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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 ROCHESTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Greater Access and Independence through Nonvisual Access Technology Act of 2019'' or the ''GAIN Act''.

SEC. 2. FINDINGS.

Congress finds the following:

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

(2) The use of interfaces which must be operated visually on exercise equipment such as treadmills and elliptical machines make these devices unusable by people who are blind. This lack of access is a potential threat to a blind person improving their health and a barrier to maintaining their physical well-being.

(3) The use of interfaces which must be operated visually on home appliances such as laundry machines, dishwashers, and stoves make these devices difficult, if not impossible, to use by people who are blind. This lack of access is a potential barrier to independent living and overall quality of life.

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

treatment devices generally lack nonvisual accessibility. If a home use medical device is not accessible in a nonvisual manner, a blind person cannot use it efficiently and independently. The lack of nonvisual accessibility in these devices poses major health risks for blind consumers, including potentially life-threatening consequences.

(5) Screen access technology has become inexpensive and is in wider use than ever before. Many technology companies have incorporated screen access technology functionalities into their products. Screen access technology is not the only mechanism by which home use medical devices, exercise equipment, and home appliances can be made accessible to blind consumers. In some cases, tactile markings, audible tones, or cost-effective and widely available text-to-speech technology may be sufficient to make such devices fully accessible. Devices can be designed to work with nonvisual access technology used by the blind at little or no extra cost as long as such compatibility is taken into consideration at the beginning of the design process.

(6) Consumers who are blind must be able to operate home use medical devices, exercise equipment, and home appliances in an equally effective

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

SEC. 3. MINIMUM NONVISUAL ACCESS STANDARD FOR COVERED DEVICES.

(a) IN GENERAL.—The Access Board shall promulgate a minimum nonvisual access standard for each type of covered device that will ensure nonvisual access to such respective device by blind consumers.

(b) EFFECTIVE DATE.—A minimum nonvisual access standard shall apply to a covered device that is manufactured after the date that is 24 months after the date on which such standard is promulgated.

SEC. 4. RULEMAKING.

(a) IN GENERAL.—The Architectural and Transportation Compliance Board established pursuant to section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) (in this Act referred to as the ''Access Board'') shall conduct a review of nonvisual accessibility standards for home use medical devices, home appliances, and exercise equipment.

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

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

(2) commission such additional research as the Access Board considers necessary to fulfill its responsibility under subsection (a) of this section;

(3) consult with groups representing blind consumers; and

(4) consult with manufacturers of covered devices and organizations that represent such manufacturers.

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

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

SEC. 5. ENFORCEMENT.

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

(b) POWERS AND DUTIES.—

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

seeing the nonvisual access compliance of manufacturers who produce home use medical devices.

(2) HOME APPLIANCES AND EXERCISE EQUIPMENT.—The Federal Trade Commission is responsible for overseeing the nonvisual access compliance of manufacturers who produce home appliances and exercise equipment.

(c) INVESTIGATIONS.—

(1) COMPLAINTS.—

(A) HOME USE MEDICAL DEVICE.—The Food and Drug Administration shall investigate each complaint regarding a home use medical device does not comply with the minimum nonvisual access standard applicable to such device and shall determine whether the device complies with such minimum nonvisual access standard.

(B) HOME APPLIANCE OR PIECE OF EXERCISE EQUIPMENT.—The Federal Trade Commission shall investigate each complaint regarding a home appliance or piece of exercise equipment does not comply with the minimum nonvisual access standard applicable to such appliance or equipment and shall determine whether the appliance or equipment complies with such minimum nonvisual access standard.

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

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

(e) CIVIL PENALTY.—The proper agency, if it is determined that a violation has occurred, may assess a civil monetary penalty against such manufacturer in an amount not to exceed 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 proper agency of such encounter, commence a civil action against the manu-

facturer 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) of this section determines that the covered device involved is in violation of the minimum nonvisual access standard, the court may grant the following relief:

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

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

(3) Reasonable attorneys' fees.

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

SEC. 7. RULE OF CONSTRUCTION.

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

SEC. 8. DEFINITIONS.

In this Act, the following definitions apply:

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

(2) BLIND CONSUMER.—The term ''blind consumer'' means an individual whose vision—

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

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

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

(3) COVERED DEVICE.—The term ''covered device'' means a Home Use Medical Device, Exercise Equipment, or Home Appliance.

(4) EXERCISE EQUIPMENT.—The term ''exercise equipment'' means an exercise machine with an interactive user interface for use in residential or commercial settings.

(5) HOME APPLIANCE.—The term ''home appliance'' means an electric appliance that is designed for use in a residential setting.

(6) HOME USE MEDICAL DEVICE.—The term ''home use medical device'' means a medical device intended for use in a residential setting, including devices intended for use in both residential and professional healthcare facilities.

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

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

(8) PROPER AGENCY.—The term ''proper agency'' means the respective agency who is responsible for overseeing specific categories of covered devices.

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