

Assembly Bill No. 3133

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Passed the Assembly August 30, 1982

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*Chief Clerk of the Assembly*

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Passed the Senate August 26, 1982

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_  
day of \_\_\_\_\_, 1982, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Chapter 2 (commencing with Section 200) to Part 1 of Division 1 of Title 1 of the Education Code, relating to discrimination.

## LEGISLATIVE COUNSEL'S DIGEST

AB 3133, Roos. Educational institutions: discrimination.

Under existing law, it is contrary to the public policy of this state for any person charged by the governing board of a school district with the responsibility of recommending persons for positions requiring certification qualifications to refuse to make or to fail to make such recommendation for various reasons, including among others, the sex of the applicant.

This bill would establish the policy of the State of California to afford all persons, regardless of sex, equal rights and opportunities in the educational institutions of the state. It would also prohibit, with certain exceptions, policies and practices contrary to this policy, and establish provisions to implement the purposes of the policy.

Existing law requires each state agency which administers a program or activity that is funded directly by the state or receives any financial assistance from the state and which enters into contracts for the performance of services to be provided to the public in a total amount exceeding \$100,000 per year to adopt rules and regulations necessary to effectuate the existing prohibition against unlawfully denying any person in the state the benefits of, or unlawfully subjecting any person in California to discrimination under, any such program or activity on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability.

This bill would provide that the governing boards of school districts and community college districts shall have responsibility for ensuring that district programs and activities are free from such discrimination. It would also give the Chancellor's office of the California Community

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Colleges certain specified review and enforcement responsibilities.

This bill would also require the California Postsecondary Education Commission to report to the Legislature and Governor on the representation and utilization of ethnic minorities and women at the community colleges, the California State University, and the University of California, as specified.

This bill would specify that none of its provisions shall be applicable to the University of California unless the regents so resolve.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

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

SECTION 1. Chapter 2 (commencing with Section 200) is added to Part 1 of Division 1 of Title 1 of the Education Code, to read:

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CHAPTER 2. PROHIBITION OF DISCRIMINATION ON  
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Article 1. Declaration of Purpose

200. It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

Article 2. Definitions

210. For purposes of this chapter, "educational institution" means a public or private preschool, elementary, or secondary school or institution; a public or private institution of vocational, professional, or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

211. For purposes of this chapter, "governing board" means the governing board of a school district or the governing board of a community college district.

212. For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being.

213. For purposes of this chapter, "state financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any students admitted to the educational institution.

State financial assistance shall include, but not be limited to, all of the following:

- (a) Grants of state property, or any interest therein.
- (b) Provision of the services of state personnel.

(c) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

214. For purposes of this chapter, "state student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

### Article 3. Prohibition of Sex Discrimination

220. No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

221. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

222. This article shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine.

223. This article shall not apply to the membership practices of any of the following:

(a) A social fraternity or social sorority which is exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at an institution of higher education.

(b) The Young Men's Christian Association, Young Women's Christian Association, girl scouts, boy scouts, camp fire girls, or voluntary youth service organizations which are exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose membership has traditionally been limited to persons of one sex, and principally to persons of less than 19 years of age.

224. This article shall not apply to any of the following:

(a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(b) Any program or activity of any secondary educational institution specifically for any of the following purposes:

(1) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(2) The selection of students to attend any of those conferences.

225. This article shall not preclude father-son or mother-daughter activities at an educational institution, provided that if such activities are offered for students of one sex, opportunities for reasonably comparable activities are offered for students of the other sex.

226. This article shall not apply to any scholarship or other financial assistance awarded by a postsecondary educational institution to any individual upon the basis of a combination of factors related to the individual's personal appearance, poise, and talent as an award in any pageant in which participation is limited exclusively to individuals of one sex, provided that the pageant complies with other nondiscrimination provisions of state and federal law.

227. In regard to admissions to educational institutions, this article shall apply only to institutions of vocational, professional, or postgraduate education, and to public postsecondary education institutions.

228. In regard to admissions to educational institutions, this article shall not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

229. Nothing contained in this article shall be construed to require any educational institution to grant preferential or disparate treatment to the members of

one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in, or receiving the benefits of, any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, district, or other area. However, this section shall not be construed to prevent the consideration in any hearing or proceeding under this article of statistical evidence which tends to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any state-supported program or activity by the members of one sex.

230. For purposes of this chapter, discrimination on the basis of sex shall include, but not be limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of sex.

(c) On the basis of sex, exclusion from participation in or denial of equivalent opportunity in athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, discrimination among persons,

including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(c) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

231. Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided.

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue rules, regulations, or orders to implement the provisions of this chapter.

The Regents of the University of California may issue rules, regulations, or orders to implement the provisions of this chapter.

#### Article 4. Instructional Materials

240. Governing boards of school districts shall adopt instructional materials in accordance with the provisions of Section 60040.

#### Article 5. Compliance

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for



all the programs and activities conducted by an educational institution.

251. A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

#### Article 6. Enforcement

260. The governing board of a school district shall have the responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

261. The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for all of the following:

(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code.

(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.

(3) Reviewing reports of any actions taken by the district to resolve each complaint.

(4) Monitoring the compliance of each district with

any and all regulations promulgated pursuant to Section 11138 of the Government Code.

263. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the community colleges, the California State University, and the University of California, pursuant to Sections 66903.1 and 66903.3.

264. No provision of this chapter shall be applicable to the University of California unless the Regents of the University of California, by resolution, make the provision applicable.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.