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2D SESSION

H. R. 4533

To provide for a study and report on access by blind consumers to certain electronic devices and to provide for the establishment of minimum non-visual access standards for such devices and for the establishment of an office within the Department of Commerce to enforce such standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2010

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for a study and report on access by blind consumers to certain electronic devices and to provide for the establishment of minimum nonvisual access standards for such devices and for the establishment of an office within the Department of Commerce to enforce such standards, 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 “Technology Bill of
5 Rights for the Blind Act of 2010”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Rapid advances in microchip and digital
4 technology have led to increasingly complex user
5 interfaces for everyday products like consumer elec-
6 tronic devices, home appliances, and office tech-
7 nology devices. Many new devices in these categories
8 require user interaction with visual displays, on-
9 screen menus, touch screens, and other interfaces
10 that are inaccessible to blind or low-vision individ-
11 uals. Rarely, for example, are settings on televisions,
12 home stereo systems, or dishwashers controlled by
13 knobs, switches, or buttons that can be readily iden-
14 tified and whose settings can be easily discerned
15 with or without the addition of tactile markings by
16 the consumer.

17 (2) The use of inaccessible interfaces on office
18 equipment such as copiers and fax machines makes
19 these devices unusable by the blind, and many office
20 software packages are either substantially or totally
21 inaccessible to blind people who use assistive tech-
22 nology. This lack of access is a potential threat to
23 a blind person's existing job and a barrier to obtain-
24 ing a new job.

25 (3) Increasingly, electronic kiosks are being
26 used to sell consumer goods and services, including

1 tickets for public transit and air transportation, and
2 to provide important public information. If a kiosk
3 is not accessible in a nonvisual manner, a blind per-
4 son has no way to make a purchase, check in for a
5 flight, or access important public information.

6 (4) This growing threat to the independence
7 and productivity of blind people is unnecessary be-
8 cause electronic devices can easily be constructed
9 with user interfaces that are not exclusively visual.
10 Text-to-speech technology has become inexpensive
11 and is in wider use than ever before. It is used in
12 everything from automated telephone systems to
13 weather broadcasts by the National Oceanic and At-
14 mospheric Administration. Additionally, office soft-
15 ware can be designed to work with screen access
16 technology used by the blind at little or no extra cost
17 as long as such compatibility is taken into consider-
18 ation at the beginning of the design process.

19 (5) Some manufacturers have incorporated non-
20 visual technology into their products by creating
21 talking menus or enabling them to articulate the
22 content on the display, a practice that makes such
23 products more usable by all consumers, whether
24 blind or sighted. For example, Apple, Inc., has incor-

1 porated innovative nonvisual interfaces into the lat-
 2 est versions of its iPhone and iPod product lines.

3 (6) There is no reason why all manufacturers
 4 cannot produce electronic devices fully accessible to
 5 blind and low-vision individuals.

6 (7) Text-to-speech technology is not the only
 7 mechanism by which consumer electronic devices,
 8 electronic kiosks, home appliances, and office tech-
 9 nology devices can be made accessible to blind and
 10 low-vision individuals. In some cases, tactile mark-
 11 ings or audible tones may be sufficient to make such
 12 devices fully accessible.

13 (8) Blind and low-vision individuals should be
 14 able to obtain and operate consumer electronic de-
 15 vices, electronic kiosks, home appliances, and office
 16 technology devices with the same ease as those with
 17 normal vision.

18 **SEC. 3. STUDY AND REPORT ON ACCESS TO COVERED DE-**
 19 **VICES BY BLIND CONSUMERS.**

20 (a) IN GENERAL.—The Secretary shall conduct a
 21 study on methods by which blind consumers can gain non-
 22 visual access to covered devices.

23 (b) RESEARCH AND CONSULTATION.—In conducting
 24 the study required by subsection (a), the Secretary shall—

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

4 (2) commission such additional research as the
5 Secretary considers necessary;

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

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

11 (c) REPORT.—Not later than 2 years after the date
12 of the enactment of this Act, the Secretary shall submit
13 to Congress a report on the findings of the study required
14 by subsection (a).

15 **SEC. 4. MINIMUM NONVISUAL ACCESS STANDARDS FOR**
16 **COVERED DEVICES.**

17 (a) IN GENERAL.—Not later than 180 days after the
18 submission of the report under section 3(c), the Secretary
19 shall promulgate a minimum nonvisual access standard for
20 each type of covered device that will ensure nonvisual ac-
21 cess to such respective type of device by blind consumers.

22 (b) EFFECTIVE DATE.—A minimum nonvisual access
23 standard shall apply to a covered device that is manufac-
24 tured after the date that is 2 years after the date on which
25 such standard is promulgated.

1 **SEC. 5. OFFICE OF NONVISUAL ACCESS COMPLIANCE.**

2 (a) ESTABLISHMENT.—As soon as practicable but
3 not later than 2 years after the date of the enactment of
4 this Act, the Secretary shall establish an Office of Non-
5 visual Access Compliance. The head of the Office shall be
6 the Director of the Office of Nonvisual Access Compliance.

7 (b) POWERS AND DUTIES.—

8 (1) ASSISTANCE TO SECRETARY.—The Director
9 and appropriate staff of the Office shall assist the
10 Secretary in—

11 (A) conducting the study required by sec-
12 tion 3(a) and preparing the report required by
13 section 3(c) (if the Director and staff have been
14 appointed by the time period involved); and

15 (B) developing the minimum nonvisual ac-
16 cess standards.

17 (2) EDUCATION OF MANUFACTURERS.—The
18 Secretary, acting through the Director, shall educate
19 manufacturers of covered devices about the min-
20 imum nonvisual access standards and compliance
21 with such standards.

22 (3) INVESTIGATIONS.—

23 (A) COMPLAINTS.—The Secretary, acting
24 through the Director, shall investigate each
25 complaint that a covered device does not comply
26 with a minimum nonvisual access standard ap-

1 plicable to such covered device and shall deter-
2 mine whether such covered device complies with
3 such minimum nonvisual access standard.

4 (B) INITIATION BY OFFICE.—In addition
5 to investigations under subparagraph (A), the
6 Secretary, acting through the Director, may
7 conduct such other investigations as the Sec-
8 retary, acting through the Director, considers
9 appropriate to ensure compliance with the min-
10 imum nonvisual access standards.

11 (4) ENFORCEMENT.—

12 (A) IN GENERAL.—If the Secretary, acting
13 through the Director, determines that a manu-
14 facturer has manufactured for sale or offered
15 for sale a covered device that does not comply
16 with a minimum nonvisual access standard ap-
17 plicable to such covered device, the Secretary,
18 acting through the Director, shall take enforce-
19 ment action under subparagraph (B) or (C).

20 (B) NOTICE AND OPPORTUNITY TO COR-
21 RECT VIOLATION; CIVIL PENALTY.—

22 (i) NOTICE AND OPPORTUNITY TO
23 CORRECT VIOLATION.—Upon making the
24 determination described in subparagraph
25 (A) and unless the Secretary, acting

1 through the Director, takes the action de-
2 scribed in subparagraph (C), the Sec-
3 retary, acting through the Director, shall
4 notify the manufacturer involved of the
5 violation and the time period within which
6 such violation must be corrected in order
7 to avoid a civil monetary penalty, if any.

8 (ii) CIVIL PENALTY.—If the notice
9 given under clause (i) includes a time pe-
10 riod within which the violation must be
11 corrected and the manufacturer has not
12 corrected the violation within such time pe-
13 riod, the Secretary, acting through the Di-
14 rector, may assess a civil monetary penalty
15 against such manufacturer in an amount
16 that is not less than 10 percent of the re-
17 tail value of the covered device involved for
18 each noncompliant unit of such covered de-
19 vice manufactured.

20 (C) IMMEDIATE CIVIL PENALTY.—Upon
21 making the determination described in subpara-
22 graph (A), the Secretary, acting through the
23 Director, may, in an appropriate case, without
24 first providing the manufacturer involved with
25 notice and an opportunity to correct the viola-

tion under subparagraph (B), assess a civil monetary penalty against such manufacturer in an amount that is not less than 10 percent of the retail value of the covered device involved for each noncompliant unit of such covered device manufactured.

SEC. 6. PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—A blind consumer who has an encounter with a covered device that does not comply with a minimum nonvisual access standard applicable to such covered device may, after notifying the Office of such encounter, commence a civil action against the manufacturer of such covered device not later than 180 days after such encounter.

(b) RELIEF.—If the court in a civil action commenced under subsection (a) determines that the covered device involved is in violation of a minimum nonvisual access standard, the court may grant the following relief:

(1) Monetary damages in an amount equal to the greater of—

(A) \$10,000 per encounter per unit of such covered device; or

(B) in the case of a blind consumer who loses an employment opportunity because of an encounter with an office technology device that

1 does not comply with a minimum nonvisual ac-
2 cess standard applicable to such office tech-
3 nology device, the value of such employment op-
4 portunity.

5 (2) Such equitable relief as the court considers
6 appropriate, including temporary, preliminary, and
7 permanent injunctive relief.

8 (3) Reasonable attorneys' fees.

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

11 **SEC. 7. RULE OF CONSTRUCTION.**

12 Nothing in this Act shall be construed to limit the
13 rights of blind or low-vision individuals under other law.

14 **SEC. 8. DEFINITIONS.**

15 In this Act, the following definitions apply:

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

18 (A) is 20/200 or less in the best corrected
19 eye;

20 (B) subtends an angle of not greater than
21 20 degrees in the best corrected eye; or

22 (C) is such that the individual cannot use
23 a covered device without some form of nonvisual
24 assistance.

1 (2) CONSUMER ELECTRONIC DEVICE.—The
2 term “consumer electronic device” means an elec-
3 tronic device designed primarily for use by the ulti-
4 mate consumer.

5 (3) COVERED DEVICE.—The term “covered de-
6 vice” means a consumer electronic device, electronic
7 kiosk, home appliance, or office technology device
8 that is manufactured for sale in the United States
9 after the date that is 2 years after the date of the
10 promulgation of a minimum nonvisual access stand-
11 ard applicable to such consumer electronic device,
12 electronic kiosk, home appliance, or office technology
13 device.

14 (4) DIRECTOR.—The term “Director” means
15 the Director of the Office of Nonvisual Access Com-
16 pliance.

17 (5) ELECTRONIC KIOSK.—The term “electronic
18 kiosk” means an electronic device with an interactive
19 user interface that is designed to—

20 (A) sell consumer goods and services, in-
21 cluding passage on transportation, to the pub-
22 lic; or

23 (B) convey information to the public.

24 (6) ENCOUNTER.—The term “encounter”
25 means—

1 (A) with respect to a consumer electronic
2 device or home appliance, the purchase or use
3 or attempted use of such item by a blind con-
4 sumer; and

5 (B) with respect to an electronic kiosk or
6 office technology device, the use or attempted
7 use of such electronic kiosk or office technology
8 device by a blind consumer.

9 (7) HOME APPLIANCE.—The term “home appli-
10 ance” means an electric appliance that is designed
11 for use in a residential setting.

12 (8) MINIMUM NONVISUAL ACCESS STANDARD.—
13 The term “minimum nonvisual access standard”
14 means a minimum nonvisual access standard pro-
15 mulgated under section 4(a).

16 (9) NONVISUAL ACCESS.—The term “nonvisual
17 access” means the ability of an individual to use all
18 functions of a device without reliance on eyesight.

19 (10) OFFICE.—The term “Office” means the
20 Office of Nonvisual Access Compliance established
21 under section 5(a).

22 (11) OFFICE TECHNOLOGY DEVICE.—The term
23 “office technology device” means an electric device
24 or computer software application that is designed for
25 use in an office setting.

- 1 (12) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce.

