

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 386**

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**Introduced by Assembly Member Ruskin**

February 23, 2009

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An act to amend Section 67302 of the Education Code, relating to postsecondary education.

### LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Ruskin. Public postsecondary education: instructional materials: disabled students.

(1) Existing law requires publishers and manufacturers of printed instructional material for use at public postsecondary educational institutions to provide the material, upon request, in an electronic format that is compatible with commonly used braille translation and speech synthesis software, when those materials are to be used by a student whose disability prevents him or her from using standard instructional materials and other requirements are met.

Existing law also requires publishers and manufacturers to provide computer files or other electronic versions of nonprinted instructional materials, defined to include materials that require the availability of electronic equipment in order to be utilized, when technology is available to convert those nonprinted materials to a format that is compatible with braille translation or speech synthesis software.

This bill would expand the definition of nonprinted instructional materials to include audiovisual works and digital media files, including podcasts and Web clips. This bill would define podcasts as an audio or

video program in digital format delivered over the Internet for playback on a computer or portable digital device.

This bill would require that the electronic versions of nonprinted instructional materials be compatible with audiovisual captioning software for the deaf, in addition to braille translation and speech synthesis software for the blind.

The bill would additionally require publishers and manufacturers to provide a captioned copy of nonprinted instructional materials, upon request by a public postsecondary educational institution, and would authorize the public postsecondary educational institution to create a captioned copy, subject to prescribed conditions, if the publisher or manufacturer fails to provide the captioned copy.

(2) Existing law states that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed instructional material provided pursuant to these provisions to transcribe the printed materials into braille.

This bill, in addition, would state that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed and nonprinted instructional material to transcribe the materials into braille or captioning.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 67302 of the Education Code is amended  
2     to read:  
3     67302. (a) An individual, firm, partnership, or corporation  
4     that publishes or manufactures printed instructional materials for  
5     students attending the University of California, the California State  
6     University, or a California Community College, shall provide to  
7     the university, college, or particular campus of the university or  
8     college, for use by students attending the University of California,  
9     the California State University, or a California Community College,  
10    any printed instructional material in an electronic format mutually  
11    agreed upon by the publisher or manufacturer and the college or  
12    campus. Computer files or electronic versions of printed  
13    instructional materials shall maintain the structural integrity of the  
14    printed instructional material, be compatible with commonly used

1 braille translation and speech synthesis software, and include  
2 corrections and revisions as may be necessary. The computer files  
3 or electronic versions of the printed instructional material shall be  
4 provided to the university, college, or particular campus of the  
5 university or college at no additional cost and in a timely manner,  
6 upon receipt of a written request that does all of the following:

7 (1) Certifies that the university, college, or particular campus  
8 of the university or college has purchased the printed instructional  
9 material for use by a student with a disability or that a student with  
10 a disability attending or registered to attend that university, college,  
11 or particular campus of the university or college has purchased the  
12 printed instructional material.

13 (2) Certifies that the student has a disability that prevents him  
14 or her from using standard instructional materials.

15 (3) Certifies that the printed instructional material is for use by  
16 the student in connection with a course in which he or she is  
17 registered or enrolled at the university, college, or particular  
18 campus of the university or college.

19 (4) Is signed by the coordinator of services for students with  
20 disabilities at the university, college, or particular campus of the  
21 university or college, or by the campus or college official  
22 responsible for monitoring compliance with the Americans with  
23 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university,  
24 college, or particular campus of the university or college.

25 (b) An individual, firm, partnership, or corporation specified in  
26 subdivision (a) may also require that, in addition to the conditions  
27 enumerated above, the request shall include a statement signed by  
28 the student agreeing to both of the following:

29 (1) He or she will use the electronic copy of the printed  
30 instructional material in specialized format solely for his or her  
31 own educational purposes.

32 (2) He or she will not copy or duplicate the printed instructional  
33 material for use by others.

34 (c) If a college or university permits a student to directly use  
35 the electronic version of an instructional material, the disk or file  
36 shall be copy-protected or the college or university shall take other  
37 reasonable precautions to ensure that students do not copy or  
38 distribute electronic versions of instructional materials in violation  
39 of the Copyright Revisions Act of 1976, as amended (17 U.S.C.  
40 Sec. 101 et seq.).

(d) (1) An individual, firm, partnership, or corporation that publishes or manufactures nonprinted instructional materials for students attending the University of California, the California State University, or a California Community College shall provide computer files, captioned copies, or other electronic versions of the nonprinted instructional materials for use by students attending the University of California, the California State University, or a California Community College, subject to the same conditions set forth in subdivisions (a) and (b) for printed instructional materials, when technology is available to convert these nonprinted instructional materials to a format that maintains the structural integrity of the nonprinted instructional materials that is compatible with braille translation, speech synthesis software, and audiovisual captioning software.

(2) The individual, firm, partnership, or corporation shall provide a captioned copy of nonprinted instructional materials, pursuant to paragraph (1), within two weeks of receipt of a written request for a captioned copy, as described in subdivision (a). If the individual, firm, partnership, or corporation fails to provide the captioned copy within the two-week period, the University of California, the California State University, or the California Community Colleges may create a captioned copy of the nonprinted instructional materials, to the extent permitted by the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.), and subject to the same conditions as set forth in subdivisions (a) and (b).

(e) For purposes of this section:

(1) "Instructional material or materials" means textbooks and other materials written and published primarily for use by students in postsecondary instruction that are required or essential to a student's success in a course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request pursuant to paragraph (4) of subdivision (a) in accordance with guidelines issued pursuant to subdivision (i). "Instructional material or materials" does not include nontextual mathematics and science materials until the time software becomes commercially available that permits the conversion of existing electronic files of the materials into a format that is compatible

1 with braille translation software, audiovisual captioning software,  
2 or alternative media for students with disabilities.

3 (2) “Printed instructional material or materials” means  
4 instructional material or materials in book or other printed form.

5 (3) “Nonprinted instructional materials” means instructional  
6 materials in formats other than print, and includes instructional  
7 materials that require the availability of electronic equipment in  
8 order to be used as a learning resource, including, but not  
9 necessarily limited to, software programs, video disks, audiovisual  
10 works, digital media files (including “podcasts” and “Web clips”),  
11 and video and audio tapes. For purposes of this paragraph,  
12 “podcast” means an audio or video program in digital format  
13 delivered over the Internet for playback on a computer or portable  
14 digital device.

15 (4) “Structural integrity” means all of the printed instructional  
16 material, including, but not limited to, the text of the material,  
17 sidebars, the table of contents, chapter headings and subheadings,  
18 footnotes, indexes, glossaries, and bibliographies. “Structural  
19 integrity” need not include nontextual elements such as pictures,  
20 illustrations, graphs, or charts. If good faith efforts fail to produce  
21 an agreement pursuant to subdivision (a) between the publisher or  
22 manufacturer and the university, college, or particular campus of  
23 the university or college, as to an electronic format that will  
24 preserve the structural integrity of the printed instructional material,  
25 the publisher or manufacturer shall provide the instructional  
26 material in ASCII text and shall preserve as much of the structural  
27 integrity of the printed instructional material as possible.

28 (5) “Specialized format” means braille, captioned audiovisual  
29 works, audio, or digital text that is exclusively for use by blind,  
30 deaf, or other persons with disabilities.

31 (f) (1) Nothing in this section shall be construed to prohibit a  
32 university, college, or particular campus of the university or college  
33 from assisting a student with a disability by using the electronic  
34 version of printed or nonprinted instructional material provided  
35 pursuant to this section solely to transcribe or arrange for the  
36 transcription of the printed or nonprinted instructional material  
37 into braille or captioning.

38 (2) If a transcription is made, or a captioned copy is created  
39 pursuant to paragraph (2) of subdivision (d), the campus or college  
40 shall have the right to share the braille or captioned copy of the

1 instructional material with other students with disabilities, to the  
2 extent permitted by the takings clause of the Fifth Amendment to  
3 the United States Constitution, the Copyright Revision Act of 1976,  
4 as amended (17 U.S.C. Sec. 101 et seq.), and any other applicable  
5 copyright laws, and subject to the same conditions as set forth in  
6 subdivisions (a) and (b). In implementing this paragraph, the  
7 campus or college shall not deprive the copyright owner of any  
8 compensation, to the extent required pursuant to the takings clause  
9 of the Fifth Amendment to the United States Constitution, the  
10 Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101  
11 et seq.), or any other applicable copyright law.

12 (g) The Chancellor of the California Community Colleges, the  
13 Chancellor of the California State University, and the President  
14 of the University of California may each establish one or more  
15 centers within their respective segments to process requests for  
16 electronic versions of instructional materials pursuant to this  
17 section. If a segment establishes a center or centers, each of the  
18 following shall apply:

19 (1) The colleges or campuses designated as within the  
20 jurisdiction of a center shall submit requests for instructional  
21 material made pursuant to paragraph (4) of subdivision (a) to the  
22 center, which shall transmit the request to the publisher or  
23 manufacturer.

24 (2) If there is more than one center, each center shall make every  
25 effort to coordinate requests within its segment.

26 (3) The publisher or manufacturer of instructional material shall  
27 be required to honor and respond to only those requests submitted  
28 through a designated center.

29 (4) If a publisher or manufacturer has responded to a request  
30 for instructional materials by a center, or on behalf of all the centers  
31 within a segment, all subsequent requests for these instructional  
32 materials shall be satisfied by the center to which the request is  
33 made.

34 (h) Nothing in this section shall be deemed to authorize any use  
35 of instructional materials that would violate the takings clause of  
36 the Fifth Amendment to the United States Constitution or would  
37 constitute an infringement of copyright under the Copyright  
38 Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

39 (i) The governing boards of the California Community Colleges,  
40 the California State University, and the University of California

- 1 shall each adopt guidelines consistent with this section for its
- 2 implementation and administration. At a minimum, the guidelines
- 3 shall address all of the following:
- 4     (1) The designation of materials deemed “required or essential
- 5 to student success.”
- 6     (2) The determination of the availability of technology for the
- 7 conversion of nonprinted materials pursuant to subdivision (d) and
- 8 the conversion of mathematics and science materials pursuant to
- 9 paragraph (4) of subdivision (e).
- 10    (3) The procedures and standards relating to distribution of files
- 11 and materials pursuant to subdivisions (a) and (b).
- 12    (4) Other matters as are deemed necessary or appropriate to
- 13 carry out the purposes of this section.
- 14    (j) Failure to comply with the requirements of this section shall
- 15 be a violation of Section 54.1 of the Civil Code.