



## 2009 SENATE BILL 638

March 23, 2010 - Introduced by Senators WIRCH and COGGS, cosponsored by Representatives SEIDEL, BERCEAU, GRIGSBY, HEBL, HIXSON, HRAYCHUCK, MASON, PASCH, POPE-ROBERTS, SOLETSKI, ZEPNICK and HINTZ. Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

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 permits an institution or college campus within the UW System or a technical college within the TCS (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 reasonable

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accommodations to read (student with a disability), to request a publisher to provide instructional material in electronic format by submitting to the publisher a request for that material that complies with the bill and a request for permission to convert or to arrange for the conversion of that material into 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 (alternative format). Within 15 working days after receipt of the request the publisher must provide the instructional material to the institution of higher education 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 for use by a student with a disability or to otherwise assist such a student. 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 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.

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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.

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 (2) (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.

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

2 (c) “Board of Regents” means the Board of Regents of the University of  
3 Wisconsin System.

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

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

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

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

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

21 (i) “Student with a disability” means a student enrolled in an institution of  
22 higher education who is blind or visually impaired, or who has a specific learning  
23 disability or other disability affecting the activity of reading, and who needs  
24 reasonable accommodations to read.

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1 (j) "Working day" means a day that is not a Saturday, a Sunday, a holiday  
2 designated under s. 230.35 (4) (a), or a legal holiday under federal law.

3 **(2) PROVISION OF INSTRUCTIONAL MATERIALS IN ELECTRONIC FORMAT.** (a) An  
4 institution of higher education, on behalf of a student with a disability, may request  
5 a publisher to provide instructional material in electronic format by submitting to  
6 the publisher a request that complies with par. (b) and with any additional  
7 requirement imposed by the publisher under par. (c) and a request for permission to  
8 convert or to arrange for the conversion of that instructional material into  
9 alternative format. Within 15 working days after receipt of the request the publisher,  
10 subject to par. (e), shall provide the instructional material in an electronic format  
11 that complies with par. (d) to the institution of higher education at no additional cost.

12 (b) A request under par. (a) for instructional material in electronic format shall  
13 be prepared and signed by the coordinator of services for students with disabilities  
14 at the institution of higher education, by another employee of the institution of  
15 higher education who is responsible for monitoring compliance with the federal  
16 Americans with Disabilities Act, 42 USC 12101 to 12213, or the federal  
17 Rehabilitation Act of 1973, 29 USC 701 to 796L, or by a representative of the division  
18 of vocational rehabilitation in the department on behalf of the institution of higher  
19 education, and shall certify all of the following:

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

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

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

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

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

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

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

12          1. Maintain the structural integrity of the original instructional material,  
13 except that this requirement does not apply to nontextual instructional material  
14 unless technology is available to maintain the structural integrity of the nontextual  
15 instructional material.

16          2. Be compatible with commonly used Braille translation or speech synthesis  
17 software.

18          3. Include corrections and revisions as necessary.

19          4. Be in an electronic format that is mutually agreed to between the publisher  
20 and the requester. If good faith efforts fail to produce an agreement as to an  
21 electronic format that will maintain the structural integrity of the original  
22 instructional material, the publisher shall provide the instructional material in an  
23 electronic format that is suitable for the creation of instructional material in  
24 alternative format and that maintains the structural integrity of the original  
25 instructional material as much as possible.

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1 (e) If providing instructional material in electronic format within 15 working  
2 days after receipt of a request under par. (a) would impose an undue burden on a  
3 publisher, the publisher shall, within those 15 working days, submit a statement to  
4 the requester certifying the date by which the publisher expects to transmit or  
5 deliver the instructional material. If a publisher has previously responded to a  
6 request from the institution of higher education for instructional material in  
7 electronic format, the institution of higher education shall satisfy all subsequent  
8 requests for that material without requesting the publisher to provide that material.

9 (f) On request of a publisher, an institution of higher education shall provide  
10 to the publisher all of the following:

11 1. A summary of all instructional materials published by that publisher that  
12 the institution of higher education has provided in electronic format or alternative  
13 format to other institutions of higher education from its holdings.

14 2. Copies of requests for instructional materials published by that publisher  
15 that the institution of higher education has received from other institutions of higher  
16 education.

17 **(3) USE OF INSTRUCTIONAL MATERIALS IN ELECTRONIC FORMAT.** (a) An institution  
18 of higher education may use instructional material provided by a publisher in  
19 electronic format solely to convert or arrange for the conversion of that material into  
20 an alternative format for use by a student with a disability or to otherwise assist such  
21 a student. If an institution of higher education converts or arranges for the  
22 conversion of that material into an alternative format, the institution of higher  
23 education may share the alternative format version of the material with any other  
24 institution of higher education that is serving a student with a disability or with an  
25 authorized entity, as defined in 17 USC 121 (c) (1), that commonly provides

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1 instructional materials in alternative formats to students enrolled in institutions of  
2 higher education.

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

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

12 (4) PUBLISHER A PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. A publisher is  
13 considered to be a public place of accommodation or amusement for purposes of s.  
14 106.52. Any publisher that refuses to provide instructional material in electronic  
15 format as required under sub. (2) (a) is in violation of s. 106.52 (3).

16 (5) POLICIES AND PROCEDURES. The board and the board of regents shall jointly  
17 under s. 20.901 (4) develop policies and procedures to ensure to the maximum extent  
18 possible that a student with a disability has access to instructional material in an  
19 appropriate alternative format within the first week of the class for which the  
20 material is required.

21 (6) REPORT. In its biennial report under s. 15.04 (1) (d), the Board of Regents  
22 shall include an assessment of the need for technical assistance, training, and other  
23 support to increase the availability and effective use of instructional materials in  
24 alternative formats by students with disabilities enrolled in the University of  
25 Wisconsin System. In its biennial report under s. 15.04 (1) (d), the board shall include



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1 an assessment of the need for technical assistance, training, and other support to  
2 increase the availability and effective use of instructional materials in alternative  
3 formats by students with disabilities enrolled in the technical college system.

4 (END)