

JAN 19 2018

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



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

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

6 "§368- State educational programs and activities;
7 discrimination prohibited. (a) No person in the State, on the
8 basis of sex, including gender identity or expression, or sexual
9 orientation, shall be excluded from participation in, be denied
10 the benefits of, or be subjected to discrimination under:

- 11 (1) Any state educational program or activity; or
12 (2) Any educational program or activity that receives
13 state financial assistance.

14 (b) Nothing shall preclude any student of a state
15 educational program or activity, or an educational program or
16 activity that receives state financial assistance, from bringing
17 a civil action for sexual harassment or sexual assault and
18 infliction of emotional distress or invasion of privacy related
19 thereto; provided that notwithstanding section 368-12, the
20 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.

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S.B. NO. 2353

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.

