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# 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;
- 9 (2) Establish two full-time equivalent (2.0 FTE) senior  
10 advisor positions and one full-time equivalent (1.0  
11 FTE) junior advisor position for the University of  
12 Hawaii system to carry out the purposes of this Act;  
13 and
- 14 (3) Appropriate funds to the department of education and  
15 state public charter school commission to carry out  
16 the purposes of this Act.

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



1        "§368D- Purpose; scope; construction. (a) The purpose  
2 of this chapter is to provide a framework for the state law  
3 corollary to Title IX that is established by section 368D-1.

4        (b) Nothing in this chapter shall be construed to  
5 prohibit:

6        (1) The membership practices of social fraternities or  
7 sororities or voluntary youth service organizations,  
8 as set forth in title 20 United States Code section  
9 1681(a)(6), as that section was in effect on  
10 January 1, 2019;

11       (2) Any educational institution receiving state funds from  
12 maintaining separate living facilities for different  
13 sexes, as set forth in title 20 United States Code  
14 section 1686, as that section was in effect on  
15 January 1, 2019; or

16       (3) An educational institution from administering, or  
17 assisting in administering a scholarship, fellowship,  
18 or other form of financial assistance pursuant to a  
19 domestic or foreign will, trust, bequest, or similar  
20 instrument that requires awards to be made to members  
21 of a particular sex specified therein; provided that



1           the overall effect of sex-restricted financial  
2           assistance shall not discriminate on the basis of sex,  
3           as set forth in title 34 Code of Federal Regulations  
4           section 106.37(b)(1), as that section was in effect on  
5           January 1, 2019.

6           §368D- Definitions. As used in this chapter:

7           "Covered educational program or activity" means:

8           (1) The University of Hawaii, the department of education,  
9           or public charter schools; or

10          (2) Any educational program or activity that receives  
11          state financial assistance, in any amount, for any  
12          purpose; provided that this term does not exclude an  
13          educational program or activity that also receives  
14          federal funds.

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

17          "Educational program or activity" means an educational  
18          program or activity provided by or under a:

19          (1) Private school that teaches students in any grade from  
20          kindergarten through grade twelve and that is licensed  
21          or accredited by the Hawaii Association of Independent



1           Schools, Hawaii Council of Private Schools, Western  
2           Association of Schools and Colleges, Western Catholic  
3           Educational Association, Association of Christian  
4           Schools International, or a similarly recognized  
5           entity that meets or exceeds the standards set by the  
6           aforementioned entities;

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

9           (3) Private university or college.

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

13          §368D-       Annual report to legislature.   No later than  
14 September 1 of each year, the University of Hawaii, department  
15 of education, and state public charter school commission shall  
16 submit to the legislature a report that includes information  
17 pertaining to the immediately preceding school year, as follows:

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

20           (A) The total number of complaints alleging a  
21           violation of this chapter or Title IX that were



1           received by the university, and the number of  
2           complaints received in each of the following  
3           categories:

4           (i) The number of complaints received at each  
5           campus of the university;

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; and

10          (iii) The number of confidential complaints,  
11          informal complaints, and formal complaints,  
12          as applicable;

13          (B) Of the total number of complaints for each campus  
14          reported under subparagraph (A), the number of  
15          complaints involving:

16          (i) A student complainant and a student  
17          respondent;

18          (ii) A student complainant and an employee  
19          respondent;

20          (iii) An employee complainant and an employee  
21          respondent; and



- 1           (iv) An employee complainant and a student  
2                           respondent;
- 3           (C) Of the total number of complaints for each campus  
4                           reported under subparagraph (A), the number of  
5                           complaints in which:
- 6                           (i) An investigation was commenced but a  
7                                   decision has not yet been rendered;
- 8                           (ii) An investigation was completed and a  
9                                   decision was rendered; and
- 10                          (iii) A party has filed an appeal, and the appeal  
11                                   is pending;
- 12           (D) The percentage of employees at each campus of the  
13                           university who have completed a training course  
14                           on the university's Title IX policies and  
15                           procedures, and on any other policies and  
16                           procedures adopted by the university in  
17                           accordance with this chapter; and
- 18           (E) The percentage of students enrolled at each  
19                           campus of the university who have completed a  
20                           training course on the university's Title IX  
21                           policies and procedures, and on any other





1 policies and procedures adopted by the university  
2 in accordance with this chapter; and

3 (2) The department of education and the state public  
4 charter school commission shall include in their  
5 respective reports 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 a covered educational program or  
9 activity of the department of education or public  
10 charter school, as applicable, and the number of  
11 complaints received in each of the following  
12 categories:

13 (i) The number of complaints received at each  
14 department of education complex area or  
15 public charter school, as applicable; and  
16 (ii) The types of complaints, including but not  
17 limited to sexual harassment, gender-based  
18 harassment, sexual assault, domestic  
19 violence, or stalking;

20 (B) Of the total number of complaints reported under  
21 subparagraph (A) for each department of education



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



1           (D) For the department of education or a public  
2           charter school, the percentage of teachers,  
3           counselors, principals, and vice-principals,  
4           disaggregated by complex area or public charter  
5           school, as applicable, who have completed a  
6           training course on the department or public  
7           charter school's Title IX policies and  
8           procedures, and on any other policies and  
9           procedures adopted by the department or public  
10           charter school in accordance with this chapter;  
11           provided that all public charter schools shall submit  
12           the information required under this section to the  
13           state public charter school commission, in a form  
14           prescribed by the commission, no later than August 1  
15           of each year."

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

18           "**§368D-1 [State] Covered educational programs and**  
19 **activities; discrimination prohibited.** (a) No person in the  
20 State, on the basis of sex, including gender identity or  
21 expression as defined in section 489-2, or sexual orientation as



1 defined in section 489-2, shall be excluded from participation  
2 in, be denied the benefits of, or be subjected to discrimination  
3 under[+]

4 ~~(1) Any state educational program or activity, or~~  
5 ~~(2) Any educational program or activity that receives~~  
6 ~~state financial assistance.] any covered educational~~  
7 ~~program or activity.~~

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

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

18 ~~(d) Nothing in this chapter shall be construed to prohibit~~  
19 ~~an educational institution from administering or assisting in~~  
20 ~~administering a scholarship, fellowship, or other form of~~  
21 ~~financial assistance pursuant to a domestic or foreign will,~~



1 ~~trust, bequest, or similar instrument that requires awards be~~  
2 ~~made to members of a particular sex specified therein; provided~~  
3 ~~that the overall effect of sex restricted financial assistance~~  
4 ~~shall not discriminate on the basis of sex, as set forth in~~  
5 ~~title 34, Code of Federal Regulations section 106.37(b)(1), as~~  
6 ~~in effect on January 1, 2019.~~

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

11       ~~(f)]~~ (c) A person, or an organization or association on  
12 behalf of a person alleging a violation of this chapter may file  
13 a complaint pursuant to this chapter.

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

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       (d) A covered educational program or activity shall be in  
5 compliance with this chapter during the school year when state  
6 funds are received or expended."

7       SECTION 4. There is established within the University of  
8 Hawaii system two full-time equivalent (2.0 FTE) senior advisor  
9 positions and one full-time equivalent (1.0 FTE) junior advisor  
10 position to carry out the purposes of this Act.

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

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

18       SECTION 6. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$                    or so  
20 much thereof as may be necessary for fiscal year 2022-2023 to  
21 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.



**Report Title:**

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

**Description:**

Requires annual reporting by the University of Hawaii, Department of Education, and State Public Charter School Commission to the Legislature on the number and types of Title IX cases and other relevant information. Establishes within the University of Hawaii System 2 full-time equivalent (2.0 FTE) senior advisor positions and 1 full-time equivalent (1.0 FTE) junior advisor position. Appropriates funds to the Department of Education and State Public Charter School Commission. Effective 7/1/2050. (SD2)

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