

## ACT 242

H.B. NO. 1775

A Bill for an Act Relating to Civil Rights.

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

SECTION 1. The legislature finds that 2022 is the fiftieth anniversary of the Patsy Takemoto Mink Equal Opportunity in Education Act, otherwise known as Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) or simply “Title IX”. Hawaii is proud of Congresswoman Mink’s signature legislation, which has given millions of girls and women educational opportunities that were undreamed of before the enactment of Title IX, in the classroom and on the playing field; in research, teaching, and graduate schools; and in science, medicine, law, and other professions.

The legislature finds that Act 110, Session Laws of Hawaii 2018, created a state corollary to Title IX by prohibiting 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. The purpose of Act 110 was to address the weakening of federal Title IX protections for victims of sex discrimination and harassment. The legislature created a high standard in state law to avoid the erosion and shifts in interpretation by the federal government, as between the Obama and Trump administrations. Similar to other civil rights laws in Hawaii, the federal law is a “floor” beneath which state protections against discrimination cannot drop, rather than a “ceiling” above which state law protections cannot rise. *California Federal Savings and Loan Association v. Guerra*, 479 U.S. 272, 285 (1987). Pursuant to the exclusive jurisdiction of the legislature to identify laws of statewide concern, granted under article X, section 6, of the Hawaii State Constitution, the legislature additionally finds that ensuring the prohibition of discrimination on the basis of sex, including gender identity or expression, or sexual orientation, is a matter of statewide concern.

In order to preserve Congresswoman Mink’s intent to provide equal opportunity in education, further clarification of section 368D-1, Hawaii Revised Statutes, is required, as well as annual data reporting from the University of Hawaii, the department of education, and state public charter school commission, to ensure that the needs of victims of unlawful sex-based discrimination, including sexual harassment, gender-based harassment, and sexual assault, are properly addressed.

Accordingly, the purpose of this Act is to:

- (1) Require annual reporting by the University of Hawaii, the 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; and
- (2) Appropriate funds to the department of education for equity training.

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

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

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

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

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

“Covered educational program or activity” means:

- (1) The University of Hawaii, the department of education, or public charter schools; or
- (2) Any educational program or activity that receives state financial assistance, in any amount, for any purpose; provided that this term does not exclude an educational program or activity that also receives federal funds.

“Covered entity” means an entity having a covered educational program or activity.

“Educational program or activity” means an educational program or activity provided by or under a:

- (1) Private school that teaches students in any grade from kindergarten through grade twelve and that is licensed or accredited by the Hawaii Association of Independent Schools, Hawaii Council of Private Schools, Western Association of Schools and Colleges, Western Catholic Educational Association, Association of Christian Schools International, or a similarly recognized entity that meets or exceeds the standards set by the aforementioned entities;
- (2) Private trade, vocational, or technical schools, as defined in section 302A-101; or
- (3) Private university or college.

“Title IX” refers to the federal Education Amendments of 1972, codified as title 20 United States Code section 1681 et seq.

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

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

- (A) The total number of complaints alleging a violation of this chapter or Title IX that were received by the university, and the number of complaints received in each of the following categories:
    - (i) The number of complaints received at each campus of the university;
    - (ii) The types of complaints, including but not limited to sexual harassment, gender-based harassment, sexual assault, domestic violence, or stalking; and
    - (iii) The number of confidential complaints, informal complaints, and formal complaints, as applicable;
  - (B) Of the total number of complaints for each campus reported under subparagraph (A), the number of complaints involving:
    - (i) A student complainant and a student respondent;
    - (ii) A student complainant and an employee respondent;
    - (iii) An employee complainant and an employee respondent; and
    - (iv) An employee complainant and a student respondent;
  - (C) Of the total number of complaints for each campus reported under subparagraph (A), the number of complaints in which:
    - (i) An investigation was commenced but a decision has not yet been rendered;
    - (ii) An investigation was completed and a decision was rendered; and
    - (iii) A party has filed an appeal, and the appeal is pending;
  - (D) The percentage of employees at each campus of the university who have completed a training course on the university's Title IX policies and procedures, and on any other policies and procedures adopted by the university in accordance with this chapter; and
  - (E) The percentage of students enrolled at each campus of the university who have completed a training course on the university's Title IX policies and procedures, and on any other policies and procedures adopted by the university in accordance with this chapter; and
- (2) The department of education and the state public charter school commission shall include in their respective reports to the legislature:
- (A) The total number of complaints alleging a violation of this chapter or Title IX that were received by the department of education or public charter school, as applicable, and the number of complaints received in each of the following categories:
    - (i) The number of complaints received at each department of education complex area or public charter school, as applicable; and
    - (ii) The types of complaints, including but not limited to sexual harassment, gender-based harassment, sexual assault, domestic violence, or stalking;
  - (B) Of the total number of complaints reported under subparagraph (A) for each department of education complex area or public charter school, as applicable, the number of complaints involving:
    - (i) A student complainant and a student respondent;
    - (ii) A student complainant and an employee respondent;

- (iii) An employee complainant and an employee respondent; and
- (iv) An employee complainant and a student respondent;
- (C) Of the total number of complaints reported under subparagraph (A) for each department of education complex area or public charter school, as applicable, the number of complaints in which:
  - (i) An investigation was commenced but a decision has not yet been rendered;
  - (ii) An investigation was completed and a decision was rendered; and
  - (iii) A party has filed an appeal, and the appeal is pending; and
- (D) For the department of education or a public charter school, the percentage of teachers, counselors, principals, and vice-principals, disaggregated by complex area or public charter school, as applicable, who have completed a training course on the department or public charter school's Title IX policies and procedures, and on any other policies and procedures adopted by the department or public charter school in accordance with this chapter;

provided that all public charter schools shall submit the information required under this section to the state public charter school commission, in a form prescribed by the commission, no later than August 1 of each year."

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

**"§368D-1 [State] Covered 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.] any covered educational program or activity.

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

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

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

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

[(f)] (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.

[(g)] ~~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.]~~

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

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2022-2023 for equity training.

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

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

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2022.

(Approved July 6, 2022.)

**Note**

1. Edited pursuant to HRS §23G-16.5.