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H. R. 1772

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2017

Mr. ROE of Tennessee (for himself, Mr. COURTNEY, Mr. THOMPSON of Pennsylvania, Mr. KINZINGER, Mr. PRICE of North Carolina, Mr. KRISHNAMOORTHY, Mr. KILDEE, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, 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 “Accessible Instruc-
5 tional Materials in Higher Education Act” or the “AIM
6 HIGH Act”.

1 **SEC. 2. COMMISSION STRUCTURE.**

2 (a) ESTABLISHMENT OF COMMISSION.—

3 (1) IN GENERAL.—The Speaker of the House of
4 Representatives, the President pro tempore of the
5 Senate, and the Secretary of Education shall estab-
6 lish an independent commission, comprised of key
7 stakeholders, to develop voluntary guidelines for ac-
8 cessible postsecondary electronic instructional mate-
9 rials and related technologies in order—

10 (A) to ensure students with disabilities are
11 afforded the same educational benefits provided
12 to nondisabled students through the use of elec-
13 tronic instructional materials and related tech-
14 nologies;

15 (B) to inform better the selection and use
16 of such materials and technologies at institu-
17 tions of higher education; and

18 (C) to encourage entities that produce such
19 materials and technologies to make accessible
20 versions more readily available in the market.

21 In fulfilling this duty, the commission shall review
22 applicable national and international information
23 technology accessibility standards, which it will com-
24 pile and annotate as an additional information re-
25 source for institutions of higher education and com-
26 panies that service the higher education market.

1 (2) MEMBERSHIP.—

2 (A) STAKEHOLDER GROUPS.—The com-
3 mission shall be composed of representatives
4 from the following categories:

5 (i) DISABILITY.—Communities of per-
6 sons with disabilities for whom the accessi-
7 bility of postsecondary electronic instruc-
8 tional materials and related technologies is
9 a significant factor in ensuring equal par-
10 ticipation in higher education, and non-
11 profit organizations that provide accessible
12 electronic materials to these communities.

13 (ii) HIGHER EDUCATION.—Higher
14 education leadership, which includes: uni-
15 versity presidents, provosts, deans, vice
16 presidents, deans of libraries, chief infor-
17 mation officers, and other senior institu-
18 tional executives.

19 (iii) INDUSTRY.—Relevant industry
20 representatives, meaning—

21 (I) developers of postsecondary
22 electronic instructional materials; and

23 (II) manufacturers of related
24 technologies.

1 (B) APPOINTMENT OF MEMBERS.—The
2 commission members shall be appointed as fol-
3 lows:

4 (i) Six members, 2 from each category
5 described in subparagraph (A), shall be ap-
6 pointed by the Speaker of the House of
7 Representatives, 3 of whom shall be ap-
8 pointed on the recommendation of the ma-
9 jority leader of the House of Representa-
10 tives and 3 of whom shall be appointed on
11 the recommendation of the minority leader
12 of the House of Representatives, with the
13 Speaker ensuring that 1 developer of post-
14 secondary electronic instructional materials
15 and 1 manufacturer of related technologies
16 are appointed. The Speaker shall also ap-
17 point 2 additional members, 1 student with
18 a disability and 1 faculty member from an
19 institution of higher education.

20 (ii) Six members, 2 from each cat-
21 egory described in subparagraph (A), shall
22 be appointed by the President pro tempore
23 of the Senate, 3 of whom shall be ap-
24 pointed on the recommendation of the ma-
25 jority leader of the Senate and 3 of whom

1 shall be appointed on the recommendation
2 of the minority leader of the Senate, with
3 the President pro tempore ensuring that 1
4 developer of postsecondary electronic in-
5 structional materials and 1 manufacturer
6 of related technologies are appointed. The
7 President pro tempore shall also appoint 2
8 additional members, 1 student with a dis-
9 ability and 1 faculty member from an insti-
10 tution of higher education.

11 (iii) Three members, each of whom
12 must possess extensive, demonstrated tech-
13 nical expertise in the development and im-
14 plementation of accessible postsecondary
15 electronic instructional materials, shall be
16 appointed by the Secretary of Education.
17 One of these members shall represent post-
18 secondary students with disabilities, 1 shall
19 represent higher education leadership, and
20 1 shall represent developers of postsec-
21 ondary electronic instructional materials.

22 (C) ELIGIBILITY TO SERVE ON THE COM-
23 MISSION.—Federal employees are ineligible for
24 appointment to the commission. An appointee
25 to a volunteer or advisory position with a Fed-

1 eral agency or related advisory body may be ap-
2 pointed to the commission so long as his or her
3 primary employment is with a non-Federal enti-
4 ty and he or she is not otherwise engaged in fi-
5 nancially compensated work on behalf of the
6 Federal Government, exclusive of any standard
7 expense reimbursement or grant-funded activi-
8 ties.

9 (b) AUTHORITY AND ADMINISTRATION.—

10 (1) AUTHORITY.—The commission’s execution
11 of its duties shall be independent of the Secretary of
12 Education, the Attorney General, and the head of
13 any other agency or department of the Federal Gov-
14 ernment with regulatory or standard setting author-
15 ity in the areas addressed by the commission.

16 (2) ADMINISTRATION.—

17 (A) STAFFING.—There shall be no perma-
18 nent staffing for the commission.

19 (B) LEADERSHIP.—Commission members
20 shall elect a chairperson from among the 19 ap-
21 pointees to the commission.

22 (C) ADMINISTRATIVE SUPPORT.—The
23 Commission shall be provided administrative
24 support, as needed, by the Secretary of Edu-

1 cation through the Office of Postsecondary
2 Education of the Department of Education.

3 **SEC. 3. DUTIES OF THE COMMISSION.**

4 (a) PRODUCE VOLUNTARY GUIDELINES.—Not later
5 than 18 months after the date of enactment of this Act,
6 subject to a 6-month extension that it may exercise at its
7 discretion, the commission established in section 2 shall—

8 (1) develop and issue voluntary guidelines for
9 accessible postsecondary electronic instructional ma-
10 terials and related technologies; and

11 (2) in developing the voluntary guidelines, the
12 commission shall—

13 (A) establish a technical panel pursuant to
14 subsection (d) to support the commission in de-
15 veloping the voluntary guidelines;

16 (B) develop criteria for determining which
17 materials and technologies constitute “postsec-
18 ondary electronic instructional materials” and
19 “related technologies” as defined in paragraphs
20 (5) and (6) of section 7;

21 (C) identify existing national and inter-
22 national accessibility standards that are rel-
23 evant to student use of postsecondary electronic
24 instructional materials and related technologies
25 at institutions of higher education;

1 (D) identify and address any unique peda-
2 gogical and accessibility requirements of post-
3 secondary electronic instructional materials and
4 related technologies that are not addressed, or
5 not adequately addressed, by the identified, rel-
6 evant existing accessibility standards;

7 (E) identify those aspects of accessibility,
8 and types of postsecondary instructional mate-
9 rials and related technologies, for which the
10 commission cannot produce guidelines or which
11 cannot be addressed by existing accessibility
12 standards due to—

13 (i) inherent limitations of commer-
14 cially available technologies; or

15 (ii) the challenges posed by a specific
16 category of disability that covers a wide
17 spectrum of impairments and capabilities
18 which makes it difficult to assess the bene-
19 fits from particular guidelines on a cat-
20 egorical basis;

21 (F) ensure that the voluntary guidelines
22 are consistent with the requirements of section
23 504 of the Rehabilitation Act of 1973 (29
24 U.S.C. 794) and titles II and III of the Ameri-

1 cans with Disabilities Act (42 U.S.C. 12131 et
2 seq.; 42 U.S.C. 12181 et seq.);

3 (G) ensure that the voluntary guidelines
4 are consistent, to the extent feasible and appro-
5 priate, with the technical and functional per-
6 formance criteria included in the national and
7 international accessibility standards identified
8 by the commission as relevant to student use of
9 postsecondary electronic instructional materials
10 and related technologies;

11 (H) allow for the use of an alternative de-
12 sign or technology that results in substantially
13 equivalent or greater accessibility and usability
14 by individuals with disabilities than would be
15 provided by compliance with the voluntary
16 guidelines; and

17 (I) provide that where electronic instruc-
18 tional materials or related technologies that
19 comply fully with the voluntary guidelines are
20 not commercially available, or where such com-
21 pliance is not technically feasible, the institution
22 may select the product that best meets the vol-
23 untary guidelines consistent with the institu-
24 tion's business and pedagogical needs.

1 (b) PRODUCE ANNOTATED LIST OF INFORMATION
2 TECHNOLOGY STANDARDS.—Not later than 18 months
3 after the date of the enactment of this Act, subject to a
4 6-month extension that it may exercise at its discretion,
5 the commission established in section 2 shall, with the as-
6 sistance of the technical panel established under sub-
7 section (d), develop and issue an annotated list of informa-
8 tion technology standards.

9 (c) SUPERMAJORITY APPROVAL.—Issuance of the
10 voluntary guidelines and annotated list of information
11 technology standards shall require approval of at least 75
12 percent (at least 15) of the 19 members of the commis-
13 sion.

14 (d) ESTABLISHMENT OF TECHNICAL PANEL.—Not
15 later than 1 month after the Commission’s first meeting,
16 it shall appoint and convene a panel of 12 technical ex-
17 perts, each of whom shall have extensive, demonstrated
18 technical experience in developing, researching, or imple-
19 menting accessible postsecondary electronic instructional
20 materials or related technologies. The commission has dis-
21 cretion to determine a process for nominating, vetting, and
22 confirming a panel of experts that fairly represents the
23 stakeholder communities on the commission. The technical
24 panel shall include a representative from the United
25 States Access Board.

1 **SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY**
2 **GUIDELINES.**

3 Not later than 5 years after issuance of the voluntary
4 guidelines and annotated list of information technology
5 standards described in subsections (a) and (b) of section
6 3, and every 5 years thereafter, the Secretary of Edu-
7 cation shall publish a notice in the Federal Register re-
8 questing public comment about whether there is a need
9 to reconstitute the commission to update the voluntary
10 guidelines and annotated list of information technology
11 standards to reflect technological advances, changes in
12 postsecondary electronic instructional materials and re-
13 lated technologies, or updated national and international
14 accessibility standards. The Secretary shall submit a re-
15 port to Congress summarizing the public comments and
16 presenting the Secretary's decision on whether to reconsti-
17 tute the commission based on those comments. If the Sec-
18 retary decides to reconstitute the commission, the Sec-
19 retary may implement that decision 30 days after the date
20 on which the report was submitted to Congress. That
21 process shall begin with the Secretary requesting the ap-
22 pointment of commission members as detailed in section
23 2(a)(2)(B).

24 **SEC. 5. SAFE HARBOR PROTECTIONS.**

25 The following defenses from liability may be asserted
26 with respect to claims regarding the use of postsecondary

1 instructional materials and related technologies arising
2 under section 504 of the Rehabilitation Act of 1973 (29
3 U.S.C. 794) and titles II and III of the Americans with
4 Disabilities Act of 1990 (42 U.S.C. 12131 et seq. and
5 12181 et seq.), subject to the judicial review afforded
6 under those Acts and without limiting any other defenses
7 provided under those Acts:

8 (1) SAFE HARBOR FOR CONFORMING POSTSEC-
9 ONDARY ELECTRONIC INSTRUCTIONAL MATERIALS
10 AND RELATED TECHNOLOGIES.—An institution of
11 higher education that requires, provides, or both rec-
12 ommends and provides, postsecondary electronic in-
13 structional materials or related technologies that
14 conform to the voluntary guidelines shall be deemed
15 in compliance with, and qualify for a safe harbor
16 from liability in relation to, its obligations under sec-
17 tion 504 of the Rehabilitation Act of 1973 (29
18 U.S.C. 794) and titles II and III of the Americans
19 with Disabilities Act (42 U.S.C. 12131 et seq.; 42
20 U.S.C. 12181 et seq.) with respect to its selection of
21 such materials or technologies.

22 (2) LIMITED SAFE HARBOR FOR NONCON-
23 FORMING POSTSECONDARY ELECTRONIC INSTRU-
24 TIONAL MATERIALS OR RELATED TECHNOLOGIES.—
25 An institution of higher education that requires, pro-

1 provides, or both recommends and provides, postsec-
2 ondary electronic instructional materials or related
3 technologies that do not fully conform with the vol-
4 untary guidelines, but which institution otherwise
5 complies with all requirements set forth in subpara-
6 graphs (A), (B), and (C), will qualify for a limited
7 safe harbor from monetary damages under section
8 504 of the Rehabilitation Act of 1973 (29 U.S.C.
9 794) and titles II and III of the Americans with
10 Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C.
11 12181 et seq.), with available remedies under section
12 505 of the Rehabilitation Act of 1973 (29 U.S.C.
13 794a), section 103 of the Americans with Disabil-
14 ities Act of 1990 (42 U.S.C. 12133), and section
15 308 of such Act (42 U.S.C. 12188) limited to de-
16 claratory and injunctive relief, and for a prevailing
17 party other than the United States, a reasonable at-
18 torney's fee, if the institution—

19 (A) documented its efforts to incorporate
20 and use the voluntary guidelines in its policies
21 and practices regarding its selection or procure-
22 ment of postsecondary electronic instructional
23 materials and related technologies. These ef-
24 forts may include establishment of a written
25 policy regarding the institution's use of the vol-

1 untary guidelines, identifying the official(s) au-
2 thorized to approve the selection of noncon-
3 forming postsecondary electronic instructional
4 materials or related technologies, and proce-
5 dures used by the official(s) when making such
6 authorizations;

7 (B) documented instances where noncon-
8 forming postsecondary electronic instructional
9 materials or related technologies are selected or
10 procured, including an explanation of—

11 (i) the process utilized for identifying
12 accessible options in the marketplace;

13 (ii) the options considered, if any are
14 available;

15 (iii) the choice the institution ulti-
16 mately made and why;

17 (iv) what auxiliary aid or service, rea-
18 sonable modification, or other method the
19 institution will utilize to ensure that af-
20 fected students within categories of dis-
21 ability are afforded the rights to which
22 they are entitled under section 504 of the
23 Rehabilitation Act of 1973 (29 U.S.C.
24 794) and titles II and III of the Americans
25 with Disabilities Act (42 U.S.C. 12131 et

1 seq.; 42 U.S.C. 12181 et seq.), including
2 an equally effective opportunity to receive
3 the same educational benefit as afforded to
4 nondisabled students; and

5 (v) where a student or students with
6 disabilities are affected by nonconforming
7 instructional materials or related tech-
8 nologies, what auxiliary aid or service, rea-
9 sonable modification, or other method the
10 institution is using to ensure the student
11 or students are afforded the rights de-
12 scribed in clause (iv); and

13 (C) posted a link to an accessible copy of
14 the voluntary guidelines and annotated list of
15 information technology standards on a publicly
16 available page of its website.

17 **SEC. 6. CONSTRUCTION.**

18 (a) **NONCONFORMING POSTSECONDARY ELECTRONIC**
19 **INSTRUCTIONAL MATERIALS OR RELATED TECH-**
20 **NOLOGIES.**—Nothing in this Act shall be construed to re-
21 quire an institution of higher education to require, pro-
22 vide, or both recommend and provide, postsecondary elec-
23 tronic instructional materials or related technologies that
24 conform to the voluntary guidelines. However, an institu-
25 tion that selects or uses nonconforming postsecondary

1 electronic instructional materials or related technologies
2 must otherwise comply with existing obligations under sec-
3 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C.
4 794) and titles II and III of the Americans with Disabil-
5 ities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et
6 seq.) to provide access to the educational benefit afforded
7 by such materials and technologies through provision of
8 appropriate and reasonable modification, accommodation,
9 and auxiliary aids or services.

10 (b) RELATIONSHIP TO EXISTING LAWS AND REGU-
11 LATIONS.—With respect to the Americans with Disabil-
12 ities Act of 1990 (42 U.S.C. 12101 et seq.) and the Reha-
13 bilitation Act of 1973 (29 U.S.C. 701 et seq.), except as
14 provided in section 5, nothing in this Act may be con-
15 strued—

16 (1) to authorize or require conduct prohibited
17 under the Americans with Disabilities Act of 1990
18 and the Rehabilitation Act of 1973, including the
19 regulations issued pursuant to those laws;

20 (2) to expand, limit, or alter the remedies or de-
21 fenses under the Americans with Disabilities Act of
22 1990 and the Rehabilitation Act of 1973;

23 (3) to supersede, restrict, or limit the applica-
24 tion of the Americans with Disabilities Act of 1990
25 and the Rehabilitation Act of 1973; or

1 (4) to limit the authority of Federal agencies to
2 issue regulations pursuant to the Americans with
3 Disabilities Act of 1990 and the Rehabilitation Act
4 of 1973.

5 (c) VOLUNTARY NATURE OF THE PRODUCTS OF THE
6 COMMISSION.—

7 (1) VOLUNTARY GUIDELINES.—It is the intent
8 of the Congress that use of the voluntary guidelines
9 developed pursuant to this Act is and should remain
10 voluntary. The voluntary guidelines shall not confer
11 any rights or impose any obligations on commission
12 participants, institutions of higher education, or
13 other persons, except for the legal protections set
14 forth in section 5. Thus, no department or agency
15 of the Federal Government may incorporate the vol-
16 untary guidelines, whether produced as a discrete
17 document or electronic resource, into regulations
18 promulgated under the Rehabilitation Act, the
19 Americans with Disabilities Act, or any other Fed-
20 eral law or instrument. This restriction applies only
21 to the voluntary guidelines as a discrete document or
22 resource; it imposes no limitation on Federal use of
23 standards or resources to which the voluntary guide-
24 lines may refer.

1 (2) ANNOTATED LIST.—It is the intent of Con-
2 gress that use of the annotated list of information
3 technology standards developed pursuant to this Act
4 is and should remain voluntary. The Annotated List
5 shall not confer any rights or impose any obligations
6 on Commission participants, institutions of higher
7 education, or other persons. Thus, no department or
8 agency of the Federal Government may incorporate
9 the Annotated List, whether produced as a discrete
10 document or electronic resource into regulations pro-
11 mulgated under the Rehabilitation Act, the Ameri-
12 cans with Disabilities Act, or any other Federal law
13 or instrument. This provision applies only to the An-
14 notated List as a discrete document or resource; it
15 imposes no limitation on Federal use of standards or
16 resources to which the Annotated List may refer.

17 **SEC. 7. DEFINITIONS.**

18 In this Act the following definitions apply:

19 (1) ANNOTATED LIST OF INFORMATION TECH-
20 NOLOGY STANDARDS.—The term “annotated list of
21 information technology standards” means a list of
22 existing national and international accessibility
23 standards relevant to student use of postsecondary
24 electronic instructional materials and related tech-
25 nologies, and to other types of information tech-

1 nology common to institutions of higher education
2 (such as institutional websites and class registration
3 systems), annotated by the commission established
4 pursuant to section 2 to provide information about
5 the applicability of such standards in higher edu-
6 cation settings. The annotated list of information
7 technology standards is intended to serve solely as a
8 reference tool to inform any consideration of the rel-
9 evance of such standards in higher education con-
10 texts.

11 (2) DISABILITY.—The term “disability” has the
12 meaning given such term in section 3 of the Ameri-
13 cans with Disabilities Act of 1990 (42 U.S.C.
14 12102).

15 (3) INSTITUTION OF HIGHER EDUCATION.—The
16 term “institution of higher education” has the
17 meaning given such term in section 101 of the High-
18 er Education Act of 1965 (20 U.S.C. 1001).

19 (4) NONCONFORMING POSTSECONDARY ELEC-
20 TRONIC INSTRUCTIONAL MATERIALS OR RELATED
21 TECHNOLOGIES.—The term “nonconforming mate-
22 rials or related technologies” means postsecondary
23 electronic instructional materials or related tech-
24 nologies that do not conform to the voluntary guide-
25 lines to be developed pursuant to this Act.

1 (5) POSTSECONDARY ELECTRONIC INSTRU-
2 TIONAL MATERIALS.—The term “postsecondary elec-
3 tronic instructional materials” means digital cur-
4 ricular content that is required, provided, or both
5 recommended and provided by an institution of high-
6 er education for use in a postsecondary instructional
7 program.

8 (6) RELATED TECHNOLOGIES.—The term “re-
9 lated technologies” refers to any software, applica-
10 tions, learning management or content management
11 systems, and hardware that an institution of higher
12 education requires, provides, or both recommends
13 and provides for student access to and use of post-
14 secondary electronic instructional materials in a
15 postsecondary instructional program.

16 (7) TECHNICAL PANEL.—The term “technical
17 panel” means a group of experts with extensive,
18 demonstrated technical experience in the develop-
19 ment and implementation of accessibility features for
20 postsecondary electronic instructional materials and
21 related technologies, established by the Commission
22 pursuant to section 3(d), which will assist the com-
23 mission in the development of the voluntary guide-
24 lines and annotated list of information technology
25 standards authorized under this Act.

1 (8) VOLUNTARY GUIDELINES.—The term “vol-
2 untary guidelines” means a set of technical and
3 functional performance criteria to be developed by
4 the commission established pursuant to section 2
5 that provide specific guidance regarding both the ac-
6 cessibility and pedagogical functionality of postsec-
7 ondary electronic instructional materials and related
8 technologies not addressed, or not adequately ad-
9 dressed, by existing accessibility standards.

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