

# Enrolled Senate Bill 261

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CHAPTER .....

AN ACT

Relating to post-secondary instructional materials; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in sections 1 to 5 of this 2007 Act:**

**(1) "Alternative format" means any medium or format for the presentation of instructional materials other than standard print that is needed by a post-secondary student with a print disability for a reading accommodation, including but not limited to Braille, large print texts, audio recordings, digital texts and digital talking books.**

**(2) "Electronic format" means a medium or format containing digital text.**

**(3) "Instructional material" means a textbook or other material if:**

**(a) The textbook or other material, including additional prints or new editions of previously published instructional material, is published on or after January 1, 2004, and is published primarily for use by students in a course of study in which a post-secondary student with a print disability is enrolled;**

**(b) The textbook or other material is required for a student's success in the course, as determined by the course instructor in consultation with the representative making the request for an electronic format under section 3 (2) of this 2007 Act;**

**(c) The textbook or other material is required for the course as stated in the course syllabus or other curriculum documents, or the use of the materials by the student is necessary for the completion of course assignments that are used to evaluate the student, such as to determine the student's proficiency level or assign a grade; and**

**(d) Software is commercially available to permit the conversion of an electronic file of the textbook or other material into a format that is compatible with assistive technologies such as speech synthesis software or Braille translation software.**

**(4) "Post-secondary education institution" means:**

**(a) A state institution of higher education listed in ORS 352.002;**

**(b) A community college operated under ORS chapter 341;**

**(c) The Oregon Health and Science University; or**

**(d) An Oregon-based, generally accredited institution of higher education.**

**(5) "Print disability" means a disability that prevents a student from effectively utilizing print material and may include blindness, other serious visual impairments, specific learning disabilities or the inability to hold a book.**

(6) "Printed instructional material" means instructional material in book or other printed form.

(7) "Publisher" means any person that publishes or manufactures instructional material used by students attending a post-secondary education institution.

(8) "Structural integrity" means the inclusion of all of the information provided in printed instructional material, including but not limited to the text of the material sidebars, the tables of contents, the chapter headings and subheadings, the footnotes, the page numbers, the indexes and the glossaries.

(9) "Working day" means a day that is not a Saturday, Sunday or legal holiday.

**SECTION 2.** The purpose of sections 1 to 5 of this 2007 Act is to ensure, to the maximum extent possible, that all post-secondary students with print disabilities in Oregon who require reading accommodations, in accordance with section 504 of the Rehabilitation Act of 1978, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., shall have equal and effective access, in alternative format, to instructional materials provided by a post-secondary education institution.

**SECTION 3.** (1)(a) A post-secondary education institution may submit a written request to a publisher to receive instructional material in an electronic format. In the request, the institution must certify that:

(A) The instructional material has been purchased:

(i) By a student for use by a student with a print disability; or

(ii) By the institution for use by a student with a print disability who attends or is registered to attend the institution;

(B) The student has a print disability that prevents the student from using the standard instructional material; and

(C) The instructional material is for use by the student in connection with a course in which the student is registered or enrolled.

(b) A publisher may require a statement signed by the student or, if the student is an unemancipated minor who is under 18 years of age, by the student's parent or legal guardian, agreeing that the student will:

(A) Use the copy of the instructional material in an electronic format solely for the student's own educational purposes; and

(B) Not copy or distribute the instructional material in an electronic format for use by other people.

(2) The request for instructional material in an electronic format submitted under subsection (1) of this section shall be prepared and signed by:

(a) A representative of services for students with disabilities at the post-secondary education institution;

(b) A representative of the Commission for the Blind; or

(c) A representative of the Department of Human Services.

(3)(a) A publisher shall, upon receipt of a request for instructional material that meets the requirements of subsections (1) and (2) of this section, provide to the post-secondary education institution printed instructional material in an electronic format.

(b) Except as provided in paragraph (c) of this subsection, the publisher may not charge the post-secondary education institution for the instructional material.

(c) The publisher may charge the post-secondary education institution for the cost of shipping and handling the instructional material at the ordinary commercial media rates.

(4) A publisher that provides instructional material in an electronic format under subsection (3) of this section shall make every reasonable effort to ensure that the instructional material:

(a) Maintains the structural integrity of the original instructional material;

(b) Is compatible with commonly used speech synthesis software and Braille translation software when necessary; and

(c) Includes corrections and revisions as may be necessary.

(5) In addition to the requirements of subsection (4) of this section, a publisher shall provide instructional material in an electronic format that is mutually agreed upon by the publisher and the post-secondary education institution. If good faith efforts fail to produce an agreement as to an electronic format that will preserve the structural integrity of the instructional material, the publisher shall:

(a) Provide the instructional material in an electronic format; and

(b) Preserve as much of the structural integrity of the original instructional material as possible.

(6)(a) The publisher shall transmit or otherwise send the instructional material in an electronic format within 15 working days of receipt of a request that meets the requirements of subsections (1) and (2) of this section.

(b) Notwithstanding paragraph (a) of this subsection, if meeting the time period requirements specified in paragraph (a) of this subsection is an undue burden on the publisher, the publisher may submit within the 15 working days a statement to the requesting post-secondary education institution certifying the expected date for transmission or delivery of the instructional material in an electronic format and a summary of the basis of the undue burden.

**SECTION 4.** (1) The State Board of Higher Education may work with publishers, recognized national organizations of publishers, representatives of post-secondary education institutions, the system described in ORS 192.517 and other interested parties to:

(a) Develop unified, statewide guidelines consistent with sections 1 to 5 of this 2007 Act;

(b) Administer sections 1 to 5 of this 2007 Act; and

(c) Review guidelines annually and revise the guidelines as necessary due to changes in technology or other changes.

(2) The guidelines may address the following:

(a) The procedures and standards relating to the distribution of files and materials pursuant to sections 1 to 5 of this 2007 Act;

(b) Available electronic formats;

(c) Procedures for granting exceptions when it is determined that a publisher is not able to comply with the requirements of sections 1 to 5 of this 2007 Act due to technical, economic or other practical impediments; and

(d) Other matters deemed necessary or appropriate to carry out the purposes of sections 1 to 5 of this 2007 Act.

(3) The State Board of Higher Education shall review the recommendations, published on or after the effective date of this 2007 Act, of the Association of American Publishers' Alternative Formats Solutions Initiative, and determine whether the recommendations should be incorporated into sections 1 to 5 of this 2007 Act.

**SECTION 5.** (1) Nothing in sections 1 to 5 of this 2007 Act authorizes any use of instructional materials, or requires a publisher to perform any act, that would constitute an infringement of copyright under the Copyright Act of 1976, 17 U.S.C. 101 et seq.

(2) Notwithstanding section 1, 2, 3 or 4 of this 2007 Act, a publisher is not required to provide an electronic format of the instructional material pursuant to section 3 of this 2007 Act if the publisher has commercially published or manufactured a version of the product that is accessible to students with print disabilities, or if the publisher has the capacity and offers to sell an electronic format of the instructional material directly to the student in a timely manner at the same cost as the commercially available material.

(3) Notwithstanding section 1, 2, 3 or 4 of this 2007 Act, a publisher is not required to provide an electronic format of the instructional material pursuant to section 3 of this 2007 Act if the publisher has not previously produced a digital version of the fully edited and typeset instructional material, such as in the case of a work produced through a method that does not require the creation of a digital file.

(4) A post-secondary education institution that has obtained an electronic format from a publisher pursuant to section 3 of this 2007 Act may not duplicate the electronic format, or specialized format produced therefrom, to enable use by one or more additional students, or obtain the electronic format, or specialized format produced therefrom, from another institution or particular campus of the institution unless, for each additional student for whom a specialized format is sought, the campus of the institution where the additional student is enrolled provides the publisher with a written request as described in section 3 of this 2007 Act.

**SECTION 6.** Sections 1 to 5 of this 2007 Act first apply to the 2007-2008 academic year.

**SECTION 7.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect July 1, 2007.

Passed by Senate March 20, 2007

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Secretary of Senate

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President of Senate

Passed by House June 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State