

## 2007 SENATE BILL 238

July 18, 2007 – Introduced by Senators ROESSLER and SCHULTZ, cosponsored by Representatives SEIDEL, BERCEAU, GRIGSBY, HEBL, HINTZ, SHERIDAN and ZEPNICK. Referred to Committee on Agriculture and Higher Education.

1     **AN ACT** *to amend* 106.52 (1) (e) 1.; and *to create* 106.52 (3) (a) 6. and 106.57 of  
2           the statutes; **relating to:** accessible instructional materials for students with  
3           disabilities enrolled in the University of Wisconsin System or the technical  
4           college system.

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### ***Analysis by the Legislative Reference Bureau***

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.

This bill directs the TCS Board and the Board of Regents of the UW System jointly to do all of the following:

1. Subject to the availability of funds, establish at a location that best meets the needs of students with disabilities enrolled at institutions or college campuses

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within the UW System or at technical colleges within the technical college system (institutions of higher education) a state repository for the purpose of collecting instructional materials in electronic and alternative formats and facilitating timely access to those materials by students with disabilities. “Student with a disability” is defined in the bill as 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 reasonable accommodations to read. “Alternative format” is defined in the bill to mean Braille, large print texts, audio recordings, digital texts, digital talking books, or any other medium or format for the presentation of instructional materials, other than standard print, that a student with a disability needs to make those materials accessible to the student.

2. Develop policies and procedures to ensure to the maximum extent possible that a student with a disability has access to instructional material in an appropriate alternative format within the first week of the class for which the material is required.

Under the bill, if a state repository is established, the state repository is required to serve as the central point for processing all requests for instructional materials in electronic format or alternative format from institutions of higher education and, in performing that function, to do all of the following:

1. Compile and maintain a collection of instructional materials in electronic format and alternative format received from publishers, institutions of higher education, and other sources.

2. Receive requests for instructional materials in electronic format or alternative format from institutions of higher education.

3. If the instructional material requested is available in the state repository’s collection or is otherwise available to the state repository, provide a copy of the instructional material to the requester.

4. If the instructional material requested is not available in the state repository’s collection or is otherwise not available, request the publisher to provide the instructional material in electronic format and obtain permission from the publisher to convert or arrange for the conversion of that instructional material into an alternative format.

5. Receive instructional material in electronic format from publishers, convert or arrange for the conversion of that instructional material into an alternative format, and provide that alternative format version to the requesting institution of higher education at no additional cost.

If a state repository is established, the bill permits an institution of higher education, on behalf of a student with a disability, to request the state repository to provide instructional material in electronic format or alternative format by submitting a request to the state repository. The bill requires the state repository to satisfy the request either by providing a copy that is available in the state repository’s collection or is otherwise available to the state repository or, if a copy is not available from those sources, by requesting the publisher to provide the material in electronic format. If it is necessary for the state repository to request instructional material in electronic format from the publisher, within 15 working days after

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receipt of the request the publisher must provide the instructional material to the state repository at no additional cost.

Under the bill, a request for instructional material in electronic format must certify that: 1) a copy of the instructional material in a standard format has been purchased for use by a student with a disability; 2) the student has a disability that prevents the student from using instructional material in a standard format; and 3) 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. In addition, the publisher may require the student to sign a statement agreeing that the student will use the electronic copy of the instructional material solely for his or her own educational purposes and that the student will not copy or distribute the instructional material for use by others.

Under the bill, 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 electronic format; 2) be compatible with commonly used Braille translation or speech synthesis software; 3) include corrections and revisions as necessary; and 4) be in an electronic format that is mutually agreed to between the publisher and the requester or, if the publisher and the requester cannot agree to a format, be in a format that is suitable for the creation of instructional material in an alternative format and that maintains the structural integrity of the original material as much as possible.

The bill permits an institution of higher education to use instructional material in electronic format provided under the bill solely to convert that material into an alternative format. The bill also permits an institution of higher education that converts instructional material into an alternative format to share the alternative format version of the material with the state repository, with any other institution of higher education that is serving a student with a disability, or with an entity that is authorized under the federal Copyright Act to reproduce and distribute previously published works in alternative formats exclusively for use by persons with disabilities and that commonly provides instructional materials in alternative formats to students enrolled in institutions of higher education.

Finally, 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 bill provides that a publisher of instructional material is considered to be a public place of accommodation or amusement and that any publisher that refuses to provide instructional material as required under the bill is in violation of the public accommodations law.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***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; publishers, as defined in s. 106.57 (1) (h); and any place where  
7 accommodations, amusement, goods, or services are available either free or for a  
8 consideration, subject to subd. 2.

9           **SECTION 2.** 106.52 (3) (a) 6. of the statutes is created to read:

10           106.52 (3) (a) 6. Refuse to provide instructional material in electronic format  
11 in violation of s. 106.57 (3) (a).

12           **SECTION 3.** 106.57 of the statutes is created to read:

13           **106.57 Postsecondary education; accessible instructional material for**  
14 **students with disabilities. (1) DEFINITIONS.** In this section:

15           (a) “Alternative format” means Braille, large print texts, audio recordings,  
16 digital texts, digital talking books, or any other medium or format for the  
17 presentation of instructional materials, other than standard print, that a student  
18 with a disability needs to make those materials accessible to the student.

19           (b) “Board” means the technical college system board.

20           (c) “Board of Regents” means the Board of Regents of the University of  
21 Wisconsin System.

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1           (d) “Institution of higher education” means an institution or college campus  
2 within the University of Wisconsin System or a technical college within the technical  
3 college system.

4           (e) “Instructional material” means any material that the instructor of a course  
5 of study at an institution of higher education includes in the syllabus of that course  
6 of study.

7           (f) “Maintain structural integrity” means to include all of the information  
8 provided in the original printed instructional material, including the text of sidebars;  
9 the table of contents; chapter headings and subheadings; footnotes; indexes;  
10 glossaries; bibliographies; nontextual elements, such as pictures, illustrations,  
11 graphs, charts, and screenshots; and any other data that are pertinent to the  
12 instructional material, when that printed instructional material is provided in  
13 electronic format.

14           (g) “Nonprinted instructional material” means instructional material in a  
15 format other than print, including instructional material that requires the  
16 availability of electronic equipment, such as a computer software program,  
17 videodisc, videotape, or audiotape, to be used as a learning resource.

18           (h) “Printed instructional material” means instructional material in a book or  
19 other printed form.

20           (i) “Publisher” means a person that publishes or manufactures instructional  
21 material.

22           (j) “State repository” means the state repository for instructional materials  
23 established under sub. (2) (a) 1.

24           (k) “Student with a disability” means a student enrolled in an institution of  
25 higher education who is blind or visually impaired, or who has a specific learning

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1 disability or other disability affecting the activity of reading, and who needs  
2 reasonable accommodations to read.

3 (L) “Working day” means a day that is not a Saturday, a Sunday, a holiday  
4 designated under s. 230.35 (4) (a), or a legal holiday under federal law.

5 (2) STATE REPOSITORY. (a) The board and the board of regents shall jointly under  
6 s. 20.901 (4) do all of the following:

7 1. Subject to the availability of funds, establish a state repository for the  
8 purpose of collecting instructional materials in electronic and alternative formats  
9 and facilitating timely access to those materials by students with disabilities. The  
10 board and the board of regents shall jointly determine the location of the state  
11 repository so as to best meet the needs of students with disabilities enrolled at  
12 institutions of higher education in this state.

13 2. Develop policies and procedures to ensure to the maximum extent possible  
14 that a student with a disability has access to instructional material in an appropriate  
15 alternative format within the first week of the class for which the material is  
16 required.

17 (b) If a state repository is established under sub. (2) (a) 1., the state repository  
18 shall serve as the central point for processing all requests for instructional materials  
19 in electronic format or alternative format from institutions of higher education under  
20 sub. (3) (a) 1. and, in performing that function, shall do all of the following:

21 1. Compile and maintain a collection of instructional materials in electronic  
22 format and alternative format received from publishers, institutions of higher  
23 education, and other sources.

24 2. Receive requests for instructional materials in electronic format or  
25 alternative format from institutions of higher education under sub. (3) (a) 1.

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1           3. If the instructional material requested is available in the state repository's  
2 collection or is otherwise available to the state repository, provide a copy of the  
3 instructional material to the requester.

4           4. If the instructional material requested is not available in the state  
5 repository's collection or is otherwise not available, request the publisher to provide  
6 the instructional material in electronic format under sub. (3) (a) 1. and obtain  
7 permission from the publisher to convert or arrange for the conversion of that  
8 instructional material into an alternative format.

9           5. Receive instructional material in electronic format from publishers under  
10 sub. (3) (a) 1., convert or arrange for the conversion of that instructional material into  
11 an alternative format, and provide the alternative format version to the requesting  
12 institution of higher education at no additional cost.

13           (c) If a publisher has previously responded to a request from the state  
14 repository for instructional material in electronic format under sub. (3) (a) 1., the  
15 state repository shall satisfy all subsequent requests for the material from an  
16 institution of higher education. On request of a publisher, the state repository shall  
17 provide to the publisher all of the following:

18           1. A summary of all instructional materials published by that publisher that  
19 the state repository has provided in electronic format or alternative format to  
20 institutions of higher education from its holdings.

21           2. Copies of requests for instructional materials published by that publisher  
22 that the state repository has received from institutions of higher education.

23           (d) In its biennial report under s. 15.04 (1) (d), the Board of Regents shall  
24 include an assessment of the need for technical assistance, training, and other  
25 support to increase the availability and effective use of instructional materials in



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1 alternative formats by students with disabilities enrolled in the University of  
2 Wisconsin System. In its biennial report under s. 15.04 (1) (d), the board shall include  
3 an assessment of the need for technical assistance, training, and other support to  
4 increase the availability and effective use of instructional materials in alternative  
5 formats by students with disabilities enrolled in the technical college system.

6 **(3) PROVISION OF INSTRUCTIONAL MATERIALS IN ELECTRONIC OR ALTERNATIVE**  
7 **FORMAT.** (a) If a state repository is established under sub. (2) (a) 1., all of the following  
8 shall apply:

9 1. An institution of higher education, on behalf of a student with a disability,  
10 may request the state repository to provide instructional material in electronic  
11 format or alternative format by submitting a request that complies with par. (b) and  
12 with any requirement imposed by the publisher under par. (c) to the state repository,  
13 and the state repository shall satisfy the request as provided in sub. (2) (b) 3. to 5.  
14 If it is necessary for the state repository to request instructional material in  
15 electronic format from the publisher, within 15 working days after receipt of the  
16 request the publisher, subject to par. (e), shall provide the instructional material in  
17 an electronic format that complies with par. (d) to the state repository at no  
18 additional cost.

19 2. All requests to publishers for instructional materials in electronic format  
20 from institutions of higher education shall be made through the state repository. A  
21 publisher is required to honor and respond only to those requests for instructional  
22 materials in electronic format from institutions of higher education that are made  
23 through the state repository.

24 (b) A request under par. (a) for instructional material in electronic format or  
25 alternative format shall be prepared and signed by the coordinator of services for



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1 students with disabilities at an institution of higher education or by another  
2 employee of an institution of higher education who is responsible for monitoring  
3 compliance with the federal Americans with Disabilities Act, 42 USC 12101 to 12213,  
4 or the federal Rehabilitation Act of 1973, 29 USC 701 to 796L, by a representative  
5 of the division of vocational rehabilitation in the department on behalf of an  
6 institution of higher education, or by a representative of the state repository on  
7 behalf of an institution of higher education, and shall certify all of the following:

8 1. That a copy of the instructional material in standard format has been  
9 purchased for use by a student with a disability by the student or by the institution  
10 of higher education in which the student is enrolled.

11 2. That the student has a disability that prevents the student from using  
12 instructional material in standard format.

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

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

18 1. That the student will use the instructional material solely for his or her own  
19 educational purposes.

20 2. That the student will not copy or distribute the instructional material for use  
21 by others.

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

24 1. Maintain the structural integrity of the original instructional material,  
25 except that this requirement does not apply to nontextual instructional material

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1 unless technology is available to maintain the structural integrity of the nontextual  
2 instructional material.

3 2. Be compatible with commonly used Braille translation or speech synthesis  
4 software.

5 3. Include corrections and revisions as necessary.

6 4. Be in an electronic format that is mutually agreed to between the publisher  
7 and the requester. If good faith efforts fail to produce an agreement as to an  
8 electronic format that will maintain the structural integrity of the original  
9 instructional material, the publisher shall provide the instructional material in an  
10 electronic format that is suitable for the creation of instructional material in  
11 alternative format and that maintains the structural integrity of the original  
12 instructional material as much as much as possible.

13 (e) If providing instructional material in electronic format within 15 working  
14 days after receipt of a request under par. (a) 1. would impose an undue burden on a  
15 publisher, the publisher shall, within those 15 working days, submit a statement to  
16 the requester certifying the date by which the publisher expects to transmit or  
17 deliver the instructional material. If a publisher has previously responded to a  
18 request from the state repository for instructional material in electronic format, the  
19 state repository shall satisfy all subsequent requests for that material from an  
20 institution of higher education.

21 **(4) USE OF INSTRUCTIONAL MATERIALS IN ELECTRONIC FORMAT.** (a) An institution  
22 of higher education may assist a student with a disability by using instructional  
23 material provided by the state repository or a publisher in electronic format solely  
24 to convert or arrange for the conversion of that material into an alternative format.  
25 If an institution of higher education converts or arranges for the conversion of that

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1 material into an alternative format, the institution of higher education may share  
2 the alternative format version of the material with the state repository, with any  
3 other institution of higher education that is serving a student with a disability, or  
4 with an authorized entity, as defined in 17 USC 121 (c) (1), that commonly provides  
5 instructional materials in alternative formats to students enrolled in institutions of  
6 higher education.

7 (b) If an institution of higher education permits a student with a disability to  
8 directly use instructional material in electronic format, the disc or file of the  
9 electronic format version shall be copy protected, or the institution of higher  
10 education shall take reasonable precautions to ensure that the student does not copy  
11 or distribute the electronic format version in violation of the federal Copyright Act,  
12 17 USC 101 to 1332.

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

16 **(5) PUBLISHER A PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT.** A publisher is  
17 considered to be a public place of accommodation or amusement for purposes of s.  
18 106.52. Any publisher that refuses to provide instructional material in electronic  
19 format as required under sub. (3) (a) 1. is in violation of s. 106.52 (3).

**SECTION 4. Effective date.**

20  
21 (1) This act takes effect on January 1, 2008, or on the day after publication,  
22 whichever is later.

23 (END)