

Date of Hearing: April 22, 2025

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Mike Fong, Chair  
AB 972 (Wilson) – As Introduced February 20, 2025

**[Note: This bill is double referred to the Assembly Judiciary Committee, where the Committee will hear it as it relates to issues under its jurisdiction.]**

**SUBJECT:** Postsecondary education: discrimination: sex

**SUMMARY:** Clarifies a person may not be discriminated against on the basis of their sex, by adding the term “sex” to the list of protected characteristics in the prohibition of discrimination section of the Equity in Higher Education Act.

**EXISTING LAW:** *Federal law.*

- 1) Prohibits a person in the United States from, on the basis of sex, being excluded from participation in, being denied the benefits of, or being subjected to discrimination in any education program or activity that receives Federal financial assistance, except as defined (United States Code Title 20, Chapter 38, Section 169, colloquially known as Title IX).
- 2) Outlines the required response a postsecondary higher education institution must undertake, when the institution is made aware of an alleged sexual harassment incident on campus. The regulations include a requirement for a formal complaint, a grievance procedure for an investigation into whether the incident based on a standard of evidence occurred, and a method of appealing the outcome of the grievance process (Federal Code of Regulations Title 34, Subtitle B, Chapter 1, Subpart D, Section 106.45).

*State law.*

- 1) Acknowledges it is the policy of the State of California to afford all persons, as defined, equal rights and opportunities in the postsecondary educational institutions of the State. Clarifies it is the purpose of the Equity in Higher Education Act to prohibit acts that are contrary to that policy and to provide remedies for those who have experienced the prohibited acts (Education Code (EDC) Section 66251).
- 2) Defines “Gender” for the Equity in Higher Education Act as the following:
  - a) Sex; and,
  - b) A person’s gender identity and gender expression. “Gender expression” is defined as a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth (EDC Section 66260.7).
- 3) States no person is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes, as defined in subdivision (a)

of Section 422.6 of the Penal Code, including immigration status. States the prohibition on the discrimination on the basis of the listed characteristics is extended to programs or activities conducted by any postsecondary education institution that receives or benefits from, state financial assistance or enrolls students who receive state financial aid (EDC Section 66270).

- 4) States a person is not permitted to force, threaten force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of a right or privilege guaranteed by the Constitution or the law of the United States based on the victim's perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, or the victim's association with a person or groups of the aforementioned protected characteristics (Penal Code Section 422.6, subdivision (a)).
- 5) States no person on the basis of listed characteristics will be denied full and equal access to the benefits of or, unlawfully subjected to discrimination under any program or activity (1) that is conducted, operated, or administered by any state agency, (2) funded by the state, (3) receives any financial assistance from the state. The list of protected characteristics includes: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, sexual orientation, disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, and, sexual orientation (Government Code Section 11135).

**FISCAL EFFECT:** This bill was keyed non-fiscal by Legislative Counsel.

**COMMENTS:** *Background.* AB 499 (Kuehl), Chapter 914, Statutes of 1998 was enacted in order to revise and recast numerous provisions in the Education Code relating to the prohibition of discrimination. The primary purpose was to bifurcate the existing section on the prohibition of discrimination into the elementary and secondary school section and the higher education section in the Education Code. AB 499 (Kuehl) established the Sex Equity in Education Act for postsecondary education institutions and provided a section explicitly prohibiting discrimination on college and university campuses throughout the state. The original language prohibited discrimination on the basis of sex, ethnic group identification, race, national origin, color, or mental or physical disability.

*Committee staff note AB 499 (Kuehl) also included a binary definition of the term "sex" as the biological condition or quality of being a male or female human being.*

EDC Section 66270 has been amended seven times since 1998, with each iteration producing a new scope for the prohibition of discrimination. The following is a list of the amendments germane to this analyses:

- 1) AB 537 (Kuehl), Chapter 587, Statutes of 1999 – Established the California Student Safety and Violence Prevention Act of 2000, amended the section to include any discrimination on the basis what is contained in the prohibition of hate crimes in the Penal Code.
- 2) AB 14 (Laird), Chapter 568, Statutes of 2007 – Removes sex and adds "gender" and the characteristic listed or defined in Government Code Section 11135. The intention behind the deletion and insertion of a cross-reference to the Government Code was to expand the

protected classes to encompass those added to the Unruh Civil Rights Act and to the Government Code Section 11135.

- 3) AB 887 (Atkins), Chapter 719, Statutes of 2011 – Adds “gender identity” and “gender expression” to the list of protected characteristics in the Section and it amended the definition for “gender” to include gender expression, and gender identity for the Equity in Higher Education Act. The intention was to clarify the vague nature of the section to make it explicitly clear institutions of higher education were responsible to prohibit discrimination against students on the basis of the student’s gender identity and gender expression.
- 4) SB 182 (Lara), Chapter 779, Statutes of 2018, added immigration status to the list of protected characteristics.

AB 972 (Wilson) seeks to remedy an oversight which occurred when the list of protected characteristics was deleted from Education Code Section 66270 and subsequently re-included by AB 14 (Laird). Sex was left out of the list of terms added in and based on feedback from gender-equity campus advocates, AB 972 (Wilson) seeks to reintroduce the term to the explicit protections delineated in the Prohibition of Discrimination Article listed in the Equity in Higher Education Act.

*Purpose.* As stated by the author, “I am proud to carry a bill that ensures California’s Education Code clearly reflects our values of equity and inclusion. AB 972 corrects a long-standing oversight by explicitly naming sex as a protected category—bringing clarity to students, staff, and administrators—and ensuring protections extend to gender, gender expression, and pregnancy-related conditions. This bill reaffirms our commitment to creating safe and inclusive environments on our campuses.”

*A remedy to a confusing oversight.* As previously stated, AB 972 (Wilson) seeks to remedy a perceived oversight with the deletion of “sex” from the prohibitions of discrimination in higher education. One may concede, the term “sex” is already listed in the Section by the cross reference of GOV Section 11135. However, many of the terms retained by AB 14 (Laird) are duplicative including, race, religion, and sexual orientation. Perhaps the issue was not the duplicative nature of the deleted term, but rather the deletion of the term “sex” was to provide space for a new expanded term, “gender.”

As previously noted, when EDC Section 66270 was first added to the Equity in Higher Education Act, the section contained the term sex as one of the protected characteristics. No one could discriminate against a person on the basis of one’s sex. In addition to being listed, the term was also defined for purposes of the act. In the same year, AB 14 (Laird) replaced the term “sex” with gender in EDC Section 66270, SB 777 (Kuehl), Chapter 569, Statutes of 2007, repealed the definition of “sex” from the Equity in Higher Education Act and added a definition for “gender.” A few years later, the definition of gender was amended into the current definition:

EDC Section 66269.7. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

The deletion of the term “sex” was deliberate in 2007, because the intent was to expand the definition to be inclusive of gender, gender expression, and gender identity to protect those who do not neatly fit within a binary definition of sex. While the term sex exists within the cross reference of Section 11135 of the GOV Code, Title IX coordinators have expressed a desire to streamline the EDC Code and to provide clarity on the types of protections institutions are required to provide to students.

AB 972 (Wilson) provides clarity by explicitly stating sex is a protected characteristic and one should not suffer discrimination on the basis of sex in programs or activities on campuses of higher education in the state of California.

*Committee comments. In order to provide a definition of “sex” the Committee has suggested and the Author has accepted the following amendment:*

1) Section 66270 is amended to read as follows:

A person shall not be subjected to discrimination on the basis of disability, ~~sex, gender, gender identity, gender expression~~, nationality, race or ethnicity, religion, sexual orientation, any characteristics listed or defined Section 11135 *or subdivision (r) of Section 12926* of Government Code or any other characteristics that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration status, in a 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.

As mentioned in the existing law section of this analysis, the United States Code pertaining to education includes provision preventing the discrimination on the basis of sex. As stated in the Assembly Committee on Higher Education report titled, A Call to Action, “Preventing sex discrimination is an edict from the Federal Government established by Title IX of the Education Amendments of 1972 (Title IX). Title IX goes beyond ensuring women have access to sports and academic majors; it requires all higher education institutions to provide educational programs free from sex discrimination. The prevention of sex discrimination is more than simply having a policy on how to address complaints. Prevention is creating a campus culture that addresses the root cause of sex discrimination before it becomes a complaint.”

One of the root causes of sex-based discrimination of late, is the inability to define sex or rather providing a definition of sex that is exclusionary and discriminatory in nature. The amendments provided by the Author, not only re-introduce sex as a protect characteristic, but also re-introduced a definition of sex to the Equity in Higher Education Act. GOV Section 12926, subdivision (r), states the following:

(r) (1) “Sex” includes, but is not limited to, the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

GOV Section 12925 refers to the definition in connection with unlawful practices investigated by the California Civil Right Department.

In a time when the United States Federal Government is defining sex as a binary concept through Executive Order 14168 and Executive Order 14201, California must preserve our inclusionary values and provide a more expansive definition for sex-based discrimination on college and universities who receive state funding. With the amendments offered, AB 972 continues California’s long-held practice of providing protections for an expanded definition of “sex” that not only includes biological female protections, but protections for gender expression, gender, and gender identity.

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file.

**Opposition**

None on file.

**Analysis Prepared by:** Ellen Cesaretti-Monroy / HIGHER ED. / (916) 319-3960