

ACT 177

H.B. NO. 483

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 Title IX of the Education Amendments of 1972 (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 educational program or 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.

However, the legislature also recognizes 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, in 2018 the legislature passed a corollary to Title IX in state law. Act 110, Session Laws of Hawaii 2018 (Act 110), prohibits discrimination on the basis of sex, including sexual orientation, gender identity, or gender expression, 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.

The law also directs the legislative reference bureau to conduct a study of existing federal Title IX procedures and enforcement in addition to examining Title IX corollaries in other jurisdictions. The legislative reference bureau was to submit its report, including any proposed legislation, in advance of the convening of the regular session of 2019. However, the study is still in progress.

Accordingly, the purpose of this Act is to extend the deadline for the legislative reference bureau to complete the study requested by Act 110 and incorporate federal law regarding Title IX into Act 110 that allow social fraternities, social sororities, certain youth service organizations, and same-sex living facilities to delineate along gender lines.

SECTION 2. Act 110, Session Laws of Hawaii 2018, is amended as follows:

- 1. By amending section 2 to read:

“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 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.

~~(b)~~ (e) 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.

(e) (f) 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)~~ (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.”

2. By amending section 3 to read:

“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;]~~ August 1, 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.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on January 1, 2020.

(Approved July 2, 2019.)