

FIRST REGULAR SESSION

# SENATE BILL NO. 259

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 16, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1129S.011

## AN ACT

To repeal section 537.110, RSMo, and to enact in lieu thereof twelve new sections relating to due process proceedings at institutions of higher education, with penalty provisions.

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

Section A. Section 537.110, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 173.1898, 173.1900, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920, 173.1925, 173.1927, 173.1930, 173.1935, and 537.110, to read as follows:

**173.1898. 1. The provisions of sections 173.1898 to 173.1935 are intended to ensure that, in any proceeding related to 20 U.S.C. Sections 1681 to 1688, individuals in this state have the right to defend their character and the right to due process protections under the Constitution of Missouri and the Constitution of the United States, including the Bill of Rights. Article I, Section 14 of the Constitution of Missouri provides that "the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay." It is the intent of the general assembly that sections 173.1898 to 173.1935 fulfill this constitutional guarantee.**

**2. For purposes of sections 173.1898 to 173.1935, "institution of higher education" means an institution of higher education located in Missouri that receives state funds or any public benefit.**

**173.1900. 1. Any student at an institution of higher education may request a due process hearing before the administrative hearing**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

3 commission with respect to any formal complaint filed with the  
4 institution arising under 20 U.S.C. Sections 1681 to 1688, or any  
5 amendments thereto. Such request shall include the student's name  
6 and address, name of the institution of higher education, issue, and  
7 suggested resolution of the dispute, if known. The administrative  
8 hearing commission shall assign a commissioner to hear the case within  
9 ten days of receiving notice of the request.

10       2. The student, school officials, and any other persons affected  
11 by the action in question shall present all evidence relative to the  
12 formal complaint at the hearing.

13       3. The provisions of chapter 536 shall govern hearings and  
14 prehearing procedures conducted under the authority of this  
15 section. Any party may obtain discovery in the same manner, and  
16 under the same conditions and requirements, as is or may hereafter be  
17 provided with respect to discovery in civil actions by rule of the  
18 supreme court of Missouri for use in the circuit courts. The  
19 administrative hearing commission may enforce discovery by the same  
20 methods as provided by rule of the supreme court of Missouri for use  
21 in civil cases.

22       4. The administrative hearing commission shall issue a final  
23 decision or order within sixty days from the conclusion of the hearing.

24       5. After review of all evidence presented, the commissioner shall  
25 issue findings, conclusions, and a decision in the matter and forward  
26 the written decision to the student and to the president of the  
27 institution of higher education. Except in the case of an expedited  
28 hearing described under subsection 6 of this section, the commissioner  
29 assigned to the matter may adopt a specific time line at the request of  
30 either party.

31       6. Any party to a case filed under this section may request an  
32 expedited due process hearing by the administrative hearing  
33 commission. If a party requests an expedited hearing, the  
34 administrative hearing commission shall assign a commissioner to hold  
35 a hearing and render a decision within sixty days of the receipt of the  
36 request for an expedited hearing.

173.1905. 1. Any student at an institution of higher education  
2 may request a due process hearing before the administrative hearing  
3 commission with respect to an appeal of any case arising under 20

4 U.S.C. Sections 1681 to 1688, or any amendments thereto, if the student  
5 received disciplinary action by the institution in the  
6 case. Notwithstanding any other provision of law, the student may  
7 make such a request with respect to a disciplinary action taken by the  
8 institution before the effective date of this section. The request shall  
9 include the student's name and address, name of the institution of  
10 higher education, issue, and suggested resolution of the dispute, if  
11 known. Within ten days of receiving notice of the request, the  
12 administrative hearing commission shall assign a commissioner to hear  
13 the case and shall enter an order staying the disciplinary action until  
14 the administrative hearing commission issues its final decision or  
15 order.

16 2. The student, school officials, and any other persons affected  
17 by the action in question shall present all evidence relative to the  
18 matter under appeal at the hearing.

19 3. The provisions of chapter 536 shall govern hearings and  
20 prehearing procedures conducted under the authority of this  
21 section. Any party may obtain discovery in the same manner, and  
22 under the same conditions and requirements, as is or may hereafter be  
23 provided with respect to discovery in civil actions by rule of the  
24 supreme court of Missouri for use in the circuit courts. The  
25 administrative hearing commission may enforce discovery by the same  
26 methods as provided by rule of the supreme court of Missouri for use  
27 in civil cases.

28 4. The administrative hearing commission shall issue a final  
29 decision or order within sixty days from the conclusion of the hearing.

30 5. After review of all evidence presented, the commissioner shall  
31 issue findings, conclusions, and a decision in the matter and forward  
32 the written decision to the student and to the president of the  
33 institution of higher education. Except in the case of an expedited  
34 hearing described under subsection 6 of this section, the commissioner  
35 assigned to the matter may adopt a specific time line at the request of  
36 either party.

37 6. A student may request an expedited due process hearing by  
38 the administrative hearing commission to challenge a disciplinary  
39 action that involves suspension or expulsion. If a student requests an  
40 expedited hearing under this section, the administrative hearing

41 commission shall assign a commissioner to hold a hearing and render  
42 a decision within sixty days of the receipt of the request for an  
43 expedited hearing.

173.1907. 1. The administrative hearing commission shall  
2 compile relevant statistics on the cases it hears under sections 173.1900  
3 and 173.1905.

4 2. The administrative hearing commission shall promulgate rules  
5 to implement the provisions of this section including, but not limited  
6 to, the requirements for the types of statistics to be compiled. Any rule  
7 or portion of a rule, as that term is defined in section 536.010, that is  
8 created under the authority delegated in this section shall become  
9 effective only if it complies with and is subject to all of the provisions  
10 of chapter 536, and, if applicable, section 536.028. This section and  
11 chapter 536 are nonseverable, and if any of the powers vested with the  
12 general assembly pursuant to chapter 536 to review, to delay the  
13 effective date, or to disapprove and annul a rule are subsequently held  
14 unconstitutional, then the grant of rulemaking authority and any rule  
15 proposed or adopted after August 28, 2019, shall be invalid and void.

173.1910. 1. For all formal complaints pending under 20 U.S.C.  
2 Sections 1681 to 1688, or any amendments thereto, an institution of  
3 higher education shall provide students fair, equitable, and  
4 individualized interim measures that avoid depriving any student of his  
5 or her education pending the investigation and resolution of the formal  
6 complaint. If interim emergency measures are deemed necessary by the  
7 institution that will deprive any student of his or her education, the  
8 institution shall provide the affected student with the opportunity for  
9 an expedited due process hearing.

10 2. Any institution of higher education that handles formal  
11 complaints filed under 20 U.S.C. Sections 1681 to 1688, or any  
12 amendments thereto, shall adopt grievance procedures for the formal  
13 complaints that provide for a prompt and equitable resolution and  
14 include the opportunity for both the complainant and the respondent  
15 to:

16 (1) Within ten days after the filing of the formal complaint,  
17 obtain a copy of the actual complaint filed by the complainant that  
18 includes sufficient details regarding the identities of the parties; the  
19 identities of any known witnesses; any regulation or code allegedly

20 violated; and the precise conduct alleged to have violated the  
21 regulation or code, including the date, location, and circumstances of  
22 the alleged conduct or incident;

23       (2) After the conclusion of any investigation, obtain a complete  
24 copy of the investigation, including any materials provided to an  
25 investigator by the complainant or the respondent; and

26       (3) Obtain the names of any witnesses disclosed by the  
27 complainant or the respondent.

28       3. The grievance procedures shall not require any party to speak  
29 to an investigator.

30       4. The grievance procedures shall specify that both the  
31 complainant and the respondent shall receive, before any hearing and  
32 in a timely manner, any information to be used at the hearing, as well  
33 as a notice in twelve-point, bold font describing the right of any student  
34 to request a due process hearing before the administrative hearing  
35 commission under section 173.1900 or 173.1905.

36       5. The grievance procedures shall describe the range of possible  
37 sanctions and remedies that the institution of higher education may  
38 implement following any determination of responsibility. Possible  
39 sanctions may include, but not be limited to, loss of certain campus  
40 privileges, removal from campus housing, probation, suspension, or  
41 expulsion.

42       6. The institution of higher education shall use an informal  
43 resolution process that may include mediation, education, counseling,  
44 or restorative justice if both the complainant and the respondent agree  
45 to such a process. The institution shall notify both the complainant and  
46 the respondent of the option to use the informal resolution process.

47       7. The institution of higher education shall not limit, prohibit,  
48 delete, or screen any evidence to be used at any point during the  
49 resolution of a formal complaint filed under 20 U.S.C. Sections 1681 to  
50 1688, or any amendments thereto.

51       8. Any person who makes any decision regarding any formal  
52 complaint filed under 20 U.S.C. Sections 1681 to 1688, or any  
53 amendments thereto, and who is an administrator at the institution of  
54 higher education or who is employed by the office that handles such  
55 complaints shall disclose to all parties in the case any prejudicial  
56 beliefs or previous experiences that would provide actual or perceived

57 bias for a decision. To comply with the provisions of this subsection,  
58 the person shall sign and submit to all parties in the case an affidavit,  
59 sworn to under penalty of perjury, either listing any prejudicial beliefs  
60 or previous experiences that would provide actual or perceived bias for  
61 a decision or stating that, to the best of the affiant's knowledge, the  
62 affiant does not have any prejudicial beliefs or previous experiences  
63 that would provide actual or perceived bias for a decision.

64 9. Any institution of higher education that handles formal  
65 complaints filed under 20 U.S.C. Sections 1681 to 1688, or any  
66 amendments thereto, shall adopt hearing procedures for the formal  
67 complaints that:

68 (1) Ensure that all testimony is made under oath or affirmation  
69 as to its truth;

70 (2) Guarantee due process for all parties as required by the  
71 Constitution of Missouri and the Constitution of the United States,  
72 including the Bill of Rights;

73 (3) Require credibility to be given to law enforcement reports  
74 and sworn affidavits from mandatory reporters in accordance with  
75 their apparent reliability; and

76 (4) Guarantee all students the right to:

77 (a) Be represented by an attorney;

78 (b) Present any and all evidence, including testimony from  
79 witnesses;

80 (c) Have all evidence and testimony presented considered;

81 (d) Cross-examine any party or witness or present questions for  
82 the purpose of cross-examination;

83 (e) Receive, before the hearing, the names of any and all persons  
84 who will be present at the hearing as decisionmakers; and

85 (f) Reject any decisionmaker who has a bias or conflict of  
86 interest or who is a friend of any witness through any interaction,  
87 including any online interaction.

88 The institution of higher education shall not be required to adopt  
89 formal rules of evidence, but the standards of evidence for the hearing  
90 shall be equivalent to those applied under chapter 536. To reach a  
91 determination of responsibility, the decisionmaker or decisionmakers  
92 shall apply the clear and convincing evidence standard.

93 10. Throughout the process of handling a formal complaint filed

94 under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, the  
95 institution of higher education shall:

96 (1) Ensure that all parties use the terms "complainant" and  
97 "respondent" and refrain from using the term "survivor" or any other  
98 term that presumes guilt before an actual finding of guilt; and

99 (2) Define consent as a freely given agreement to the conduct at  
100 issue by a competent person through words or overt actions.

173.1915. 1. Notwithstanding any provision of law granting  
2 immunity to public employees, any student of an institution of higher  
3 education who fails to receive due process as required under section  
4 173.1910 shall have a civil cause of action against any employee of the  
5 institution of higher education who intentionally denied the student  
6 such due process. The student shall be entitled to recover from the  
7 employee who denied him or her due process such relief as may be  
8 appropriate including, but not limited to:

9 (1) Actual damages; and

10 (2) Punitive damages.

11 2. Failure to provide due process to a respondent student in any  
12 proceeding under 20 U.S.C. Sections 1681 to 1688, or any amendments  
13 thereto, shall:

14 (1) Be considered a breach of contract between the student and  
15 the institution of higher education that handled the proceeding; and

16 (2) Be considered by the attorney general as an unlawful act  
17 prohibited under chapter 407 for purposes of investigation under  
18 section 173.1925.

19 3. If a person makes a false claim or files a false formal  
20 complaint under 20 U.S.C. Sections 1681 to 1688, or any amendments  
21 thereto, the person who was the subject of the false claim or complaint  
22 has a civil cause of action against the person who made the false claim  
23 or complaint and is entitled to recover from the person who made the  
24 false claim or complaint such relief as may be appropriate including,  
25 but not limited to:

26 (1) Actual damages; and

27 (2) Punitive damages.

173.1920. 1. Any institution of higher education that conducts  
2 any type of training on 20 U.S.C. Sections 1681 to 1688, or any  
3 amendments thereto, shall maintain and publish on its website any

4 materials used in the training.

5           2. Any institution of higher education that handles formal  
6 complaints filed under 20 U.S.C. Sections 1681 to 1688, or any  
7 amendments thereto, shall maintain and publish on its website  
8 information and procedures related to such complaints. All  
9 information relating to 20 U.S.C. Sections 1681 to 1688, and any  
10 amendments thereto, shall appear together in one document or web  
11 page that is easily accessible.

          173.1925. 1. The attorney general shall have authority to  
2 investigate alleged or suspected violations of section 173.1910 and shall  
3 have all powers provided by sections 407.040 to 407.090 in connection  
4 with investigations of alleged or suspected violations of section  
5 173.1910 as if the violations are unlawful acts prohibited under chapter  
6 407.

7           2. Any institution of higher education that violates a student's  
8 due process rights under section 173.1910 shall be fined two hundred  
9 fifty thousand dollars. All fines collected in accordance with this  
10 subsection shall be credited to and deposited in the merchandising  
11 practices revolving fund established in section 407.140.

12           3. The attorney general shall collect information and statistics  
13 from institutions of higher education on their procedures and policies  
14 for formal complaints filed under 20 U.S.C. Sections 1681 to 1688, and  
15 any amendments thereto. The information collected on each institution  
16 shall include, but not be limited to, the following:

17           (1) A description of the steps the institution takes after receiving  
18 a formal complaint;

19           (2) A description of the ways in which the institution considers  
20 evidence in its proceedings;

21           (3) The rights afforded to students under the institution's  
22 procedures;

23           (4) Any changes in the institution's procedures as a result of  
24 guidance received from the United States Department of Education in  
25 2017 or any subsequent year, any rules promulgated by the United  
26 States Department of Education, or any other actions taken by the  
27 United States Department of Education; and

28           (5) Demographic patterns or other patterns noted by the  
29 institution with respect to formal complaints.

173.1927. If any entity of the federal government brings suit  
2 against an institution of higher education for complying with the  
3 requirements of sections 173.1898 to 173.1935, the attorney general shall  
4 have authority to bring suit on behalf of the institution against any  
5 entity in order to defend the requirements established under sections  
6 173.1898 to 173.1935.

173.1930. 1. For purposes of this section, the following terms  
2 mean:

3 (1) "Exempt record", a record that is neither required by law to  
4 be open to the public nor is confidential, but may be open in the  
5 discretion of the public entity;

6 (2) "Personally identifiable information":

7 (a) Information that directly identifies an individual; and

8 (b) Information that, alone or in combination with other  
9 information, is linked or linkable to an individual and would allow a  
10 reasonable person who lacks knowledge of the relevant circumstances  
11 to identify the individual.

12 2. Notwithstanding the provisions of chapter 610, any record  
13 related to a formal complaint or investigation under 20 U.S.C. Sections  
14 1681 to 1688, or any amendments thereto, at an institution of higher  
15 education, or at the administrative hearing commission, which contains  
16 personally identifiable information about a party to the formal  
17 complaint is an exempt record.

173.1935. Sections 173.1898 to 173.1930 shall apply only to the  
2 extent they are not inconsistent with the requirements under 20 U.S.C.  
3 Sections 1681 to 1688, any amendments thereto, and any regulations  
4 promulgated thereunder.

537.110. It is actionable to publish falsely and maliciously, in any manner  
2 whatsoever, that any person has been guilty of fornication [or] , adultery, sexual  
3 assault, or rape.

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