



SB-1146 Discrimination: postsecondary education. (2015-2016)

AMENDED IN ASSEMBLY JUNE 29, 2016

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CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 1146

**Introduced by Senator Lara
(Coauthor: Senator Leno)**

February 18, 2016

An act to add Sections ~~66290.1, 66290.2, and 66292.8 to, and to repeal and add Section 66271 of, 66290.1 and 66290.2~~ to the Education Code, *and Section 11135.5 to the Government Code*, relating to ~~postsecondary education: discrimination.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Lara. ~~Postsecondary education: nondiscrimination.~~ *Discrimination: postsecondary education.*

The Equity in Higher Education Act, among other things, prohibits a person from being subjected to discrimination on the basis of specified attributes, including sex, in any program or activity conducted by a postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid. Existing federal law, known as Title IX of the Education Amendments of 1972, prohibits a person, on the basis of sex, from being excluded from participation in, being denied the benefits of, or being subject to discrimination under, any education program or activity receiving federal financial assistance. Both the federal and state laws do not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization. Title IX provides a private right of action for violation of its provisions by a public postsecondary educational institution.

This bill would ~~provide that a religious educational institution is subject to the provisions of the Equity in Higher Education Act except with respect to prohibitions concerning religion, as specified. The bill would~~ require an institution that claims an exemption from either the Equity in Higher Education Act or Title IX to make specified disclosures to the institution's current and prospective students, faculty members, and employees, and to the Student Aid Commission, concerning the institution's claim for the exemption. The bill would require the commission to collect the information it receives and post and maintain a list on the commission's Internet Web site of all institutions claiming the exemption and their respective bases for claiming the exemption. ~~The bill would specify that the changes made by the bill shall not be construed to affect the operation of the Cal Grant Program and other provisions of law that prohibit discrimination on the basis of certain characteristics, or to prohibit students from seeking civil remedies, as specified. The bill would make the provisions of the Equity in Higher Education Act severable.~~

Existing law provides that no person in the state shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, administered, or funded by the state.

This bill would, except as provided, specify that a postsecondary educational institution that is controlled by a religious organization and that receives financial assistance from the state or enrolls students who receive state financial assistance is subject to that prohibition and violation of that prohibition may be enforced by a private right of action.

This bill would make its provisions severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 66271 of the Education Code is repealed.~~

~~SEC. 2. Section 66271 is added to the Education Code, to read:~~

~~66271. (a) This chapter shall apply to a religious educational institution except with respect to prohibitions concerning religion.~~

~~(b) Nothing in this section shall be construed to permit discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including the perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.~~

SEC. 3. SECTION 1. Section 66290.1 is added to the Education Code, to read:

66290.1. (a) Each postsecondary educational institution in this state that claims an exemption pursuant to Section 901(a)(3) of the federal Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681(a)(3)) or Section 66271 shall disclose to current and prospective students, faculty members, and employees the basis for claiming the exemption and the scope of the allowable activities provided by the exemption.

(b) The disclosure required in subdivision (a) shall be made in all of the following ways:

- (1) The disclosure shall be displayed in a prominent location of the campus or school site. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.
- (2) The disclosure shall be included in written materials sent to prospective students seeking admission to the postsecondary educational institution.
- (3) The disclosure shall be provided as part of orientation programs conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.
- (4) The disclosure shall be provided to each faculty member, member of the administrative staff, and member of the support staff at the beginning of the first quarter or semester of each school year. The disclosure shall be provided to each new employee upon his or her hire.
- (5) The disclosure shall be included in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 4. **SEC. 2.** Section 66290.2 is added to the Education Code, to read:

66290.2. (a) Each postsecondary educational institution in this state that claims an exemption pursuant to Section 901(a)(3) of the federal Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681(a)(3)) or Section 66271 shall submit to the Student Aid Commission copies of all materials submitted to, and received from, a state or federal agency concerning the granting of the exemption.

(b) The Student Aid Commission shall collect the information received pursuant to subdivision (a) and post and maintain a list on the commission's Internet Web site of the institutions that have claimed the exemption with their respective bases for claiming the exemption.

~~SEC. 5. Section 66292.8 is added to the Education Code, to read:~~

~~66292.8. (a) The changes to this chapter made by the act adding this section shall not be construed to affect either the current operation of the Cal Grant program established pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 or other provisions of law that prohibit discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including the perception that any person has, or is perceived to have, any of those characteristics.~~

~~(b) The changes to this chapter made by the act adding this section shall not be construed to prohibit students from seeking civil remedies under the provisions of this chapter for discrimination.~~

~~(c) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

SEC. 3. Section 11135.5 is added to the Government Code, to read:

11135.5. (a) Notwithstanding any other law, a postsecondary educational institution that is controlled by a religious organization and that receives financial assistance from the state or enrolls students who receive state financial assistance is subject to Section 11135, and violation of that section may be enforced by a private right of action as described in Section 11139.

(b) This section shall not prohibit an institution, as described in subdivision (a), from doing any of the following:

(1) Providing housing or restroom accommodations reserved for either male or female students if students are afforded housing or restroom accommodations consistent with their gender identity.

(2) Providing separate housing accommodations reserved primarily for married students or for students with minor dependents who reside with them if "married" includes both married opposite-sex and married same-sex couples.

(3) Enforcing rules of moral conduct and establishing housing policies in accordance with these rules of moral conduct if the rules are uniformly applicable to all students regardless of the student's sexual orientation or gender identity.

(4) Enforcing religious practices if these practices are uniformly applicable to all students regardless of the student's sexual orientation or gender identity.

(5) Admitting only students of one sex if the institution traditionally and continually from its establishment had that policy.

(c) This section does not apply to an institution described in subdivision (a) if the purpose of the institution is to prepare students to become ministers of the religion or to enter upon some other vocation of the religion and if the application of this section would not be consistent with the religious tenets of the organization.

(d) This section does not prevent an institution described in subdivision (a) from prohibiting the use of the institution's real property for any purpose that is not consistent with the religious tenets of the organization.

(e) Except for the provisions of Sections 11135 and 11139 and this section, this article does not apply to an institution described in subdivision (a).

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.