
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 T. Mink Equal Opportunity in Education
3 Act, otherwise known as Title IX of the Education Amendments of
4 1972 (20 U.S.C. 1681 et seq.) or simply "Title IX". Hawaii is
5 proud of Congresswoman Mink's signature legislation, which has
6 given millions of girls and women educational opportunities that
7 were undreamed of before the enactment of Title IX, in the
8 classroom and on the playing field; in research, teaching, and
9 graduate schools; and in science, medicine, law, and other
10 professions. The legislature also recognizes, however, that
11 Congresswoman Mink's celebrated legacy has not yet been fully
12 realized. The recent federal administrative rules adopted in
13 2020 by the Trump administration significantly diminished the
14 rights and protections for students and employees under Title
15 IX. For example, the new rules limit the application of federal
16 Title IX policies to persons in the United States. This means
17 that students participating in international programs, such as



1 study abroad, are no longer protected under federal Title IX
2 rules. The new rules also narrowed the definition of "sexual
3 harassment", making it more difficult for victims to receive
4 relief under Title IX.

5 The legislature also finds that Act 110, Session Laws of
6 Hawaii 2018, created a state corollary to Title IX by
7 prohibiting discrimination on the basis of sex, including gender
8 identity or expression, or sexual orientation, in any state
9 educational program or activity, or in any educational program
10 or activity that receives state financial assistance. Pursuant
11 to the exclusive jurisdiction of the legislature to identify
12 laws of statewide concern, granted under article X, section 6,
13 of the Hawaii State Constitution, the legislature additionally
14 finds that ensuring the prohibition of discrimination on the
15 basis of sex, including gender identity or expression, or sexual
16 orientation, is a matter of statewide concern. In order to
17 preserve Congresswoman Mink's intent to provide equal
18 opportunity in education, further clarification of section 368D-
19 1, Hawaii Revised Statutes, is required, as well as annual data
20 reporting from the department of education, public charter
21 schools, and the University of Hawaii, to ensure that the needs



1 of victims of unlawful sex-based discrimination, including
2 sexual harassment, gender-based harassment, and sexual assault,
3 are properly addressed.

4 Accordingly, the purpose of this Act is to:

5 (1) Define the scope and application of chapter 368D,
6 Hawaii Revised Statutes, and set forth requirements
7 with which entities that have state education programs
8 or activities, or that receive state funding for
9 educational programs or activities, must comply; and

10 (2) Require annual reporting to the legislature on the
11 number and types of Title IX cases received by the
12 department of education, public charter schools, and
13 the University of Hawaii, and other relevant
14 information.

15 SECTION 2. Chapter 368D, Hawaii Revised Statutes, is
16 amended by adding four new sections to be appropriately
17 designated and to read as follows:

18 "§368D- Purpose; scope; construction. (a) The purpose
19 of this chapter is to provide a framework for the enforcement of
20 the state law corollary to Title IX of the Education Amendments



1 of 1972 (20 U.S.C. 1681 et seq.) that is set out in section
2 368D-1.

3 (b) This chapter shall apply to the conduct of all
4 students and employees of any covered educational program or
5 activity and of third parties, provided that the conduct occurs:

6 (1) On the premises of the covered educational program or
7 activity; or

8 (2) Outside of the premises of the covered educational
9 program or activity, if:

10 (A) The conduct occurred in connection with the
11 covered educational program or activity; or

12 (B) The conduct may have a continuing adverse effect
13 on, or may create a hostile environment within,
14 the covered educational program or activity.

15 (c) If any conflict arises between applicable mandatory
16 federal requirements under Title IX (20 U.S.C. 1681 et seq.) and
17 any state law requirements, the federal requirements shall
18 prevail.

19 (d) Nothing in this chapter shall be construed to
20 prohibit:



- 1 (1) The membership practices of social fraternities or
2 sororities or voluntary youth service organizations,
3 as set forth in title 20 United States Code section
4 1681(a)(6), as that section was in effect on
5 January 1, 2019;
- 6 (2) Any educational institution receiving state funds from
7 maintaining separate living facilities for different
8 sexes, as set forth in title 20 United States Code
9 section 1686, as that section was in effect on
10 January 1, 2019; or
- 11 (3) An educational institution from administering, or
12 assisting in administering, a scholarship, fellowship,
13 or other form of financial assistance pursuant to a
14 domestic or foreign will, trust, bequest, or similar
15 instrument that requires awards to be made to members
16 of a particular sex specified therein; provided that
17 the overall effect of sex-restricted financial
18 assistance shall not discriminate on the basis of sex,
19 as set forth in title 34 Code of Federal Regulations
20 section 106.37(b)(1), as that section was in effect on
21 January 1, 2019.



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

5 §368D- Definitions. As used in this chapter:

6 "Consent" means an affirmative, conscious, and voluntary
7 agreement to engage in an agreed-upon form of sexual contact;
8 provided that:

9 (1) Silence, or the absence of protest or resistance, does
10 not constitute consent; and

11 (2) A person is unable to give consent when the person is:

12 (A) Under the age of consent for sexual contact, as
13 provided in part V of chapter 707;

14 (B) Developmentally or intellectually disabled; or

15 (C) Mentally incapacitated or physically helpless.

16 "Covered educational program or activity" means:

17 (1) Any state educational program or activity; or

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

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



1 "Dating violence" means physical, sexual, emotional,
2 financial, or psychological abuse or threats of abuse against
3 another person who is or has been in a social relationship of a
4 romantic or intimate nature with the alleged perpetrator;
5 provided that the existence of the relationship is evidenced by
6 the following factors:

7 (1) Length of the relationship;
8 (2) Type of relationship; and
9 (3) Frequency of interaction between the persons involved
10 in the relationship.

11 "Domestic violence" means physical, sexual, emotional,
12 financial, or psychological abuse or threats of abuse against a
13 family or household member. For purposes of this definition,
14 "household member" means a cohabitant who is or was a spouse or
15 intimate partner of the alleged perpetrator.

16 "Educational program or activity that receives state
17 financial assistance" means any educational program or activity
18 that receives state financial assistance, in any amount, for any
19 purpose. The term does not exclude an educational program or
20 activity that also receives federal funds.



1 "Gender-based harassment" is a form of sex-based harassment
2 that includes:

- 3 (1) Unwelcome conduct based on a person's actual or
4 perceived sex or gender;
5 (2) Verbal, physical, or electronic conduct based on sex,
6 gender, sexual orientation, or sex stereotyping that
7 creates a hostile, intimidating, or abusive
8 environment, even if the conduct is not sexual in
9 nature; and
10 (3) Harassment in response to a person's exhibition of a
11 perceived stereotypical characteristic for the
12 person's sex, or to a person's failure to conform to
13 stereotypical notions of masculinity or femininity,
14 regardless of the person's actual or perceived sex,
15 gender, sexual orientation, gender identity, or gender
16 expression.

17 "Incapacitated" or "incapacitation" means a mental or
18 physical state in which a person lacks the ability to understand
19 the consequences of the person's actions and, as a result, is
20 unable to make a rational, reasonable decision. States of
21 incapacitation include:



- 1 (1) Sleep;
- 2 (2) Unconsciousness;
- 3 (3) Intermittent consciousness; or
- 4 (4) Any other state in which the person is unaware that
- 5 sexual contact is occurring.

6 "Retaliation" means adverse action taken against a person
 7 because of the person's good faith participation in any of the
 8 following activities:

- 9 (1) Seeking advice or assistance about conduct prohibited
- 10 under this chapter;
- 11 (2) Opposing or filing a complaint against conduct that
- 12 the person reasonably believes to be prohibited under
- 13 this chapter; or
- 14 (3) Testifying, assisting, or participating in an
- 15 investigation or other proceeding related to a
- 16 complaint of conduct addressed by this chapter.

17 For purposes of this definition, "adverse action" means an
 18 action that would dissuade a reasonable person from filing or
 19 supporting a complaint brought pursuant to this chapter.

20 "Sex discrimination" means any unlawful distinction,
 21 preference, or detriment to a person, in relation to other



1 persons, that is based upon the person's sex or gender and is
2 sufficiently serious to unreasonably interfere with or limit the
3 ability of a person who is:

4 (1) A student, or applicant for admission, from
5 participating in, accessing, or benefitting from a
6 covered entity's programs, services, or activities,
7 including admission, academic standing, grades,
8 academic assignment, and on-campus housing;

9 (2) An employee, or applicant for employment, from
10 accessing employment or conditions and benefits of
11 employment, including hiring, advancement, and work
12 assignment;

13 (3) An authorized volunteer from participating in a
14 volunteer activity; or

15 (4) A guest or visitor from participating in, accessing,
16 or benefitting from a covered entity's programs,
17 services, or activities.

18 "Sexual assault" means an act of unwanted physical contact
19 of a sexual nature with an intimate body part of another person
20 that is committed by an acquaintance or stranger. Intimate body



1 parts include genitalia, groin, breasts, buttocks, or mouth.

2 Contact is unwanted when:

3 (1) The contact occurs without the consent of the other
4 person; or

5 (2) The other person is incapacitated or otherwise
6 incapable of giving consent.

7 "Sexual contact" means:

8 (1) Intentional touching or penetration of another
9 person's clothed or unclothed body, including the
10 other person's mouth, neck, anus, genitalia, groin,
11 breast, or buttock, in a sexual manner, with any part
12 of the body or with any object; or

13 (2) Causing another person to touch the person's own body,
14 or the body of another person, in the manner described
15 in paragraph (1).

16 "Sexual exploitation" means violating another person's
17 sexual privacy or taking sexual advantage of another person in
18 an unjust or abusive manner, without the person's consent. The
19 term includes:

20 (1) Photographing or otherwise recording another person
21 who is engaged in sexual activity, intercourse, or



- 1 penetration, or who is in a state of undress, without
2 the person's knowledge or consent;
- 3 (2) Sharing photographs, or video or audio recordings, of
4 another person who is engaged in sexual activity,
5 intercourse, or penetration, or who is in a state of
6 undress, without the person's knowledge or consent;
- 7 (3) Watching another person who is currently engaging in
8 sexual activity, without the person's knowledge or
9 consent;
- 10 (4) Allowing other persons to watch sexual activity
11 without the knowledge or consent of all persons
12 engaging in the sexual activity;
- 13 (5) Exposing a person's intimate body part, including
14 genitalia, groin, breast, or buttock, to another
15 person without the person's consent;
- 16 (6) Engaging in sexual activity while in a public place
17 and in view of another person who does not consent to
18 witnessing the sexual activity; and
- 19 (7) Tampering with another person's beverage with the
20 intent to impair the person's ability to withhold
21 consent or to knowingly consent to sexual activity,



1 regardless of whether any sexual activity actually
2 occurs.

3 For purposes of this definition, "sexual exploitation" does not
4 include sexual assault.

5 "Sexual harassment" means unwelcome sexual advances,
6 requests for sexual favors, or other verbal or physical conduct
7 of a sexual nature; provided that:

8 (1) Submission to, or rejection of, the conduct is either
9 an explicit or implicit term or condition of a
10 person's education, employment, or participation in a
11 covered entity's programs, services, or activities;

12 (2) Submission to, or rejection of, the conduct by a
13 person is used as a basis for decisions affecting the
14 person's education, employment, or participation in a
15 covered entity's programs, services, or activities; or

16 (3) The conduct is unwelcome to either the person to whom
17 the conducted is directed, or to another person having
18 direct awareness of the conduct; provided further that
19 the conduct:

20 (A) Is severe, persistent, or pervasive; and

21 (B) Has the purpose or effect of either:



- 1 (i) Unreasonably interfering with the person's
- 2 academic or work performance; or
- 3 (ii) Creating an intimidating, hostile, or
- 4 offensive educational or work environment.

5 "Stalking" means two or more acts of unwanted and harassing
 6 behavior that are:

- 7 (1) Directed at a specific person;
- 8 (2) Sufficiently serious to cause physical, emotional, or
- 9 psychological fear, or to create a hostile,
- 10 intimidating, or abusive environment; and
- 11 (3) Objectively and subjectively perceived as hostile,
- 12 intimidating, or abusive.

13 "State educational program or activity" means an
 14 educational program or activity of the University of Hawaii, the
 15 department of education, or public charter schools.

16 "Title IX" refers to the federal Education Amendments of
 17 1972, codified as title 20 United States Code section 1621 et
 18 seq.

19 **§368D- Designation of coordinator; publication of**
 20 **information; adoption of policies.** No later than January 1,
 21 2023, all covered entities shall:



- 1 (1) Designate a person, who shall be known as the Title IX
2 coordinator, to oversee the covered entity's
3 implementation of the requirements of this chapter,
4 and the covered entity's response to alleged
5 violations thereof;
- 6 (2) Annually publish the name and contact information of
7 the Title IX coordinator to students and on the
8 website of the covered educational program or
9 activity; and
- 10 (3) Adopt a written policy for addressing complaints
11 brought pursuant to this chapter. The written policy
12 shall include provisions that address:
- 13 (A) The scope of the policy;
- 14 (B) The conduct or behavior prohibited under the
15 policy;
- 16 (C) Definitions necessary to interpret and apply the
17 policy;
- 18 (D) The applicable evidentiary standard of review,
19 which shall be by preponderance of the evidence;
- 20 (E) The roles of various personnel of the covered
21 educational program or activity; and



1 (F) Any resources available to students and employees
2 of the covered educational program or activity,
3 including any advocacy services, assistance
4 programs, and confidential or non-confidential
5 support services.

6 §368D- Annual report to legislature. No later than
7 September 1 of each year, each state educational program or
8 activity shall submit to the legislature a report that includes
9 information pertaining to the immediately preceding school year,
10 as follows:

11 (1) The University of Hawaii shall include in its report
12 to the legislature:

13 (A) The total number of complaints alleging a
14 violation of this chapter that were received by
15 the University, and the number of complaints
16 received in each of the following categories:

17 (i) The number of complaints received at each
18 campus of the university;

19 (ii) The number of complaints that involve each
20 type of conduct prohibited under section
21 368D-1(b); and



- 1 (iii) The number of confidential complaints,
2 informal complaints, and formal complaints,
3 as applicable;
- 4 (B) Of the total number of complaints for each campus
5 reported under subparagraph (A), the number of
6 complaints involving:
- 7 (i) A student complainant and a student
8 respondent;
- 9 (ii) A student complainant and an employee
10 respondent;
- 11 (iii) An employee complainant and an employee
12 respondent; and
- 13 (iv) An employee complainant and a student
14 respondent;
- 15 (C) Of the complaints reported under subparagraph
16 (A), the number of complaints in which:
- 17 (i) An investigation was commenced but a
18 decision has not yet been rendered;
- 19 (ii) An investigation was completed and a
20 decision was rendered; and



1 (iii) A party has filed an appeal, and the appeal
2 is pending;

3 (D) The percentage of employees at each campus of the
4 university who have completed a training course
5 on the university's Title IX policies and
6 procedures, and on any other policies and
7 procedures adopted by the university in
8 accordance with this chapter; and

9 (E) The percentage of students enrolled at each
10 campus of the university who have completed a
11 training course on the university's Title IX
12 policies and procedures, and on any other
13 policies and procedures adopted by the university
14 in accordance with this chapter; and

15 (2) The department of education and each public charter
16 school shall include in their respective reports to
17 the legislature:

18 (A) The total number of complaints alleging a
19 violation of this chapter that were received by a
20 covered educational program or activity of the
21 department of education or the public charter



1 school, as applicable, and the number of
2 complaints received in each of the following
3 categories:
4 (i) The number of complaints received at each
5 department of education complex area or
6 public charter school, as applicable; and
7 (ii) The number of complaints that involve each
8 type of conduct prohibited under section
9 368D-1(b);
10 (B) Of the total number of complaints reported under
11 subparagraph (A) for each department of education
12 complex area or public charter school, as
13 applicable, the number of complaints involving:
14 (i) A student complainant and a student
15 respondent;
16 (ii) A student complainant and an employee
17 respondent;
18 (iii) An employee complainant and an employee
19 respondent; and
20 (iv) An employee complainant and a student
21 respondent;



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

19 SECTION 3. Section 368D-1, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "~~§368D-1~~ ~~[State]~~ Covered educational programs and
2 activities; discrimination and other conduct prohibited. (a)
3 No person in the State, on the basis of sex, including gender
4 identity or expression as defined in section 489-2, or sexual
5 orientation as defined in section 489-2, shall be excluded from
6 participation in, be denied the benefits of, or be subjected to
7 discrimination under[+]

8 ~~(1) Any state educational program or activity; or~~
9 ~~(2) Any educational program or activity that receives~~
10 ~~state financial assistance.]~~ any covered educational
11 program or activity.

12 ~~[(b) Nothing in this chapter shall be construed to~~
13 ~~prohibit the membership practices of social fraternities or~~
14 ~~sororities or voluntary youth service organizations, as set~~
15 ~~forth in title 20 United States Code Section 1681(a)(6), as in~~
16 ~~effect on January 1, 2019.~~

17 ~~(c) Nothing in this chapter shall be construed to prohibit~~
18 ~~any educational institution receiving state funds from~~
19 ~~maintaining separate living facilities for different sexes, as~~
20 ~~set forth in title 20, United States Code Section 1686, as in~~
21 ~~effect on January 1, 2019.~~



1 ~~(d) Nothing in this chapter shall be construed to prohibit~~
2 ~~an educational institution from administering or assisting in~~
3 ~~administering a scholarship, fellowship, or other form of~~
4 ~~financial assistance pursuant to a domestic or foreign will,~~
5 ~~trust, bequest, or similar instrument that requires awards be~~
6 ~~made to members of a particular sex specified therein; provided~~
7 ~~that the overall effect of sex-restricted financial assistance~~
8 ~~shall not discriminate on the basis of sex, as set forth in~~
9 ~~title 34, Code of Federal Regulations section 106.37(b)(1), as~~
10 ~~in effect on January 1, 2019.~~

11 ~~(e) Nothing in this chapter shall preclude a student~~
12 ~~participating in any educational program or activity who is~~
13 ~~aggrieved by a violation of this chapter from filing a civil~~
14 ~~action in a court of competent jurisdiction.~~

15 ~~(f) A person, or an organization or association on behalf~~
16 ~~of a person alleging a violation of this chapter may file a~~
17 ~~complaint pursuant to this chapter.~~

18 ~~(g) As used in this section:~~

19 ~~"Educational program or activity that receives state~~
20 ~~financial assistance" means any educational program or activity~~
21 ~~that receives state financial assistance, in any amount, for any~~



1 ~~purpose. The term does not exclude an educational program or~~
2 ~~activity that also receives federal funds.~~

3 ~~"State educational program or activity" means an~~
4 ~~educational program or activity of the University of Hawaii, the~~
5 ~~department of education, or public charter schools.]~~

6 (b) The following types of conduct shall be prohibited
7 under any covered educational program or activity:

- 8 (1) Sex discrimination;
- 9 (2) Sexual harassment;
- 10 (3) Gender-based harassment;
- 11 (4) Sexual exploitation;
- 12 (5) Sexual assault;
- 13 (6) Domestic violence;
- 14 (7) Dating violence;
- 15 (8) Stalking; and
- 16 (9) Retaliation.

17 (c) Any person, or an organization or association on
18 behalf thereof, who alleges a violation of this chapter may file
19 a complaint with a covered entity pursuant to this chapter."

20 SECTION 4. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2022-2023 to
2 hire one full-time equivalent (1.0 FTE) position to ensure
3 compliance by public charter schools with Title IX of the
4 federal Education Amendments of 1972, as amended.

5 The sum appropriated shall be expended by the state public
6 charter school commission for the purposes of this Act.

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

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

16 SECTION 7. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect on July 1, 2050.

19



Report Title:

Education; Educational Programs and Activities; Sex
Discrimination; Title IX Corollary; Enforcement; Appropriation

Description:

Specifies additional forms of discrimination and other prohibited conduct under Chapter 368D, HRS. Requires entities with state education programs or activities, or that receive state funding for educational programs or activities, to adopt written policies and undertake other specified enforcement actions no later than 1/1/2023. Requires annual reports to legislature. Appropriates funds. Effective 7/1/2050. (HD1)

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

