

GOV. MSG. NO. 1344

EXECUTIVE CHAMBERS

DAVID Y. IGE GOVERNOR

7/6/2022

The Honorable Ronald D. Kouchi, President and Members of the Senate Thirty-First State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813 The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives Thirty-First State Legislature State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on 7/6/2022, the following bill was signed into law:

HB1775 HD2 SD3 CD1

RELATING TO CIVIL RIGHTS. ACT 242

Sincerely,

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DAVID Y. IGE Governor, State of Hawai'i

Approved by the Governor

on \_\_\_\_\_ JUL 0 6 2022

HOUSE OF REPRESENTATIVES THIRTY-FIRST LEGISLATURE, 2022 STATE OF HAWAII

**ACT** 242 H.B. NO. 1775 H.D. 2 S.D. 3 C.D. 1

## A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

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

1 SECTION 1. The legislature finds that 2022 is the fiftieth 2 anniversary of the Patsy Takemoto Mink Equal Opportunity in 3 Education Act, otherwise known as Title IX of the Education 4 Amendments of 1972 (20 U.S.C. 1681 et seq.) or simply 5 "Title IX". Hawaii is proud of Congresswoman Mink's signature 6 legislation, which has given millions of girls and women 7 educational opportunities that were undreamed of before the 8 enactment of Title IX, in the classroom and on the playing 9 field; in research, teaching, and graduate schools; and in science, medicine, law, and other professions. 10

11 The legislature finds that Act 110, Session Laws of Hawaii 12 2018, created a state corollary to Title IX by prohibiting 13 discrimination on the basis of sex, including gender identity or 14 expression, or sexual orientation, in any state educational 15 program or activity, or in any educational program or activity 16 that receives state financial assistance. The purpose of Act 17 110 was to address the weakening of federal Title IX protections

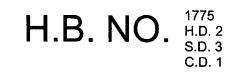
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1 for victims of sex discrimination and harassment. The 2 legislature created a high standard in state law to avoid the 3 erosion and shifts in interpretation by the federal government, as between the Obama and Trump administrations. Similar to 4 other civil rights laws in Hawaii, the federal law is a "floor" 5 beneath which state protections against discrimination cannot 6 drop, rather than a "ceiling" above which state law protections 7 8 cannot rise. California Federal Savings and Loan Association v. Guerra, 479 U.S. 272, 285 (1987). Pursuant to the exclusive 9 10 jurisdiction of the legislature to identify laws of statewide 11 concern, granted under article X, section 6, of the Hawaii State 12 Constitution, the legislature additionally finds that ensuring 13 the prohibition of discrimination on the basis of sex, including 14 gender identity or expression, or sexual orientation, is a matter of statewide concern. 15

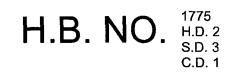
In order to preserve Congresswoman Mink's intent to provide equal opportunity in education, further clarification of section 368D-1, Hawaii Revised Statutes, is required, as well as annual data reporting from the University of Hawaii, the department of education, and state public charter school commission, to ensure that the needs of victims of unlawful sex-based discrimination,

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1	including sexual harassment, gender-based harassment, and sexual
2	assault, are properly addressed.
3	Accordingly, the purpose of this Act is to:
4	(1) Require annual reporting by the University of Hawaii,
5	the department of education, and state public charter
6	school commission to the legislature on the number and
7	types of Title IX cases and other relevant
8	information; and
9	(2) Appropriate funds to the department of education for
10	equity training.
11	SECTION 2. Chapter 368D, Hawaii Revised Statutes, is
12	amended by adding three new sections to be appropriately
13	designated and to read as follows:
14	"§368D- Purpose; scope; construction. (a) The purpose
15	of this chapter is to provide a framework for the state law
16	corollary to Title IX that is established by section 368D-1.
17	(b) Nothing in this chapter shall be construed to
18	prohibit:
19	(1) The membership practices of social fraternities or
20	sororities or voluntary youth service organizations,
21	as set forth in title 20 United States Code section

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1		1681(a)(6), as that section was in effect on
2		January 1, 2019;
3	(2)	Any educational institution receiving state funds from
4		maintaining separate living facilities for different
5		sexes, as set forth in title 20 United States Code
6		section 1686, as that section was in effect on
7		January 1, 2019; or
8	(3)	An educational institution from administering, or
9		assisting in administering a scholarship, fellowship,
10		or other form of financial assistance pursuant to a
11		domestic or foreign will, trust, bequest, or similar
12		instrument that requires awards to be made to members
13		of a particular sex specified therein; provided that
14		the overall effect of sex-restricted financial
15		assistance shall not discriminate on the basis of sex,
16		as set forth in title 34 Code of Federal Regulations
17		section 106.37(b)(1), as that section was in effect on
18		January 1, 2019.
19	<u>\$368</u>	D- Definitions. As used in this chapter:
20	"Cov	ered educational program or activity" means:

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1	(1)	The University of Hawaii, the department of education,
2		or public charter schools; or
3	(2)	Any educational program or activity that receives
4		state financial assistance, in any amount, for any
5		purpose; provided that this term does not exclude an
6		educational program or activity that also receives
7		federal funds.
8	"Cove	ered entity" means an entity having a covered
9	education	al program or activity.
10	<u>"Edu</u>	cational program or activity" means an educational
11	program o	r activity provided by or under a:
12	(1)	Private school that teaches students in any grade from
13		kindergarten through grade twelve and that is licensed
14		or accredited by the Hawaii Association of Independent
15		Schools, Hawaii Council of Private Schools, Western
16		Association of Schools and Colleges, Western Catholic
17		Educational Association, Association of Christian
18		Schools International, or a similarly recognized
19		entity that meets or exceeds the standards set by the
20		aforementioned entities;

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1	(2) Private trade, vocational, or technical schools, as
2	defined in section 302A-101; or
3	(3) Private university or college.
4	"Title IX" refers to the federal Education Amendments of
5	1972, codified as title 20 United States Code section 1681 et
6	seq.
7	<b>§368D-</b> Annual report to legislature. No later than
8	September 1 of each year, the University of Hawaii, department
9	of education, and state public charter school commission shall
10	submit to the legislature a report that includes information
11	pertaining to the immediately preceding school year, as follows:
12	(1) The University of Hawaii shall include in its report
13	to the legislature:
14	(A) The total number of complaints alleging a
15	violation of this chapter or Title IX that were
16	received by the university, and the number of
17	complaints received in each of the following
18	categories:
19	(i) The number of complaints received at each
20	campus of the university;

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1	<u>(ii)</u>	The types of complaints, including but not
2		limited to sexual harassment, gender-based
3		harassment, sexual assault, domestic
4		violence, or stalking; and
5	(iii)	The number of confidential complaints,
6		informal complaints, and formal complaints,
7		as applicable;
8	<u>(B)</u> Of t	he total number of complaints for each campus
9	repo	rted under subparagraph (A), the number of
10	comp	laints involving:
11	<u>(i)</u>	A student complainant and a student
12		respondent;
13	<u>(ii)</u>	A student complainant and an employee
14		respondent;
15	<u>(iii)</u>	An employee complainant and an employee
16		respondent; and
17	<u>(iv)</u>	An employee complainant and a student
18		respondent;
19	<u>(C)</u> Of t	he total number of complaints for each campus
20	repo	rted under subparagraph (A), the number of
21	comp	laints in which:

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1		<u>(i)</u>	An investigation was commenced but a
2			decision has not yet been rendered;
3		<u>(ii)</u>	An investigation was completed and a
4			decision was rendered; and
5		<u>(iii)</u>	A party has filed an appeal, and the appeal
6			is pending;
7		(D) The	percentage of employees at each campus of the
8		univ	versity who have completed a training course
9		on t	the university's Title IX policies and
10		prod	cedures, and on any other policies and
11		proc	cedures adopted by the university in
12		acco	ordance with this chapter; and
13		(E) The	percentage of students enrolled at each
14		cam	ous of the university who have completed a
15		tra	ining course on the university's Title IX
16		pol	icies and procedures, and on any other
17		pol	icies and procedures adopted by the university
18		in	accordance with this chapter; and
19	(2)	The depa	rtment of education and the state public
20		charter	school commission shall include in their
21		respecti	ve reports to the legislature:

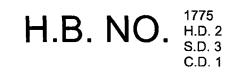
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1	(A) The total number of complaints alleging a
2	violation of this chapter or Title IX that were
3	received by the department of education or public
4	charter school, as applicable, and the number of
5	complaints received in each of the following
б	categories:
7	(i) The number of complaints received at each
8	department of education complex area or
9	public charter school, as applicable; and
10	(ii) The types of complaints, including but not
11	limited to sexual harassment, gender-based
12	harassment, sexual assault, domestic
13	violence, or stalking;
14	(B) Of the total number of complaints reported under
15	subparagraph (A) for each department of education
16	complex area or public charter school, as
17	applicable, the number of complaints involving:
18	(i) A student complainant and a student
19	respondent;
20	(ii) A student complainant and an employee
21	respondent;

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1	(iii) An employee complainant and an employee
2	respondent; and
3	(iv) An employee complainant and a student
4	respondent;
5	(C) Of the total number of complaints reported under
6	subparagraph (A) for each department of education
7	complex area or public charter school, as
8	applicable, the number of complaints in which:
9	(i) An investigation was commenced but a
10	decision has not yet been rendered;
11	(ii) An investigation was completed and a
12	decision was rendered; and
13	(iii) A party has filed an appeal, and the appeal
14	is pending; and
15	(D) For the department of education or a public
16	charter school, the percentage of teachers,
17	counselors, principals, and vice-principals,
18	disaggregated by complex area or public charter
19	school, as applicable, who have completed a
20	training course on the department or public
21	charter school's Title IX policies and

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1	procedures, and on any other policies and
2	procedures adopted by the department or public
3	charter school in accordance with this chapter;
4	provided that all public charter schools shall submit
5	the information required under this section to the
6	state public charter school commission, in a form
7	prescribed by the commission, no later than August 1
8	of each year."
9	SECTION 3. Section 368D-1, Hawaii Revised Statutes, is
10	amended to read as follows:
11	"§368D-1 [State] Covered educational programs and
12	activities; discrimination prohibited. (a) No person in the
13	State, on the basis of sex, including gender identity or
14	expression as defined in section 489-2, or sexual orientation as
15	defined in section 489-2, shall be excluded from participation
16	in, be denied the benefits of, or be subjected to discrimination
17	under[+
18	(1) Any state educational program or activity; or
19	(2) Any educational program or activity that receives
20	state financial assistance.] any covered educational
21	program or activity.

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1	[ <del>(b) Nothing in this chapter shall be construed to</del>
2	prohibit the membership practices of social fraternities or
3	sororities or voluntary youth service organizations, as set
4	forth in title 20 United States Code Section 1681(a)(6), as in
5	effect on January 1, 2019.
6	(c) Nothing in this chapter shall be construed to prohibit
7	any educational institution receiving state funds from
8	maintaining separate living facilities for different sexes, as
9	set forth in title 20, United States Code Section 1686, as in
10	effect on January 1, 2019.
11	(d) Nothing in this chapter shall be construed to prohibit
12	an educational institution from administering or assisting in
13	administering a scholarship, fellowship, or other form of
14	financial assistance pursuant to a domestic or foreign will,
15	trust, bequest, or similar instrument that requires awards be
16	made to members of a particular sex specified therein; provided
17	that the overall effect of sex-restricted financial assistance
18	shall not discriminate on the basis of sex, as set forth in
19	title 34, Code of Federal Regulations section 106.37(b)(1), as
20	in effect on January 1, 2019.

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1	<del>(e)</del> ] <u>(b)</u> Nothing in this chapter shall preclude [ <del>a-student</del>
2	<del>participating in any educational program or activity</del> ] <u>a person</u>
3	who is aggrieved by a violation of this chapter from filing a
4	civil action in a court of competent jurisdiction.
5	[ <del>(f)</del> ] <u>(c)</u> A person, or an organization or association on
6	behalf of a person alleging a violation of this chapter may file
7	a complaint pursuant to this chapter.
8	[ <del>(g) As-used in this section:</del>
9	"Educational program or activity that receives state
10	financial assistance" means any educational program or activity
11	that receives state financial assistance, in any amount, for any
12	purpose. The term does not exclude an educational program or
13	activity that also receives federal funds.
14	"State educational program or activity" means an
15	educational program or activity of the University of Hawaii, the
16	department of education, or public charter schools.]
17	(d) A covered educational program or activity shall be in
18	compliance with this chapter during the school year when state
19	funds are received or expended."
20	SECTION 4. There is appropriated out of the general
21	revenues of the State of Hawaii the sum of \$350,000 or so much

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thereof as may be necessary for fiscal year 2022-2023 for equity
 training.

3 The sum appropriated shall be expended by the department of4 education for the purposes of this Act.

5 SECTION 5. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 6. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketedand stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2022.

APPROVED this 6th day of July , 2022

Arrid y Ly.

GOVERNOR OF THE STATE OF HAWAII



#### HB No. 1775, HD 2, SD 3, CD 1

#### THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

(Stm

Scott K. Saiki Speaker House of Representatives

the hi the

Brian L. Takeshita Chief Clerk House of Representatives

### THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022 Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate

of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

President of the Senate

Clerk of the Senate