



GOV. MSG. NO. 1344

EXECUTIVE CHAMBERS
HONOLULU

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,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 06 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
10 science, medicine, law, and other professions.

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



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,
4 as between the Obama and Trump administrations. Similar to
5 other civil rights laws in Hawaii, the federal law is a "floor"
6 beneath which state protections against discrimination cannot
7 drop, rather than a "ceiling" above which state law protections
8 cannot rise. *California Federal Savings and Loan Association v.*
9 *Guerra*, 479 U.S. 272, 285 (1987). Pursuant to the exclusive
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
15 matter of statewide concern.

16 In order to preserve Congresswoman Mink's intent to provide
17 equal opportunity in education, further clarification of section
18 368D-1, Hawaii Revised Statutes, is required, as well as annual
19 data reporting from the University of Hawaii, the department of
20 education, and state public charter school commission, to ensure
21 that the needs of victims of unlawful sex-based discrimination,



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



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 §368D- Definitions. As used in this chapter:
20 "Covered educational program or activity" means:



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 "Covered entity" means an entity having a covered
9 educational program or activity.

10 "Educational program or activity" means an educational
11 program or 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;



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 §368D- 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;



1 (ii) 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 (B) Of the total number of complaints for each campus
9 reported under subparagraph (A), the number of
10 complaints involving:

11 (i) A student complainant and a student
12 respondent;

13 (ii) A student complainant and an employee
14 respondent;

15 (iii) An employee complainant and an employee
16 respondent; and

17 (iv) An employee complainant and a student
18 respondent;

19 (C) Of the total number of complaints for each campus
20 reported under subparagraph (A), the number of
21 complaints in which:



- 1 (i) An investigation was commenced but a
2 decision has not yet been rendered;
- 3 (ii) An investigation was completed and a
4 decision was rendered; and
- 5 (iii) A party has filed an appeal, and the appeal
6 is pending;
- 7 (D) The percentage of employees at each campus of the
8 university who have completed a training course
9 on the university's Title IX policies and
10 procedures, and on any other policies and
11 procedures adopted by the university in
12 accordance with this chapter; and
- 13 (E) The percentage of students enrolled at each
14 campus of the university who have completed a
15 training course on the university's Title IX
16 policies and procedures, and on any other
17 policies and procedures adopted by the university
18 in accordance with this chapter; and
- 19 (2) The department of education and the state public
20 charter school commission shall include in their
21 respective reports to the legislature:



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
6 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;



- 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



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.



1 ~~[(b) Nothing in this chapter shall be construed to~~
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.~~



1 ~~(e)~~ (b) Nothing in this chapter shall preclude ~~[a student~~
2 ~~participating in any educational program or activity]~~ a person
3 who is aggrieved by a violation of this chapter from filing a
4 civil action in a court of competent jurisdiction.

5 ~~(f)~~ (c) 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 ~~(g) As used in this section:~~

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



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

3 The sum appropriated shall be expended by the department of
4 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.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and 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



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.



Scott K. Saiki
Speaker
House of Representatives




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