

ACT 110

H.B. NO. 1489

A Bill for an Act Relating to Civil Rights.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that Title IX of the Education Amendment of 1972 (20 U.S.C. 1681 et seq.) (Title IX), renamed the Patsy Mink Equal Opportunity in Education Act in 2002, triggered a seismic shift in the education landscape by prohibiting discrimination on the basis of sex by any education program of activity receiving federal funds. The legislature also finds that Hawaii is rightfully proud of Patsy Mink's signature legislation, which has given millions of girls and women educational opportunities that were undreamed of before enactment of Title IX, in the classroom and on playing fields; in research, teaching, and graduate schools; and in employment, medicine, law, and other professions. The legislature recognizes, however, that Patsy Mink's celebrated legacy has not been fully realized, and that the efficacy of Title IX federal protections against sex discrimination in education has been diminished and eroded. For these reasons, the legislature believes it is time to consider and address the need for a corollary to Title IX in state law.

Accordingly, the purpose of this Act is to:

- (1) Provide for a state corollary to Title IX that prohibits discrimination on the basis of sex, including gender identity or expression, or sexual orientation, in any state educational program or activity, or in any educational program or activity that receives state financial

assistance, without regard to whether the educational program or activity also receives federal funds; and

- (2) Direct the legislative reference bureau to conduct a study of existing Title IX procedures on the federal level and in other jurisdictions and recommend proposed legislation.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 20 to be appropriately designated and to read as follows:

“CHAPTER DISCRIMINATION IN STATE EDUCATIONAL PROGRAMS AND ACTIVITIES

§ -1 State educational programs and activities; discrimination prohibited. (a) No person in the State, on the basis of sex, including gender identity or expression as defined in section 489-2, or sexual orientation as defined in section 489-2, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under:

- (1) Any state educational program or activity; or
- (2) Any educational program or activity that receives state financial assistance.

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

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

- (d) As used in this section:

“Educational program or activity that receives state financial assistance” means any educational program or activity that receives state financial assistance, in any amount, for any purpose. The term does not exclude an educational program or activity that also receives federal funds.

“State educational program or activity” means an educational program or activity of the University of Hawaii, the department of education, or public charter schools.”

PART III

SECTION 3. The legislative reference bureau shall conduct a study of existing Title IX enforcement practices and procedures on the federal level and in other jurisdictions, including the following:

- (1) A detailed review of enforcement entities responsible for overseeing the investigation and adjudication of complaints under Title IX and related state laws prohibiting discrimination on the basis of sex;
- (2) An examination of issues related to service and standing for bringing applicable complaints;
- (3) A review of the various remedies for violations that may be available to an aggrieved party, including alternative dispute resolution, injunctive relief, and civil damages; and
- (4) An examination of any potential inconsistencies between multiple state and federal compliance mandates and regulatory schemes.

No later than twenty days prior to the convening of the regular session of 2019, the legislative reference bureau shall submit a report to the legislature

with findings and recommendations on the foregoing issues, including proposed legislation concerning an appropriate enforcement mechanism for chapter , Hawaii Revised Statutes.

PART IV

SECTION 4. This Act shall take effect on January 1, 2020; provided that part III shall take effect on July 1, 2018.

(Approved July 5, 2018.)