

SECOND REGULAR SESSION

# SENATE BILL NO. 725

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4765S.01I

## AN ACT

To amend chapter 173, RSMo, by adding thereto one new section relating to academic freedom of expression, with an emergency clause.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 173, RSMo, is amended by adding thereto one new  
2 section, to be known as section 173.1553, to read as follows:

**173.1553. 1. The provisions of this section shall be known as the  
2 "Academic Freedom and Whistleblower Protection Act". For the  
3 purposes of this section, the following terms mean:**

4 **(1) "Faculty", any non-administrative or non-managerial position,  
5 whether or not it is compensated by an institution of higher education,  
6 that is tasked with providing scholarship, academic research, or  
7 teaching at an institution of higher education, including:**

8 **(a) Tenured and non-tenured professors;**

9 **(b) Adjunct professors;**

10 **(c) Visiting professors or lecturers;**

11 **(d) Graduate student instructors; and**

12 **(e) Any person in comparable positions to paragraphs (a) to (d)  
13 of this subdivision, however titled;**

14 **(2) "Institution of higher education", any publicly operated  
15 institution of higher education located in this state.**

16 **2. (1) No institution of higher education shall create or maintain  
17 a policy that allows it to take adverse personnel action against a  
18 faculty member in retaliation for:**

19 **(a) Expression related to scholarship, academic research, or  
20 teaching, except as provided in subdivision (2) of this subsection;**

21 **(b) Expression related to any matter of institutional policy or**

22 action that is of public concern;

23 (c) Public expression related to any matter of social, political,  
24 economic, or other interest;

25 (d) Disclosure, whether formal or informal, of information the  
26 faculty member reasonably believes evidences:

27 a. Any violation of any federal or state law, rule, or regulation;  
28 or

29 b. Gross mismanagement, a gross waste of funds, an abuse of  
30 authority, or a substantial and specific danger to public health or  
31 safety.

32 (2) Nothing in subdivision (1) of this subsection shall be  
33 interpreted as preventing an institution of higher education from  
34 creating or maintaining a policy that allows it to take lawful adverse  
35 personnel action, up to and including termination, against a faculty  
36 member for:

37 (a) Classroom expression that:

38 a. Is not reasonably germane to the subject matter of the course,  
39 broadly construed; and

40 b. Comprises a substantial portion of classroom instruction; or

41 (b) Being convicted of committing a criminal act of violence  
42 against a member of the campus community including another faculty  
43 member, staff member, student, or prospective student.

44 3. (1) Any person whose rights under this section have been  
45 violated may bring an action in any state court of competent  
46 jurisdiction. In an action brought under this section, if the court finds  
47 that protected expression, as described in subdivision (1) of subsection  
48 2 of this section, was a motivating factor behind the institution of  
49 higher education's decision to take an adverse personnel action, the  
50 court shall award the aggrieved person compensatory damages,  
51 reasonable court costs, and attorney's fees, including expert fees, or  
52 any other relief in equity or law as deemed appropriate, unless the  
53 institution of higher education can demonstrate that it would have  
54 taken the same personnel action in absence of the protected activity.

55 (2) In an action brought pursuant to subdivision (1) of this  
56 subsection, remedies, including remedies both at law and in equity, are  
57 available for such a violation to the same extent as such remedies are  
58 available for such a violation in an action against any public or private

59 entity.

60 **(3) A person must bring an action under this section not later**  
61 **than one year after the day the cause of action accrues. For purposes**  
62 **of calculating the one-year limitation period, the cause of action shall**  
63 **be deemed accrued on the date that the person receives final notice of**  
64 **discipline from the institution of higher education or the date in which**  
65 **the act of retaliation occurred, whichever occurs later.**

66 **4. This section shall not apply to any privately operated**  
67 **institution of higher education.**

Section B. Because of the importance of protecting academic freedom in  
2 institutions of higher education, section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace, and safety, and is  
4 hereby declared to be an emergency act within the meaning of the constitution,  
5 and section A of this act shall be in full force and effect upon its passage and  
6 approval.

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