into alternative format as provided in par. (a) 4.; the publisher responds to the request as provided in par. (b) 2.; the publisher does not respond to the request as required under par. (b); or the publisher does not fulfill the request as provided in par. (c) 1. or 2.

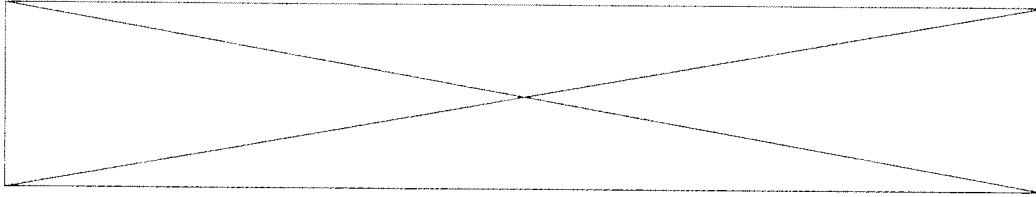
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2. An institution of higher education may not create a copy of instructional material in alternative format if the instructional material in the particular alternative format needed by a student with a disability is commercially available from the publisher of the material.

(f) A publisher that sells instructional materials for use by students enrolled in institutions of higher education shall provide the name and contact information of its office or employee who is designated to handle requests under sub. (2) (a) to the persons specified in sub. (2) (b) for those institutions. A publisher may provide that information either by posting that information on its Internet site or by providing that information in writing to those persons. If a publisher fails to provide that information, a person specified in sub. (2) (b) may request that information, or may request instructional material under sub. (2) (a), by sending the request to the publisher at the address of the publisher's principal place of business, directed to the attention of the publisher's rights and permissions department.

(g) Nothing in this subsection may be construed to require a publisher to incur an investment that the publisher cannot reasonably recoup. If a publisher has not previously produced a digital version of fully typeset and edited instructional material, including instructional material produced through a method that does not require the creation of a digital file, the publisher may



condition its provision of the instructional material in alternative format or electronic format on payment of reasonable compensation for the expense of creating that format.

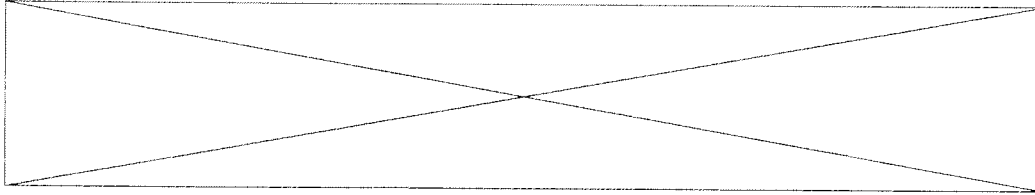
(4) USE OF INSTRUCTIONAL MATERIALS IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) 1. Subject to subds. 2. and 3., if an institution of higher education has in its possession a copy of instructional material in alternative format or electronic format that has been provided by a publisher under sub. (3) (c) or that has been created by the institution of higher education under sub. (3) (e), the institution of higher education shall satisfy all subsequent requests for instructional material in that format from its own students without requesting the publisher to provide that material and may, if requested, provide instructional material in that format to another institution of higher education for use by a student of that other institution.

2. ~~An~~ institution of higher education that satisfies a request for or provides instructional material under subd. 1. shall, for each student for whom the instructional material is provided, provide to the publisher the information specified in sub. (2) (b) 1. to 4. and the statement specified in sub. (2) (c).

3. An institution of higher education may not satisfy a request for or provide instructional material under subd. 1. if the institution receives notice that an

Comment [WS8]: The automatic collection of these certificates is a major safeguard for the publisher's copyright and critical to the AAP's support for this bill.

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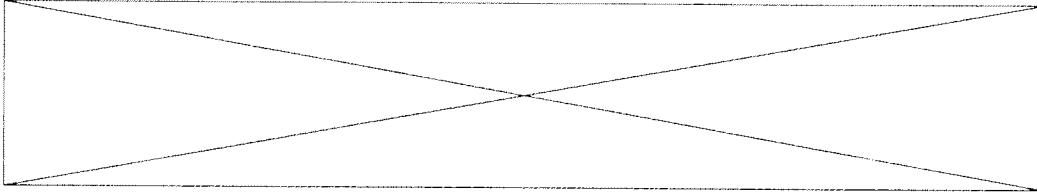
alternative format or an electronic format of the instructional material in the same specifications is commercially available from the publisher of the material.

(b) An institution of higher education in possession of a copy of instructional material in alternative format or electronic format that has been provided by a publisher under sub. (3) (c) or that has been created by the institution of higher education under sub. (3) (e) shall take reasonable precautions to ensure that the format is not distributed to any 3rd parties, except as permitted under par. (a) 1. or (c), and shall, to the extent possible, maintain in effect all copy-protection measures embedded in the alternative format or electronic format by the publisher.

(c) An institution of higher education may contract with a 3rd party to assist the institution in creating instructional material in alternative format as permitted under sub. (3) (e) or as otherwise permitted by the publisher. If an institution of higher education contracts with a 3rd party under this paragraph, the contract shall provide all of the following:

1. That the electronic format from which the alternative format is created may not be further distributed by the 3rd party.

2. That any alternative format made from the electronic format may be provided only to the institution.



3. That all files provided by the institution to the 3rd party shall be returned to the institution.

4. That the 3rd party may not retain, and must destroy, any copies of its work product, including any interim work files.

5. That both the institution and the publisher shall have the power to enforce the contractual provisions specified in subds. 1. to 4.

(d) If an institution of higher education permits a student with a disability to directly use an electronic format version of instructional material, the disc or file of the electronic format version shall be copy protected, or the institution of higher education shall take reasonable precautions to ensure that the student does not copy or distribute the electronic format version in violation of the federal Copyright Act, 17 USC 101 to 1332.

(e) Nothing in this section shall be construed to authorize any use of instructional materials that would constitute an infringement of copyright under the federal Copyright Act, 17 USC 101 to 1332.

(END)

Deleted: (5) PUBLISHER A PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. A publisher is considered to be a public place of accommodation or amusement under s. 106.52 solely for the purpose of enforcement of this section. Any publisher that refuses to provide instructional material in electronic format as required under this section is in violation of s. 106.52 (3).