

116TH CONGRESS
1ST SESSION

H. R. 3929

To direct the Architectural and Transportation Barriers Compliance Board to develop a minimum nonvisual access standard for home use medical devices, exercise equipment, and home appliances, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2019

Ms. SCHAKOWSKY (for herself, Mr. DESAULNIER, and Ms. BLUNT ROCH-ESTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Architectural and Transportation Barriers Compliance Board to develop a minimum nonvisual access standard for home use medical devices, exercise equipment, and home appliances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Greater Access and
5 Independence through Nonvisual Access Technology Act
6 of 2019” or the “GAIN Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) Rapid advances in digital technology have
2 led to increasingly complex user interfaces for every-
3 day products such as home use medical devices,
4 home appliances, and exercise equipment. Many new
5 devices in these categories utilize displays that can
6 only be operated visually and require user inter-
7 action with on-screen menus and other interfaces
8 that are inaccessible to consumers who are blind.

9 (2) The use of interfaces which must be oper-
10 ated visually on exercise equipment such as tread-
11 mills and elliptical machines make these devices un-
12 usable by people who are blind. This lack of access
13 is a potential threat to a blind person improving
14 their health and a barrier to maintaining their phys-
15 ical well-being.

16 (3) The use of interfaces which must be oper-
17 ated visually on home appliances such as laundry
18 machines, dishwashers, and stoves make these de-
19 vices difficult, if not impossible, to use by people
20 who are blind. This lack of access is a potential bar-
21 rier to independent living and overall quality of life.

22 (4) Increasingly, home use medical devices are
23 being utilized to lessen the cost of medical care for
24 consumers. Devices such as blood pressure monitors,
25 sleep apnea machines, and in-home chemotherapy

1 treatment devices generally lack nonvisual accessi-
2 bility. If a home use medical device is not accessible
3 in a nonvisual manner, a blind person cannot use it
4 efficiently and independently. The lack of nonvisual
5 accessibility in these devices poses major health risks
6 for blind consumers, including potentially life-threat-
7 ening consequences.

8 (5) Screen access technology has become inex-
9 pensive and is in wider use than ever before. Many
10 technology companies have incorporated screen ac-
11 cess technology functionalities into their products.
12 Screen access technology is not the only mechanism
13 by which home use medical devices, exercise equip-
14 ment, and home appliances can be made accessible
15 to blind consumers. In some cases, tactile markings,
16 audible tones, or cost-effective and widely available
17 text-to-speech technology may be sufficient to make
18 such devices fully accessible. Devices can be designed
19 to work with nonvisual access technology used by the
20 blind at little or no extra cost as long as such com-
21 patibility is taken into consideration at the begin-
22 ning of the design process.

23 (6) Consumers who are blind must be able to
24 operate home use medical devices, exercise equip-
25 ment, and home appliances in an equally effective

1 and equally integrated manner and with equivalent
2 ease of use as consumers without disabilities.

3 **SEC. 3. MINIMUM NONVISUAL ACCESS STANDARD FOR COV-**
4 **ERED DEVICES.**

5 (a) IN GENERAL.—The Access Board shall promul-
6 gate a minimum nonvisual access standard for each type
7 of covered device that will ensure nonvisual access to such
8 respective device by blind consumers.

9 (b) EFFECTIVE DATE.—A minimum nonvisual access
10 standard shall apply to a covered device that is manufac-
11 tured after the date that is 24 months after the date on
12 which such standard is promulgated.

13 **SEC. 4. RULEMAKING.**

14 (a) IN GENERAL.—The Architectural and Transpor-
15 tation Compliance Board established pursuant to section
16 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792)
17 (in this Act referred to as the “Access Board”) shall con-
18 duct a review of nonvisual accessibility standards for home
19 use medical devices, home appliances, and exercise equip-
20 ment.

21 (b) RESEARCH AND CONSULTATION.—In conducting
22 the review required by subsection (a), the Access Board
23 shall—

1 (1) review all available research on methods by
2 which blind consumers can acquire nonvisual access
3 to covered devices;

4 (2) commission such additional research as the
5 Access Board considers necessary to fulfill its re-
6 sponsibility under subsection (a) of this section;

7 (3) consult with groups representing blind con-
8 sumers; and

9 (4) consult with manufacturers of covered de-
10 vices and organizations that represent such manu-
11 facturers.

12 (c) **RULEMAKING REQUIRED.**—Not later than 18
13 months after the date of enactment of this Act, the Access
14 Board shall initiate rulemaking pursuant to section 3(a).

15 (d) **FINAL RULE.**—Not later than 36 months after
16 the date of enactment of this Act, the Access Board shall
17 issue the final rule.

18 **SEC. 5. ENFORCEMENT.**

19 (a) **EDUCATION OF MANUFACTURERS.**—The Access
20 Board shall conduct training to educate manufacturers of
21 covered devices about the minimum nonvisual access
22 standard and compliance with such standard.

23 (b) **POWERS AND DUTIES.**—

24 (1) **HOME USE MEDICAL DEVICES.**—The Food
25 and Drug Administration is responsible for over-

1 seeing the nonvisual access compliance of manufac-
2 turers who produce home use medical devices.

3 (2) HOME APPLIANCES AND EXERCISE EQUIP-
4 MENT.—The Federal Trade Commission is respon-
5 sible for overseeing the nonvisual access compliance
6 of manufacturers who produce home appliances and
7 exercise equipment.

8 (c) INVESTIGATIONS.—

9 (1) COMPLAINTS.—

10 (A) HOME USE MEDICAL DEVICE.—The
11 Food and Drug Administration shall investigate
12 each complaint regarding a home use medical
13 device does not comply with the minimum non-
14 visual access standard applicable to such device
15 and shall determine whether the device complies
16 with such minimum nonvisual access standard.

17 (B) HOME APPLIANCE OR PIECE OF EXER-
18 CISE EQUIPMENT.—The Federal Trade Com-
19 mission shall investigate each complaint regard-
20 ing a home appliance or piece of exercise equip-
21 ment does not comply with the minimum non-
22 visual access standard applicable to such appli-
23 ance or equipment and shall determine whether
24 the appliance or equipment complies with such
25 minimum nonvisual access standard.

1 (2) OTHER INVESTIGATIONS.—In addition to
2 investigations under paragraph (1), the proper agen-
3 cy may conduct such other investigations considered
4 appropriate to ensure compliance with the minimum
5 nonvisual access standard set forth by the Access
6 Board.

7 (d) ENFORCEMENT ACTION.—If the proper agency
8 determines that a manufacturer has manufactured or of-
9 fered for sale a covered device that does not comply with
10 the minimum nonvisual access standard applicable to such
11 covered device, the proper agency shall determine and levy
12 a penalty pursuant to subsection (e).

13 (e) CIVIL PENALTY.—The proper agency, if it is de-
14 termined that a violation has occurred, may assess a civil
15 monetary penalty against such manufacturer in an
16 amount not to exceed 10 percent of the retail value of the
17 covered device involved for each noncompliant unit of such
18 covered device manufactured.

19 **SEC. 6. PRIVATE RIGHT OF ACTION.**

20 (a) IN GENERAL.—A blind consumer who has an en-
21 counter with a covered device that does not comply with
22 a minimum nonvisual access standard applicable to such
23 covered device may, after notifying the proper agency of
24 such encounter, commence a civil action against the manu-

1 factorer of such covered device not later than 180 days
2 after such encounter.

3 (b) RELIEF.—If the court in a civil action com-
4 menced under subsection (a) of this section determines
5 that the covered device involved is in violation of the min-
6 imum nonvisual access standard, the court may grant the
7 following relief:

8 (1) Monetary damages in an amount equal to
9 the greater of \$10,000 per violation per unit of such
10 covered device.

11 (2) Such equitable relief as the court considers
12 appropriate, including temporary, preliminary, and
13 permanent injunctive relief.

14 (3) Reasonable attorneys' fees.

15 (4) In the case of willful or repeated violations
16 by the manufacturer, punitive damages.

17 **SEC. 7. RULE OF CONSTRUCTION.**

18 Nothing in this Act shall be construed to limit the
19 rights of blind consumers under any other applicable law.

20 **SEC. 8. DEFINITIONS.**

21 In this Act, the following definitions apply:

22 (1) ACCESS BOARD.—The term “Access Board”
23 has the meaning given such term in section 502 of
24 the Rehabilitation Act of 1973 (29 U.S.C. 792).

1 (2) BLIND CONSUMER.—The term “blind con-
2 sumer” means an individual whose vision—

3 (A) is 20/200 or less in the best corrected
4 eye;

5 (B) subtends an angle of not greater than
6 20 degrees in the best corrected eye; or

7 (C) is such that the individual cannot use
8 a covered device without nonvisual means.

9 (3) COVERED DEVICE.—The term “covered de-
10 vice” means a Home Use Medical Device, Exercise
11 Equipment, or Home Appliance.

12 (4) EXERCISE EQUIPMENT.—The term “exer-
13 cise equipment” means an exercise machine with an
14 interactive user interface for use in residential or
15 commercial settings.

16 (5) HOME APPLIANCE.—The term “home appli-
17 ance” means an electric appliance that is designed
18 for use in a residential setting.

19 (6) HOME USE MEDICAL DEVICE.—The term
20 “home use medical device” means a medical device
21 intended for use in a residential setting, including
22 devices intended for use in both residential and pro-
23 fessional healthcare facilities.

24 (7) NONVISUAL ACCESS.—The term “nonvisual
25 access” means the ability of an individual to use all

1 functions of a device in an equally effective and
2 equally integrated manner and with equivalent ease
3 of use.

4 (8) PROPER AGENCY.—The term “proper agen-
5 cy” means the respective agency who is responsible
6 for overseeing specific categories of covered devices.

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