
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 established by 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" means an educational
2 program or activity provided by or under a:

3 (1) Private school that teaches students in any grade from
4 kindergarten through grade twelve and that is licensed
5 or accredited by the Hawaii Association of Independent
6 Schools, Hawaii Council of Private Schools, Western
7 Association of Schools and Colleges, Western Catholic
8 Educational Association, Association of Christian
9 Schools International, or a similarly recognized
10 entity that meets or exceeds the standards set by the
11 aforementioned entities;

12 (2) Private trade, vocational, or technical schools, as
13 defined in section 302A-101; or

14 (3) Private university or college.

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



1 "State educational program or activity" means an
2 educational program or activity of the University of Hawaii, the
3 department of education, or public charter schools.

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- Designation of coordinator; publication of
8 information; adoption of policies. No later than January 1,
9 2023, all covered entities shall:

10 (1) Designate a person, who shall be known as the Title IX
11 coordinator, to oversee the covered entity's
12 implementation of the requirements of this chapter,
13 and the covered entity's response to alleged
14 violations thereof;

15 (2) Annually publish the name and contact information of
16 the Title IX coordinator to students and on the
17 website of the covered educational program or
18 activity; and

19 (3) Adopt a written policy for addressing complaints
20 brought pursuant to this chapter. The written policy
21 shall include provisions that address:



- 1 (A) The scope of the policy;
- 2 (B) The conduct or behavior prohibited under the
- 3 policy;
- 4 (C) Definitions necessary to interpret and apply the
- 5 policy;
- 6 (D) The applicable evidentiary standard of review,
- 7 which shall be by preponderance of the evidence;
- 8 (E) The roles of various personnel of the covered
- 9 educational program or activity; and
- 10 (F) Any resources available to students and employees
- 11 of the covered educational program or activity,
- 12 including any advocacy services, assistance
- 13 programs, and confidential or non-confidential
- 14 support services.

15 §368D- Annual report to legislature. No later than
 16 September 1 of each year, each state educational program or
 17 activity shall submit to the legislature a report that includes
 18 information pertaining to the immediately preceding school year,
 19 as follows:

- 20 (1) The University of Hawaii shall include in its report
- 21 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 university, and the number of
- 4 complaints received in each of the following
- 5 categories:
- 6 (i) The number of complaints received at each
- 7 campus of the university;
- 8 (ii) The types of complaints, including but not
- 9 limited to sexual harassment, gender-based
- 10 harassment, sexual assault, domestic
- 11 violence, or stalking; and
- 12 (iii) The number of confidential complaints,
- 13 informal complaints, and formal complaints,
- 14 as applicable;
- 15 (B) Of the total number of complaints for each campus
- 16 reported under subparagraph (A), the number of
- 17 complaints involving:
- 18 (i) A student complainant and a student
- 19 respondent;
- 20 (ii) A student complainant and an employee
- 21 respondent;



1 training course on the university's Title IX
2 policies and procedures, and on any other
3 policies and procedures adopted by the university
4 in accordance with this chapter; and

5 (2) The department of education and the public charter
6 school commission shall include in their respective
7 reports to the legislature:

8 (A) The total number of complaints alleging a
9 violation of this chapter or Title IX that were
10 received by a covered educational program or
11 activity of the department of education or the
12 public charter school, as applicable, and the
13 number of complaints received in each of the
14 following categories:

15 (i) The number of complaints received at each
16 department of education complex area or
17 public charter school, as applicable; and

18 (ii) The types of complaints, including but not
19 limited to sexual harassment, gender-based
20 harassment, sexual assault, domestic
21 violence, or stalking;



- 1 (B) 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 involving:
- 5 (i) A student complainant and a student
- 6 respondent;
- 7 (ii) A student complainant and an employee
- 8 respondent;
- 9 (iii) An employee complainant and an employee
- 10 respondent; and
- 11 (iv) An employee complainant and a student
- 12 respondent;
- 13 (C) Of the total number of complaints reported under
- 14 subparagraph (A) for each department of education
- 15 complex area or public charter school, as
- 16 applicable, 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; and

3 (D) For the department of education or a public
4 charter school, the percentage of teachers,
5 counselors, principals, and vice-principals,
6 disaggregated by complex area, who have completed
7 a training course on the department's Title IX
8 policies and procedures, and on any other
9 policies and procedures adopted by the department
10 in accordance with this chapter."

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

13 "§368D-1 [State] Covered educational programs and
14 activities; discrimination prohibited. (a) No person in the
15 State, on the basis of sex, including gender identity or
16 expression as defined in section 489-2, or sexual orientation as
17 defined in section 489-2, shall be excluded from participation
18 in, be denied the benefits of, or be subjected to discrimination
19 under[+]

20 ~~(1) Any state educational program or activity; or~~



1 ~~(2) Any educational program or activity that receives~~
2 ~~state financial assistance.] any covered educational~~
3 ~~program or activity.~~

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

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

14 ~~(d) Nothing in this chapter shall be construed to prohibit~~
15 ~~an educational institution from administering or assisting in~~
16 ~~administering a scholarship, fellowship, or other form of~~
17 ~~financial assistance pursuant to a domestic or foreign will,~~
18 ~~trust, bequest, or similar instrument that requires awards be~~
19 ~~made to members of a particular sex specified therein, provided~~
20 ~~that the overall effect of sex restricted financial assistance~~
21 ~~shall not discriminate on the basis of sex, as set forth in~~



1 ~~title 34, Code of Federal Regulations section 106.37(b)(1), as~~
2 ~~in effect on January 1, 2019.~~

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

7 ~~[(f)]~~ (c) A person, or an organization or association on
8 behalf of a person alleging a violation of this chapter may file
9 a complaint pursuant to this chapter.

10 ~~[(g) As used in this section:~~

11 ~~"Educational program or activity that receives state~~
12 ~~financial assistance" means any educational program or activity~~
13 ~~that receives state financial assistance, in any amount, for any~~
14 ~~purpose. The term does not exclude an educational program or~~
15 ~~activity that also receives federal funds.~~

16 ~~"State educational program or activity" means an~~
17 ~~educational program or activity of the University of Hawaii, the~~
18 ~~department of education, or public charter schools.] "~~

19 SECTION 4. There is established within the University of
20 Hawaii system two full-time equivalent (2.0 FTE) senior advisor



1 positions and one full-time equivalent (1.0 FTE) junior advisor
2 position to carry out the purposes of this Act.

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

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

10 SECTION 6. 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 to
13 hire one full-time equivalent (1.0 FTE) position to ensure
14 compliance by public charter schools with this Act and Title IX
15 of the federal Education Amendments of 1972, as amended.

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

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



1 SECTION 8. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

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

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



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. (SD1)

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

