
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 "Title
5 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. The legislature
11 also recognizes, however, that Congresswoman Mink's celebrated
12 legacy has not yet been fully realized. The recent federal
13 administrative rules adopted in 2020 by the Trump administration
14 significantly diminished the rights and protections for students
15 and employees under Title IX. For example, the new rules limit
16 the application of federal Title IX policies to persons in the
17 United States. This means that students participating in



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

17 In order to preserve Congresswoman Mink's intent to provide
18 equal opportunity in education, further clarification of section
19 368D-1, Hawaii Revised Statutes, is required, as well as annual
20 data reporting from the University of Hawaii, the department of
21 education, and public charter schools, 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) Clarify the application of chapter 368D, Hawaii
6 Revised Statutes, and set forth requirements with
7 which entities that have state education programs or
8 activities, or that receive state funding for
9 educational programs or activities, must comply;
- 10 (2) Require annual reporting to the legislature on the
11 number and types of Title IX cases received by the
12 University of Hawaii, the department of education, and
13 public charter schools, and other relevant
14 information;
- 15 (3) Establish two full-time equivalent (2.0 FTE) senior
16 advisor positions and one full-time equivalent (1.0
17 FTE) junior advisor position for the University of
18 Hawaii system to carry out the purposes of this Act;
19 and



1 (4) Appropriate funds to the department of education and
2 public charter schools to carry out the purposes of
3 this Act.

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

7 "§368D- Purpose; scope; construction. (a) The purpose
8 of this chapter is to provide a framework for the state law
9 corollary to Title IX that is set out in section 368D-1.

10 (b) If any conflict arises between applicable mandatory
11 federal requirements under Title IX and any state law
12 requirements, the federal requirements shall prevail.

13 (c) Nothing in this chapter shall be construed to
14 prohibit:

15 (1) The membership practices of social fraternities or
16 sororities or voluntary youth service organizations,
17 as set forth in title 20 United States Code section
18 1681(a)(6), as that section was in effect on
19 January 1, 2019;

20 (2) Any educational institution receiving state funds from
21 maintaining separate living facilities for different



1 sexes, as set forth in title 20 United States Code
 2 section 1686, as that section was in effect on
 3 January 1, 2019; or
 4 (3) An educational institution from administering, or
 5 assisting in administering, a scholarship, fellowship,
 6 or other form of financial assistance pursuant to a
 7 domestic or foreign will, trust, bequest, or similar
 8 instrument that requires awards to be made to members
 9 of a particular sex specified therein; provided that
 10 the overall effect of sex-restricted financial
 11 assistance shall not discriminate on the basis of sex,
 12 as set forth in title 34 Code of Federal Regulations
 13 section 106.37(b)(1), as that section was in effect on
 14 January 1, 2019.

15 **§368D- Definitions.** As used in this chapter:

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

6 "State educational program or activity" means an
7 educational program or activity of the University of Hawaii, the
8 department of education, or public charter schools.

9 "Title IX" refers to the federal Education Amendments of
10 1972, codified as title 20 United States Code section 1681 et
11 seq.

12 **§368D- _____ Designation of coordinator; publication of**
13 **information; adoption of policies.** No later than January 1,
14 2023, all covered entities shall:

15 (1) Designate a person, who shall be known as the Title IX
16 coordinator, to oversee the covered entity's
17 implementation of the requirements of this chapter,
18 and the covered entity's response to alleged
19 violations thereof;

20 (2) Annually publish the name and contact information of
21 the Title IX coordinator to students and on the



1 website of the covered educational program or
2 activity; and
3 (3) Adopt a written policy for addressing complaints
4 brought pursuant to this chapter. The written policy
5 shall include provisions that address:
6 (A) The scope of the policy;
7 (B) The conduct or behavior prohibited under the
8 policy;
9 (C) Definitions necessary to interpret and apply the
10 policy;
11 (D) The applicable evidentiary standard of review,
12 which shall be by preponderance of the evidence;
13 (E) The roles of various personnel of the covered
14 educational program or activity; and
15 (F) Any resources available to students and employees
16 of the covered educational program or activity,
17 including any advocacy services, assistance
18 programs, and confidential or non-confidential
19 support services.
20 §368D- Annual report to legislature. No later than
21 September 1 of each year, each state educational program or

1 activity shall submit to the legislature a report that includes
2 information pertaining to the immediately preceding school year,
3 as follows:

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

6 (A) The total number of complaints alleging a
7 violation of this chapter or Title IX that were
8 received by the University, and the number of
9 complaints received in each of the following
10 categories:

11 (i) The number of complaints received at each
12 campus of the university;

13 (ii) The types of complaints, including but not
14 limited to sexual harassment, gender-based
15 harassment, sexual assault, domestic
16 violence, or stalking; and

17 (iii) The number of confidential complaints,
18 informal complaints, and formal complaints,
19 as applicable;



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



- 1 (D) The percentage of employees at each campus of the
- 2 university who have completed a training course
- 3 on the university's Title IX policies and
- 4 procedures, and on any other policies and
- 5 procedures adopted by the university in
- 6 accordance with this chapter; and
- 7 (E) The percentage of students enrolled at each
- 8 campus of the university who have completed a
- 9 training course on the university's Title IX
- 10 policies and procedures, and on any other
- 11 policies and procedures adopted by the university
- 12 in accordance with this chapter; and
- 13 (2) The department of education and the public charter
- 14 school commission shall include in their respective
- 15 reports to the legislature:
- 16 (A) The total number of complaints alleging a
- 17 violation of this chapter or Title IX that were
- 18 received by a covered educational program or
- 19 activity of the department of education or the
- 20 public charter school, as applicable, and the



1 number of complaints received in each of the
2 following categories:
3 (i) The number of complaints received at each
4 department of education complex area or
5 public charter school, as applicable; and
6 (ii) The types of complaints, including but not
7 limited to sexual harassment, gender-based
8 harassment, sexual assault, domestic
9 violence, or stalking;
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 or a public
12 charter school, the percentage of teachers,
13 counselors, principals, and vice-principals,
14 disaggregated by complex area, who have completed
15 a training course on the department's Title IX
16 policies and procedures, and on any other
17 policies and procedures adopted by the department
18 in accordance with this 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 prohibited.** (a) No person in the
3 State, on the basis of sex, including gender identity or
4 expression as defined in section 489-2, or sexual orientation as
5 defined in section 489-2, shall be excluded from participation
6 in, be denied the benefits of, or be subjected to discrimination
7 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)]~~ (b) Nothing in this chapter shall preclude [a
12 ~~student]~~ an individual participating in any educational program
13 or activity who is aggrieved by a violation of this chapter from
14 filing a civil action in a court of competent jurisdiction.

15 ~~[(f)]~~ (c) A person, or an organization or association on
16 behalf of a person alleging a violation of this chapter may file
17 a 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 SECTION 4. There is established within the University of
7 Hawaii system two full-time equivalent (2.0 FTE) senior advisor
8 positions and one full-time equivalent (1.0 FTE) junior advisor
9 position to carry out the purposes of this Act.

10 SECTION 5. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ or so
12 much thereof as may be necessary for fiscal year 2022-2023 for
13 the department of education to carry out the purposes of this
14 Act.

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

17 SECTION 6. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2022-2023 to
20 hire one full-time equivalent (1.0 FTE) position to ensure



1 compliance by public charter schools with this Act and Title IX
2 of the federal Education Amendments of 1972, as amended.

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

5 SECTION 7. 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 8. 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 9. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect on July 1, 2050.

17



Report Title:

Educational Programs and Activities; Title IX Corollary;
Reporting; Appropriation

Description:

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 actions no later than 1/1/2023. Requires annual reports to legislature. Appropriates funds. Effective 7/1/2050. (HD2)

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

