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.01I

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Section A. Section 537.110, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 173.1898, 173.1900, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920, 173.1925,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...
commission with respect to any formal complaint filed with the institution arising under 20 U.S.C. Sections 1681 to 1688, or any amendments thereto. Such request shall include the student's name and address, name of the institution of higher education, issue, and suggested resolution of the dispute, if known. The administrative hearing commission shall assign a commissioner to hear the case within ten days of receiving notice of the request.

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

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

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

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

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

173.1905. 1. Any student at an institution of higher education may request a due process hearing before the administrative hearing commission with respect to an appeal of any case arising under 20
U.S.C. Sections 1681 to 1688, or any amendments thereto, if the student received disciplinary action by the institution in the case. Notwithstanding any other provision of law, the student may make such a request with respect to a disciplinary action taken by the institution before the effective date of this section. The request shall include the student's name and address, name of the institution of higher education, issue, and suggested resolution of the dispute, if known. Within ten days of receiving notice of the request, the administrative hearing commission shall assign a commissioner to hear the case and shall enter an order staying the disciplinary action until the administrative hearing commission issues its final decision or order.

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

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

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

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

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

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

2. The administrative hearing commission shall promulgate rules to implement the provisions of this section including, but not limited to, the requirements for the types of statistics to be compiled. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule 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. Sections 1681 to 1688, or any amendments thereto, an institution of higher education shall provide students fair, equitable, and individualized interim measures that avoid depriving any student of his or her education pending the investigation and resolution of the formal complaint. If interim emergency measures are deemed necessary by the institution that will deprive any student of his or her education, the institution shall provide the affected student with the opportunity for an expedited due process hearing.

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

(1) Within ten days after the filing of the formal complaint, obtain a copy of the actual complaint filed by the complainant that includes sufficient details regarding the identities of the parties; the identities of any known witnesses; any regulation or code allegedly
violated; and the precise conduct alleged to have violated the
regulation or code, including the date, location, and circumstances of
the alleged conduct or incident;

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

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

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

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

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

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

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

8. Any person who makes any decision regarding any formal
complaint filed under 20 U.S.C. Sections 1681 to 1688, or any
amendments thereto, and who is an administrator at the institution of
higher education or who is employed by the office that handles such
complaints shall disclose to all parties in the case any prejudicial
beliefs or previous experiences that would provide actual or perceived
bias for a decision. To comply with the provisions of this subsection, the person shall sign and submit to all parties in the case an affidavit, sworn to under penalty of perjury, either listing any prejudicial beliefs or previous experiences that would provide actual or perceived bias for a decision or stating that, to the best of the affiant's knowledge, the affiant does not have any prejudicial beliefs or previous experiences that would provide actual or perceived bias for a decision.

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

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

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

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

(4) Guarantee all students the right to:

(a) Be represented by an attorney;

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

(c) Have all evidence and testimony presented considered;

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

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

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

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

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

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

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

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

(1) Actual damages; and

(2) Punitive damages.

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

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

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

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

(1) Actual damages; and

(2) Punitive damages.

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

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

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

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

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

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

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

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

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

   (5) Demographic patterns or other patterns noted by the institution with respect to formal complaints.
173.1927. If any entity of the federal government brings suit against an institution of higher education for complying with the requirements of sections 173.1898 to 173.1935, the attorney general shall have authority to bring suit on behalf of the institution against any entity in order to defend the requirements established under sections 173.1898 to 173.1935.

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

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

(2) "Personally identifiable information":

(a) Information that directly identifies an individual; and

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

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

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

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