

AMENDED IN ASSEMBLY AUGUST 4, 2016

AMENDED IN ASSEMBLY JUNE 29, 2016

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN ASSEMBLY JUNE 13, 2016

AMENDED IN SENATE MAY 4, 2016

AMENDED IN SENATE APRIL 11, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1146

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

February 18, 2016

An act to add Sections 66290.1 and 66290.2 to the Education Code, and *to add* Section 11135.5 to the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Lara. 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 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.

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.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 66290.1 is added to the Education Code,
- 2 to read:
- 3 66290.1. (a) Each postsecondary educational institution in this
- 4 state that claims an exemption pursuant to Section 901(a)(3) of
- 5 the federal Title IX of the Education Amendments of 1972 (20
- 6 U.S.C. Sec. 1681(a)(3)) or Section 66271 shall disclose to current
- 7 and prospective students, faculty members, and employees the

1 basis for claiming the exemption and the scope of the allowable
2 activities provided by the exemption.

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

5 (1) The disclosure shall be displayed in a prominent location of
6 the campus or school site. “Prominent location” means that
7 location, or those locations, in the main administrative building or
8 other area where notices regarding the institution’s rules,
9 regulations, procedures, and standards of conduct are posted.

10 (2) The disclosure shall be included in written materials sent to
11 prospective students seeking admission to the ~~postsecondary~~
12 ~~educational institution.~~ *institution.*

13 (3) The disclosure shall be provided as part of orientation
14 programs conducted for new students at the beginning of each
15 quarter, semester, or summer session, as applicable.

16 (4) The disclosure shall be provided to each faculty member,
17 member of the administrative staff, and member of the support
18 staff at the beginning of the first quarter or semester of each school
19 year. The disclosure shall be provided to each new employee upon
20 his or her hire.

21 (5) The disclosure shall be included in any publication of the
22 institution that sets forth the comprehensive rules, regulations,
23 procedures, and standards of conduct for the institution.

24 SEC. 2. Section 66290.2 is added to the Education Code, to
25 read:

26 66290.2. (a) Each postsecondary educational institution in this
27 state that claims an exemption pursuant to Section 901(a)(3) of
28 the federal Title IX of the Education Amendments of 1972 (20
29 U.S.C. Sec. 1681(a)(3)) or Section 66271 shall submit to the
30 Student Aid Commission copies of all materials submitted to, and
31 received from, a state or federal agency concerning the granting
32 of the exemption.

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

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

1 11135.5. (a) Notwithstanding any other law, a postsecondary
2 educational institution that is controlled by a religious organization
3 and that receives financial assistance from the state or enrolls
4 students who receive state financial assistance is subject to Section
5 11135, and violation of that section may be enforced by a private
6 right of action as described in Section 11139.

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

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

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

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

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

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

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

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

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

38 SEC. 4. The provisions of this act are severable. If any
39 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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