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.

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.

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 “Accessible Instructional Materials in Higher Education Act” or the “AIM HEA Act”.

SEC. 2. COMMISSION STRUCTURE.

(a) Establishment of Commission.—
(1) IN GENERAL.—The Speaker of the House of Representatives, the President pro tempore of the Senate, and the Secretary of Education shall establish an independent commission, comprised of key stakeholders, to develop voluntary guidelines for accessible postsecondary electronic instructional materials and related technologies in order—

(A) to ensure students with disabilities are afforded the same educational benefits provided to nondisabled students through the use of electronic instructional materials and related technologies;

(B) to inform better the selection and use of such materials and technologies at institutions of higher education; and

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

In fulfilling this duty, the commission shall review applicable national and international information technology accessibility standards, which it will compile and annotate as an additional information resource for institutions of higher education and companies that service the higher education market.

(2) MEMBERSHIP.—
(A) **Stakeholder Groups.**—The commission shall be composed of representatives from the following categories:

(i) **Disability.**—Communities of persons with disabilities for whom the accessibility of postsecondary electronic instructional materials and related technologies is a significant factor in ensuring equal participation in higher education, and nonprofit organizations that provide accessible electronic materials to these communities.

(ii) **Higher Education.**—Higher education leadership, which includes: university presidents, provosts, deans, vice presidents/deans of libraries, chief information officers, and other senior institutional executives.

(iii) **Industry.**—Relevant industry representatives, meaning—

(I) developers of postsecondary electronic instructional materials; and

(II) manufacturers of related technologies.
(B) APPOINTMENT OF MEMBERS.—The commission members shall be appointed as follows:

(i) 6 members, 2 from each category described in subparagraph (A), shall be appointed by the Speaker of the House of Representatives, 3 of whom shall be appointed on the recommendation of the majority leader of the House of Representatives and 3 of whom shall be appointed on the recommendation of the minority leader of the House of Representatives, with the Speaker ensuring that 1 developer of post-secondary electronic instructional materials and 1 manufacturer of related technologies are appointed. The Speaker shall also appoint 2 additional members, 1 student with a disability and 1 faculty member from an institution of higher education.

(ii) 6 members, 2 from each category described in subparagraph (A), shall be appointed by the President pro tempore of the Senate, 3 of whom shall be appointed on the recommendation of the majority leader of the Senate and 3 of whom shall
be appointed on the recommendation of the minority leader of the Senate, with the President pro tempore ensuring that 1 developer of postsecondary electronic instructional materials and 1 manufacturer of related technologies are appointed. The President pro tempore shall also appoint 2 additional members, 1 student with a disability and 1 faculty member from an institution of higher education.

(iii) 3 members, each of whom must possess extensive, demonstrated technical expertise in the development and implementation of accessible postsecondary electronic instructional materials, shall be appointed by the Secretary of Education. 1 of these members shall represent postsecondary students with disabilities, 1 shall represent higher education leadership, and 1 shall represent developers of postsecondary electronic instructional materials.

(C) ELIGIBILITY TO SERVE ON THE COMMISSION.—Federal employees are ineligible for appointment to the commission. An appointee to a volunteer or advisory position with a Fed-
eral agency or related advisory body may be ap-
pointed to the commission so long as his or her
primary employment is with a non-Federal enti-
ty and he or she is not otherwise engaged in fi-
nancially compensated work on behalf of the
Federal Government, exclusive of any standard
expense reimbursement or grant-funded activi-
ties.

(b) Authority and Administration.—

(1) Authority.—The commission’s execution
of its duties shall be independent of the Secretary of
Education, the Attorney General, and the head of
any other agency or department of the Federal Gov-
ernment with regulatory or standard setting author-
ity in the areas addressed by the commission, none
of whom shall have any authority to review or revise
the voluntary guidelines or annotated list of informa-
tion technology standards produced by the commis-
sion under this Act.

(2) Administration.—

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

(B) Leadership.—Commission members
shall elect a chairperson from among the 19 ap-
pointees to the commission.
(C) Administrative Support.—The Commission shall be provided administrative support, as needed, by the Secretary of Education through the Office of Postsecondary Education of the Department of Education.

SEC. 3. DUTIES OF THE COMMISSION.

(a) Produce Voluntary Guidelines.—Not later than eighteen months after the date of enactment of this Act, subject to a 6-month extension that it may exercise at its discretion, the commission established in section 2 shall—

(1) develop and issue voluntary guidelines for accessible postsecondary electronic instructional materials, and related technologies; and

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

(A) establish a technical panel pursuant to subsection (d) to support the commission in developing the voluntary guidelines;

(B) develop criteria for determining which materials and technologies constitute “postsecondary electronic instructional materials” and “related technologies” as defined in paragraphs (5) and (6) of section 7;
(C) identify existing national and international accessibility standards that are relevant to student use of postsecondary electronic instructional materials and related technologies at institutions of higher education;

(D) identify and address any unique pedagogical and accessibility requirements of postsecondary electronic instructional materials and related technologies that are not addressed, or not adequately addressed, by the identified, relevant existing accessibility standards;

(E) identify those aspects of accessibility, and types of postsecondary instructional materials and related technologies, for which the commission cannot produce guidelines or which cannot be addressed by existing accessibility standards due to—

(i) inherent limitations of commercially available technologies; or

(ii) the challenges posed by a specific category of disability that covers a wide spectrum of impairments and capabilities which makes it difficult to assess the benefits from particular guidelines on a categorical basis;
(F) ensure that the voluntary guidelines are consistent with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.);

(G) ensure that the voluntary guidelines are consistent, to the extent feasible and appropriate, with the technical and functional performance criteria included in the national and international accessibility standards identified by the commission as relevant to student use of postsecondary electronic instructional materials and related technologies;

(H) allow for the use of an alternative design or technology that results in substantially equivalent or greater accessibility and usability by individuals with disabilities than would be provided by compliance with the voluntary guidelines; and

(I) provide that where electronic instructional materials, or related technologies, that comply fully with the voluntary guidelines are not commercially available, or where such compliance is not technically feasible, the institution
may select the product that best meets the voluntary guidelines consistent with the institution’s business and pedagogical needs.

(b) **PRODUCE ANNOTATED LIST OF INFORMATION TECHNOLOGY STANDARDS.**—Not later than 18 months after the date of the enactment of this Act, subject to a 6-month extension that it may exercise at its discretion, the commission established in section 2 shall, with the assistance of the technical panel established under subsection (d), develop and issue an annotated list of information technology standards.

(c) **SUPERMAJORITY APPROVAL.**—Issuance of the voluntary guidelines and annotated list of information technology standards shall require approval of at least 75 percent (at least 15) of the 19 members of the commission.

(d) **ESTABLISHMENT OF TECHNICAL PANEL.**—Not later than 1 month after the Commission’s first meeting, it shall appoint and convene a panel of 12 technical experts, each of whom shall have extensive, demonstrated technical experience in developing, researching, or implementing accessible postsecondary electronic instructional materials, or related technologies. The commission has discretion to determine a process for nominating, vetting, and confirming a panel of experts that fairly represents
the stakeholder communities on the commission. The technical panel shall include a representative from the United States Access Board.

SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY GUIDELINES.

Not later than 5 years after issuance of the voluntary guidelines and annotated list of information technology standards described in subsections (a) and (b) of section 3, and every 5 years thereafter, the Secretary of Education shall publish a notice in the Federal Register requesting public comment about whether there is a need to reconstitute the commission to update the voluntary guidelines and annotated list of information technology standards to reflect technological advances, changes in postsecondary electronic instructional materials and related technologies, or updated national and international accessibility standards. The Secretary shall then submit a report and recommendation to Congress regarding whether the commission should be reconstituted.

SEC. 5. SAFE HARBOR PROTECTIONS.

(a) SAFE HARBOR FOR CONFORMING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS AND RELATED TECHNOLOGIES.—An institution of higher education that requires, provides, or both recommends and provides, postsecondary electronic instructional materials
or related technologies that conform to the voluntary
guidelines shall be deemed in compliance with, and qualify
for a safe harbor from liability in relation to, its obliga-
tions under section 504 of the Rehabilitation Act of 1973
(29 U.S.C. 794) and titles II and III of the Americans
with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C.
12181 et seq.) with respect to its selection of such mate-
rials or technologies.

(b) **Limited Safe Harbor for Non-Conforming Postsecondary Electronic Instructional Materials or Related Technologies.**—An institution of higher education that requires, provides, or both rec-
ommends and provides, postsecondary electronic instruc-
tional materials or related technologies that do not fully
conform with the voluntary guidelines, but which institu-
tion otherwise complies with all requirements set forth in
paragraphs (1), (2), and (3), will qualify for a limited safe
harbor from monetary liability under section 504 of the
Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II
and III of the Americans with Disabilities Act (42 U.S.C.
12131 et seq.; 42 U.S.C. 12181 et seq.), with available
remedies under section 505 of the Rehabilitation Act of
1973 (29 U.S.C. 794a), section 103 of Americans with
Disabilities Act of 1990 (42 U.S.C. 12133), and section
308 of such Act (42 U.S.C. 12188) limited to declaratory
and injunctive relief, and for a prevailing party other than the United States, a reasonable attorney’s fee, if the institution—

(1) documented its efforts to incorporate and use the voluntary guidelines in its policies and practices regarding its selection or procurement of post-secondary electronic instructional materials and related technologies. These efforts may include establishment of a written policy regarding the institution’s use of the voluntary guidelines, identifying the official(s) authorized to approve the selection of non-conforming postsecondary electronic instructional materials or related technologies, and procedures used by the official(s) when making such authorizations;

(2) documented instances where non-conforming postsecondary electronic instructional materials or related technologies are selected or procured, including an explanation of—

(A) the process utilized for identifying accessible options in the marketplace;

(B) the options considered, if any are available;

(C) the choice the institution ultimately made and why;
(D) what auxiliary aid or service, reasonable modification, or other method the institution will utilize to ensure that affected students within categories of disability are afforded the rights to which they are entitled under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.), including an equally effective opportunity to receive the same educational benefit as afforded to non-disabled students; and

(E) where a student, or students, with disabilities are affected by non-conforming instructional materials or related technologies, what auxiliary aid or service, reasonable modification, or other method the institution is using to ensure the student or students are afforded the rights described in subparagraph (D); and

(3) posted a link to an accessible copy of the voluntary guidelines and annotated list of information technology standards on a publicly available page of its website.
SEC. 6. CONSTRUCTION.

(a) Non-Conforming Postsecondary Electronic Instructional Materials or Related Technologies.—Nothing in this Act shall be construed to require an institution of higher education to require, provide, or both recommend and provide, postsecondary electronic instructional materials or related technologies that conform to the voluntary guidelines. However, an institution that selects or uses non-conforming postsecondary electronic instructional materials or related technologies must otherwise comply with existing obligations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.) to provide access to the educational benefit afforded by such materials and technologies through provision of appropriate and reasonable modification, accommodation, and auxiliary aids or services.

(b) Relationship to Existing Laws and Regulations.—With respect to the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except as provided in section 5, nothing in this Act may be construed—
(1) to authorize or require conduct prohibited under such Acts, including the regulations issued pursuant to those laws;

(2) to expand, limit, or alter the remedies or defenses under such Acts;

(3) to supersede, restrict, or limit the application of such Acts; or

(4) to limit the authority of Federal agencies to issue regulations pursuant to such Acts.

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

(1) VOLUNTARY GUIDELINES.—It is the intent of the Congress that use of the voluntary guidelines developed pursuant to this Act is and should remain voluntary. The voluntary guidelines shall not confer any rights or impose any obligations on commission participants, institutions of higher education, or other persons, except for the legal protections set forth in section 5. Thus, no department or agency of the Federal Government may incorporate the voluntary guidelines, whether produced as a discrete document or electronic resource, into regulations promulgated under any Federal law. This restriction applies only to the voluntary guidelines as a discrete document or resource; it imposes no limitation on
Federal use of standards or resources to which the voluntary guidelines may refer.

(2) **ANNOTATED LIST.**—It is the intent of Congress that use of the annotated list of information technology standards developed pursuant to this Act is and should remain voluntary. The Annotated List shall not confer any rights or impose any obligations on Commission participants, institutions of higher education, or other persons. Thus, no department or agency of the Federal Government may incorporate the Annotated List, whether produced as a discrete document or electronic resource into regulations promulgated under the Rehabilitation Act, the Americans with Disabilities Act, or any other Federal law or instrumentality. This provision applies only to the Annotated List as a discrete document or resource; it imposes no limitation on Federal use of standards or resources to which the Annotated List may refer.

**SEC. 7. DEFINITIONS.**

In this Act:

(1) **ANNOTATED LIST OF INFORMATION TECHNOLOGY STANDARDS.**—The term “annotated list of information technology standards” means a list of existing national and international accessibility standards relevant to student use of postsecondary
electronic instructional materials and related technologies, and to other types of information technology common to institutions of higher education (such as institutional websites and class registration systems), annotated by the commission established pursuant to section 2 to provide information about the applicability of such standards in higher education settings. The annotated list of information technology standards is intended to serve solely as a reference tool to inform any consideration of the relevance of such standards in higher education contexts.

(2) DISABILITY.—The term “disability” has the meaning given such term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

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

(4) NON-CONFORMING POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATERIALS OR RELATED TECHNOLOGIES.—The term “non-conforming materials or related technologies” means postsecondary electronic instructional materials or related tech-
nologies that do not conform to the voluntary guidelines to be developed pursuant to this Act.

(5) Postsecondary Electronic Instructional Materials.—The term “postsecondary electronic instructional materials” means digital curricular content that is required, provided, or both recommended and provided by an institution of higher education for use in a postsecondary instructional program.

(6) Related Technologies.—The term “related technologies” refers to any software, applications, learning management or content management systems, and hardware that an institution of higher education requires, provides, or both recommends and provides for student access to and use of postsecondary electronic instructional materials in a postsecondary instructional program.

(7) Technical Panel.—The term “technical panel” means a group of experts with extensive, demonstrated technical experience in the development and implementation of accessibility features for postsecondary electronic instructional materials and related technologies, established by the Commission pursuant to section 3(d), which will assist the commission in the development of the voluntary guide-
lines and annotated list of information technology standards authorized under this Act.

(8) VOLUNTARY GUIDELINES.—The term “voluntary guidelines” means a set of technical and functional performance criteria to be developed by the commission established pursuant to section 2 that provide specific guidance regarding both the accessibility and pedagogical functionality of postsecondary electronic instructional materials and related technologies not addressed, or not adequately addressed, by existing accessibility standards.