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## A BILL FOR AN ACT

RELATING TO DISCRIMINATION IN EDUCATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that Title IX of the  
2 Education Amendments of 1972 (20 U.S.C. 1681 et seq.), renamed  
3 the Patsy Mink Equal Opportunity in Education Act in 2002,  
4 triggered a seismic shift in the education landscape by  
5 prohibiting discrimination on the basis of sex by any education  
6 program or activity receiving federal funds. The legislature  
7 also finds that Hawaii is rightfully proud of Patsy Mink's  
8 signature legislation, which has given millions of girls and  
9 women educational opportunities that were undreamed of before  
10 enactment of Title IX, in the classroom and on the playing  
11 fields, in research, teaching, and graduate schools, and in  
12 employment, medicine, law, and other professions. The  
13 legislature recognizes, however, that Patsy Mink's celebrated  
14 legacy has not been fully realized, and that the efficacy of  
15 Title IX federal protections against sex discrimination in  
16 education has been diminished and eroded. For these reasons,



1 the legislature believes it is time to consider and address the  
2 need for a corollary to Title IX in state law.

3 The legislature recognizes that under the federal courts'  
4 interpretation of Title IX, a student who is subjected to sexual  
5 harassment has no claim for relief under Title IX absent a  
6 showing of "deliberate indifference." This is the federal  
7 standard applied to the abuse of prisoners, and it is far  
8 narrower than the standard applied in sexual harassment cases in  
9 an employment setting. In the absence of a state Title IX  
10 corollary, a minor student who is the victim of sexual  
11 harassment or sexual assault that was perpetrated at school by  
12 an adult employee or administrator will have no effective civil  
13 rights protection. In contrast, similarly situated teachers,  
14 custodians, counselors, office staff, and administrators will be  
15 effectively protected under state and federal fair employment  
16 laws, specifically, part I of chapter 378, Hawaii Revised  
17 Statutes, and Title VII of the Civil Rights Act of 1964 (42  
18 U.S.C. 2000e et seq.), respectively. As a result, adult  
19 employees are presently protected against sexual harassment in  
20 state educational programs, while students, including children,  
21 are not.



1       The legislature is further aware that in 2017, the Trump  
2 Administration reversed the federal government's previous  
3 interpretation of the prohibition against discrimination based  
4 on "sex" that included discrimination based on sexual  
5 orientation and gender identity and expression. It also issued  
6 an interim rule rescinding its guidance on the investigation of  
7 campus sex assaults. These rollbacks in federal Title IX  
8 protections highlight the need for a state Title IX corollary to  
9 protect the students entrusted to our schools from sex  
10 discrimination, including sexual harassment and sexual assault.

11       Accordingly, the purpose of this Act is to provide for a  
12 state corollary to Title IX that prohibits discrimination on the  
13 basis of sex, including gender identity or expression, or sexual  
14 orientation, in any state educational program or activity, or in  
15 any educational program or activity that receives state  
16 financial assistance, without regard to whether the educational  
17 program or activity also receives federal funds.

18       It is the intent of the legislature that placement of this  
19 new protection in chapter 368, Hawaii Revised Statutes, will  
20 provide for enforcement procedures and remedies under that



chapter, as well as rulemaking, by the Hawaii civil rights commission.

SECTION 2. Chapter 368, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§368- State educational programs and activities; discrimination prohibited. (a) No person in the State, on the basis of sex, including gender identity or expression, or sexual orientation, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under:

(1) Any state educational program or activity; or

(2) Any educational program or activity that receives state financial assistance.

(b) Nothing shall preclude any student of a state educational program or activity, or an educational program or activity that receives state financial assistance, from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a notice of right to sue on a complaint



1 filed with the commission if it determines that a civil action  
 2 alleging similar facts has been filed in circuit court.

3 (c) As used in this section:

4 "Educational program or activity that receives state  
 5 financial assistance" means any educational program or activity  
 6 that receives state financial assistance, in any amount, for any  
 7 purpose. The term does not exclude an educational program or  
 8 activity that also receives federal funds.

9 "State educational program or activity" includes an  
 10 educational program or activity of the University of Hawaii, the  
 11 department of education, and public charter schools."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on January 1, 2019.

14 INTRODUCED BY:

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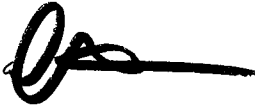
H.B. NO. 2139



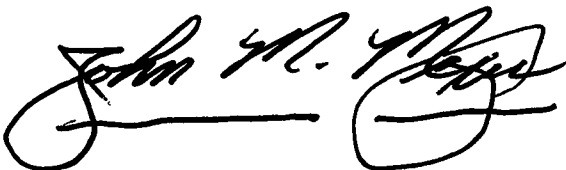


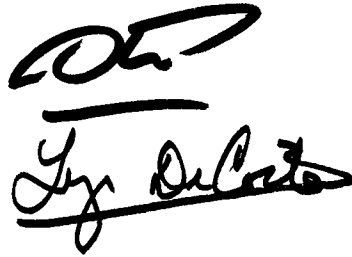












JAN 19 2018



# H.B. NO. 2139

**Report Title:**

Education; Civil Rights; Discrimination; Sex; Sexual Orientation; Gender Identity; Gender Expression

**Description:**

Prohibits discrimination on the basis of sex, including gender identity or expression, or sexual orientation, in any state educational program or activity, or in any educational program or activity that receives state financial assistance. Takes effect 1/1/2019.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

