

Honolulu, Hawaii

APR 06 2018RE: H.B. No. 1489
H.D. 1
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1489, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CIVIL RIGHTS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit 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; and
- (2) Provide that any student of a state educational program or activity, or an educational program or activity that receives state financial assistance, may bring a civil action under chapter 368, Hawaii Revised Statutes, for gender discrimination.

Your Committee received testimony in support of this measure from the Hawai'i Civil Rights Commission, Hawai'i State Commission on the Status of Women, University of Hawai'i System, Hawaii Women's Coalition, Amnesty International Hawaii Chapter No. 449, American Civil Liberties Union of Hawai'i, Community Alliance on Prisons, Hawaii State Teachers Association, IMUAlliance, LGBT



Caucus of the Democratic Party of Hawai'i, Hawai'i State Democratic Women's Caucus, Hawaii Children's Action Network, YWCA O'ahu, Planned Parenthood Votes Northwest and Hawaii, Americans for Democratic Action, Hawaii Women Lawyers, Domestic Violence Action Center, Filipina Advocacy Network, O'ahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, and twenty-five individuals. Your Committee received comments on this measure from the Department of the Attorney General and Department of Education.

Your Committee finds that the University of Hawaii's recent climate survey report underscored the importance of a state corollary to the Patsy Mink Equal Opportunity in Education Act (Title IX), by revealing the persistence of sex discrimination, including sexual harassment and violence, on Hawaii's campuses. Under the federal courts' interpretation of Title IX, a student who is subject to sexual harassment has no claim for relief under Title IX absent a showing of "deliberate indifference". This is the federal standard applied to the abuse of prisoners, and it is far narrower than the standard applied in sexual harassment cases in an employment setting. This measure may strengthen protections and provide additional remedies for students in Hawaii who are or who may become victims of sex discrimination and sexual harassment.

Your Committee has amended this measure by:

- (1) Adding legislative findings to state that this measure is intended to be liberally construed, that it is not preempted by federal law, and that the Hawaii Civil Rights Commission (Commission) may need to address potential inconsistencies between federal and state law in the Commission's rulemaking;
- (2) Allowing limited sex-specific programs or activities in the context of social clubs, housing assignments, and athletic team participation as provided for in rules adopted by the Commission;
- (3) Limiting the remedies available in cases of discrimination in state educational programs and activities under chapter 368, Hawaii Revised Statutes,



to equitable relief, reasonable attorneys' fees, and the costs of legal action;

- (4) Clarifying language related to non-preemption of civil legal actions by individuals for compensatory or punitive damages;
- (5) Establishing a statute of limitations for bringing a complaint for discrimination in state educational programs and activities of two years from the date of an alleged unlawful act;
- (6) Defining "commission" to mean the Hawaii Civil Rights Commission;
- (7) Requiring the Commission to submit a report to the Legislature prior to the Regular Sessions of 2019 and 2020 on the Commission's proposed rules, any public outreach activities, and any proposed legislation;
- (8) Inserting an effective date of January 1, 2020; provided that the rulemaking authority and reporting requirement of the Commission shall take effect on July 1, 2018; and
- (9) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1489, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1489, H.D. 1, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:
HB1489, HD1, SD1	LBR, JDC	4/3/18

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1

Recommendation:
 Adopted
 Not Adopted

Chair's or Designee's Signature: *Karl Rhoads*

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*Only one measure per Record of Votes