

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 573

100TH GENERAL ASSEMBLY

0202H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 536.018, RSMo, and to enact in lieu thereof eleven new sections relating to due process in proceedings in higher education, with penalty provisions and an emergency clause for certain sections.

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

Section A. Section 536.018, RSMo, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 173.1898, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920, 173.1925, 173.1927, 173.1930, 173.1935, and 536.018, 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, the following terms mean:

(1) "Formal complaint", a document signed by a complainant or by the Title IX coordinator filed under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, against a respondent about conduct within an institution of higher education that requests the initiation of a grievance procedure;

(2) "Institution of higher education", an institution of higher education located in Missouri that receives state funds or any public benefit;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(3) "Sexual harassment":**

18 **(a) An employee of the institution of higher education conditioning the provision**
19 **of any aid, benefit, or service of the institution of higher education on an individual's**
20 **participation in unwelcome sexual conduct;**

21 **(b) Unwelcome conduct on the basis of sex that is so severe, pervasive, and**
22 **objectively offensive that it effectively denies a person equal access to the institution of**
23 **higher education's education program or activity; or**

24 **(c) Sexual assault, as defined in 34 CFR 668.46(a).**

173.1905. 1. Any student at an institution of higher education may request a due
2 **process hearing before the administrative hearing commission with respect to an appeal**
3 **of any case arising under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, if**
4 **the student was aggrieved by a final decision of the institution of higher education. The**
5 **request shall include the student's name and address, name of the institution of higher**
6 **education, issue, and suggested resolution of the dispute, if known. Within ten days of**
7 **receiving notice of the request, the administrative hearing commission shall assign a**
8 **commissioner to hear the case and may enter an order staying the disciplinary action until**
9 **the administrative hearing commission issues its final decision or order.**

10 **2. The student, school officials, and any other persons affected by the action in**
11 **question shall present all evidence relative to the matter under appeal at the hearing;**
12 **except that, nothing in this section shall be construed to compel any person affected by the**
13 **action to incriminate himself or herself.**

14 **3. The provisions of chapter 536 shall govern hearings and prehearing procedures**
15 **conducted under the authority of this section. Any party may obtain discovery in the same**
16 **manner, and 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 supreme court of Missouri**
18 **for use in the circuit courts. The administrative hearing commission may enforce discovery**
19 **by the same methods as provided by rule of the supreme court of Missouri for use in civil**
20 **cases. The administrative hearing commission may consider evidence presented to, but not**
21 **necessarily considered by, the institution.**

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

24 **5. After review of all evidence presented, the commissioner shall issue findings,**
25 **conclusions, and a decision in the matter and forward the written decision to the**
26 **complainant, to the respondent, and to the president of the institution of higher education.**
27 **Except in the case of an expedited hearing described under subsection 6 of this section, the**

28 commissioner assigned to the matter may adopt a specific time line at the request of either
29 party.

30 6. A student may request an expedited due process hearing by the administrative
31 hearing commission to challenge a disciplinary action that involves suspension or
32 expulsion. If a student requests an expedited hearing under this section, the administrative
33 hearing commission shall assign a commissioner to hold a hearing and render a decision
34 within sixty days of the receipt of the request for an expedited hearing.

35 7. A hearing held under the provisions of this section shall be a closed hearing.

173.1907. 1. The administrative hearing commission shall compile relevant
2 statistics on the cases it hears under section 173.1905.

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

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

8 2. Any institution of higher education that handles formal complaints filed under
9 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall apply a uniform
10 definition of the term "sexual harassment", defined in section 173.1898, and shall adopt
11 grievance procedures for the formal complaints, with proceedings on the record, that
12 provide for a prompt and equitable resolution and include the opportunity for both the
13 complainant and the respondent to:

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

17 **allegedly violated; and the precise conduct alleged to have violated the regulation or code,**
18 **including the date, location, and circumstances of the alleged conduct or incident;**

19 **(2) After the conclusion of any investigation, obtain a complete copy of the**
20 **investigation, which shall include any materials provided to an investigator by the**
21 **complainant or the respondent and that directly related to the allegations raised in the**
22 **formal complaint; and**

23 **(3) Obtain the names of any witnesses disclosed by the complainant or the**
24 **respondent.**

25 **3. The grievance procedures shall not require any party to speak to an investigator.**

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

31 **5. The grievance procedures shall describe the range of possible sanctions and**
32 **remedies that the institution of higher education may implement following any**
33 **determination of responsibility. Possible sanctions may include, but not be limited to, loss**
34 **of certain campus privileges, removal from campus housing, probation, suspension, or**
35 **expulsion.**

36 **6. The institution of higher education shall use an informal resolution process that**
37 **may include mediation, education, counseling, or restorative justice if both the complainant**
38 **and the respondent agree to such a process. The institution shall notify both the**
39 **complainant and the respondent of the option to use the informal resolution process.**

40 **7. The institution of higher education shall not limit, prohibit, delete, or screen any**
41 **evidence to be used at any point during the resolution of a formal complaint filed under**
42 **20 U.S.C. Sections 1681 to 1688, or any amendments thereto. However, all**
43 **cross-examination shall exclude evidence of the complainant's sexual behavior or**
44 **predisposition, unless such evidence about the complainant's sexual behavior is offered to**
45 **prove that someone other than the respondent committed the conduct alleged by the**
46 **complainant, or if the evidence concerns specific incidents of the complainant's sexual**
47 **behavior with respect to the respondent and is offered to prove consent.**

48 **8. Any institution of higher education that handles formal complaints filed under**
49 **20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall adopt hearing**
50 **procedures for the formal complaints that:**

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

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

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

56 **(4) Guarantee all students the right to:**

57 **(a) Be represented by an attorney at the student's expense;**

58 **(b) Present relevant evidence necessary for a meaningful process, including**
59 **testimony from witnesses;**

60 **(c) Have all evidence and testimony presented considered. If evidence is excluded**
61 **over the objection of either party, the party seeking to enter the evidence may make an**
62 **offer of proof;**

63 **(d) Cross-examine any party or witness or present questions for the purpose of**
64 **cross-examination;**

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

67 **(f) Cross-examine and reject any decisionmaker who has a bias or conflict of**
68 **interest.**

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70 **The institution of higher education shall not be required to adopt formal rules of evidence,**
71 **but the standards of evidence for the hearing shall be equivalent to those applied under**
72 **chapter 536. To reach a determination of responsibility, the decisionmaker or**
73 **decisionmakers may apply either the preponderance of the evidence standard or the clear**
74 **and convincing evidence standard. However, the preponderance of the evidence standard**
75 **may be used only if it used as the standard for all other discriminatory harassment**
76 **complaints involving faculty.**

77 **9. Throughout the process of handling a formal complaint filed under 20 U.S.C.**
78 **Sections 1681 to 1688, or any amendments thereto, the institution of higher education shall:**

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

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

173.1915. 1. Notwithstanding any section granting immunity to public employees,
2 **any student of an institution of higher education who fails to receive due process as**
3 **required under section 173.1910 shall have a civil cause of action against any institution**
4 **of higher education that intentionally failed to comply with the provisions of sections**

5 **173.1898 to 173.1930. The student shall be entitled to recover from the institution of higher**
6 **education that failed to comply with the provisions of sections 173.1898 to 173.1930 such**
7 **relief as may be appropriate including, but not limited to:**

- 8 (1) **Actual damages;**
9 (2) **Punitive damages; and**
10 (3) **A reasonable attorney's fee and other litigation costs reasonably incurred.**

11 **2. Failure by an institution of higher education to comply with the provisions of**
12 **sections 173.1898 to 173.1930 shall:**

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

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

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

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

173.1925. The attorney general shall collect information and statistics from
2 **institutions of higher education on their procedures and policies for formal complaints**
3 **filed under 20 U.S.C. Sections 1681 to 1688, and any amendments thereto. The information**
4 **collected on each institution shall include, but not be limited to, the following:**

5 (1) **A description of the steps the institution takes after receiving a formal**
6 **complaint;**

7 (2) **A description of the ways in which the institution considers evidence in its**
8 **proceedings;**

9 (3) **The rights afforded to students under the institution's procedures;**

10 (4) **Any changes in the institution's procedures as a result of guidance received**
11 **from the United States Department of Education in 2017 or any subsequent year, any rules**
12 **promulgated by the United States Department of Education, or any other actions taken by**
13 **the United States Department of Education; and**

14 (5) **Demographic data including, but not limited to, gender and race noted by the**
15 **institution with respect to formal complaints.**

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

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

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

4 (2) "Personally identifiable information":

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

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

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

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

536.018. The term "agency" and the term "state agency" as defined by section 536.010
2 shall not include an institution of higher education, supported in whole or in part from state
3 funds, if such institution has established written procedures to assure that constitutionally
4 required due process safeguards exist and apply to a proceeding that would otherwise constitute
5 a "contested case" as defined in section 536.010. **Provisions of this section to the contrary
6 notwithstanding, in actions arising under sections 173.1898 to 173.1930, the terms
7 "agency" and "state agency" shall include institutions of higher education, as defined
8 under section 173.1898.**

Section B. Because of the importance of protecting the due process rights of individuals
2 in Title IX proceedings and ensuring that individuals accused of sexual misconduct are able to
3 defend their character, the enactment of sections 173.1898, 173.1905, 173.1907, 173.1910,
4 173.1915, 173.1920, 173.1925, 173.1927, 173.1930, and 173.1935 of this act is deemed
5 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is
6 hereby declared to be an emergency act within the meaning of the constitution, and the enactment

7 of sections 173.1898, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920, 173.1925, 173.1927,
8 173.1930, and 173.1935 of this act shall be in full force and effect upon its passage and approval.

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