

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 259

AN ACT

To repeal section 536.018, RSMo, and to enact in lieu thereof eleven new sections relating to due process proceedings at institutions of higher education.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 536.018, RSMo, is repealed and eleven  
2 new sections enacted in lieu thereof, to be known as sections  
3 173.1898, 173.1905, 173.1907, 173.1910, 173.1915, 173.1920,  
4 173.1925, 173.1927, 173.1930, 173.1935, and 536.018, to read as  
5 follows:

6           173.1898. 1. The provisions of sections 173.1898 to  
7 173.1935 are intended to ensure that, in any proceeding involving  
8 allegations of sexual harassment related to 20 U.S.C. Sections  
9 1681 to 1688, individuals in this state have the right to defend  
10 their character and the right to due process protections under  
11 the Constitution of Missouri and the Constitution of the United  
12 States, including the Bill of Rights. Article I, Section 14 of  
13 the Constitution of Missouri provides that "the courts of justice  
14 shall be open to every person, and certain remedy afforded for  
15 every injury to person, property or character, and that right and  
16 justice shall be administered without sale, denial or delay." It  
17 is the intent of the general assembly that sections 173.1898 to  
18 173.1935 fulfill this constitutional guarantee.

1           2. For purposes of sections 173.1898 to 173.1935, the  
2 following terms shall mean:

3           (1) "Formal complaint", a document signed by a complainant  
4 or by the Title IX Coordinator, on or after August 28, 2019,  
5 involving allegations of sexual harassment filed under 20 U.S.C.  
6 Sections 1681 to 1688, or any amendments thereto, against a  
7 respondent about conduct within an institution of higher  
8 education that requests the initiation of a grievance procedure;

9           (2) "Institution of higher education", an institution of  
10 higher education located in Missouri that receives state funds or  
11 any public benefit, except that section 173.1898 to 173.1935  
12 shall not apply to an institution of higher education that is  
13 religious in nature, including any institution that is owned,  
14 controlled, or affiliated with a religious organization or  
15 religious accreditor, and otherwise qualifies for an exemption  
16 under 20 U.S.C. Section 1681(a) (3);

17           (3) "Sexual harassment":

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

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

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

27           173.1905. 1. Any student at an institution of higher  
28 education may request a due process hearing before the

1 administrative hearing commission with respect to an appeal of  
2 any case involving allegations of sexual harassment arising under  
3 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  
5 of higher education. The request shall include the student's  
6 name and address, name of the institution of higher education,  
7 issue, and suggested resolution of the dispute, if known. Such  
8 request shall be filed with the administrative hearing commission  
9 within sixty days of the aggrieved party's receipt of the  
10 institution of higher education's final decision. Within ten  
11 days of receiving notice of the request, the administrative  
12 hearing commission shall assign a commissioner to hear the case,  
13 request the institution of higher education file the entire  
14 grievance record, and may enter an order staying the disciplinary  
15 action until the administrative hearing commission issues its  
16 final decision or order.

17 2. The student, school officials, and any other persons  
18 affected by the action in question shall present all evidence  
19 relevant to the matter under appeal at the hearing; except that  
20 nothing in this section shall be construed to compel any person  
21 affected by the action to incriminate himself or herself.

22 3. The provisions of chapter 536 shall govern hearings and  
23 prehearing procedures conducted under the authority of this  
24 section. The administrative hearing commission may consider  
25 evidence presented to, but not necessarily considered by, the  
26 institution.

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

1 the hearing.

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

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

17 7. A hearing held under the provisions of this section  
18 shall be a closed hearing. The administrative hearing commission  
19 shall maintain confidentiality of records of an appeal under this  
20 section and such records shall be closed records, notwithstanding  
21 any provision of chapter 610. Unless agreed upon by both the  
22 complainant and respondent, the hearing provided for under this  
23 section shall be held at the institution of higher education.

24 173.1907. 1. The administrative hearing commission shall  
25 compile relevant statistics on the cases it hears under section  
26 173.1905.

27 2. The administrative hearing commission shall promulgate  
28 rules to implement the provisions of this section including, but

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

13 173.1910. 1. For all formal complaints involving  
14 allegations of sexual harassment pending under 20 U.S.C. Sections  
15 1681 to 1688, or any amendments thereto, an institution of higher  
16 education shall provide students fair, equitable, and  
17 individualized interim measures that avoid depriving any student  
18 of his or her education pending the investigation and resolution  
19 of the formal complaint. If interim emergency measures are  
20 deemed necessary by the institution that will deprive any student  
21 of his or her education, the institution shall provide the  
22 affected student with the opportunity for an expedited due  
23 process hearing.

24 2. Any institution of higher education that handles formal  
25 complaints involving allegations of sexual harassment filed under  
26 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall  
27 apply a uniform definition of the term "sexual harassment",  
28 defined in section 173.1898, and shall adopt grievance procedures

1 for the formal complaints, with proceedings on the record, that  
2 provide for a prompt and equitable resolution and include the  
3 opportunity for both the complainant and the respondent to:

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

12 (2) After the conclusion of any investigation, obtain a  
13 complete copy of the investigation, which shall include any  
14 materials provided to an investigator by the complainant or the  
15 respondent and that directly relates to the allegations raised in  
16 the formal complaint; and

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

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

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

28 5. The grievance procedures shall describe the range of

1 possible sanctions and remedies that the institution of higher  
2 education may implement following any determination of  
3 responsibility. Possible sanctions may include, but not be  
4 limited to, loss of certain campus privileges, removal from  
5 campus housing, probation, suspension, or expulsion.

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

12 7. The grievance procedure shall exclude evidence of the  
13 complainant's sexual behavior or predisposition, unless such  
14 evidence about the complainant's sexual behavior is offered to  
15 prove that someone other than the respondent committed the  
16 conduct alleged by the complainant, or if the evidence concerns  
17 specific incidents of the complainant's sexual behavior with  
18 respect to the respondent and is offered to prove consent.

19 8. Any institution of higher education that handles formal  
20 complaints involving allegations of sexual harassment filed under  
21 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall  
22 adopt hearing procedures for the formal complaints that:

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

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

28 (3) Require credibility to be given to law enforcement

1 reports and sworn affidavits from mandatory reporters in  
2 accordance with their apparent reliability; and

3 (4) Guarantee all students the right to:

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

5 (b) Present relevant evidence necessary for a meaningful  
6 process, including testimony from witnesses;

7 (c) Have all evidence and testimony presented considered.

8 If evidence is excluded over the objection of either party, the  
9 party seeking to enter the evidence may make an offer of proof;

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

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

14 (f) Cross-examine and request removal and replacement of  
15 any decisionmaker on grounds of bias or conflict of interest and  
16 have such request decided by a decisionmaker who does not have  
17 bias or a conflict of interest.

18  
19 The institution of higher education shall not be required to  
20 adopt formal rules of evidence, but the standards of evidence for  
21 the hearing shall be equivalent to those applied under chapter  
22 536. To reach a determination of responsibility, the  
23 decisionmaker or decisionmakers may apply either the  
24 preponderance of the evidence standard or the clear and  
25 convincing evidence standard. However, the preponderance of the  
26 evidence standard may be used only if it is used as the standard  
27 that applies to complaints involving faculty.

28 9. Throughout the process of handling a formal complaint



1 involving allegations of sexual harassment filed under 20 U.S.C.  
2 Sections 1681 to 1688, or any amendments thereto, the institution  
3 of higher education shall:

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

8 (2) Define consent as set forth under 10 U.S.C. Section  
9 920, or any amendments thereto.

10 10. Any religious exemption provided by 20 U.S.C. Section  
11 1681 shall apply to proceedings under sections 173.1898 to  
12 173.1935.

13 173.1915. 1. Notwithstanding any provision of law granting  
14 immunity to public employees, any student of an institution of  
15 higher education who fails to receive due process as required  
16 under section 173.1910 shall have a civil cause of action against  
17 any institution of higher education that intentionally failed to  
18 comply with the provisions of sections 173.1898 to 173.1935. The  
19 student shall be entitled to recover from the institution of  
20 higher education that failed to comply with the provisions of  
21 sections 173.1898 to 173.1935 such relief as may be appropriate  
22 including, but not limited to:

23 (1) Actual damages;

24 (2) Punitive damages; and

25 (3) A reasonable attorney's fee and other litigation costs  
26 reasonably incurred.

27 2. Failure by an institution of higher education to comply  
28 with the provisions of sections 173.1898 to 173.1935 shall:

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

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

7       173.1920. 1. Any institution of higher education that  
8 conducts any type of training on 20 U.S.C. Sections 1681 to 1688,  
9 or any amendments thereto, shall maintain and publish on its  
10 website any materials used in the training.

11       2. Any institution of higher education that handles formal  
12 complaints involving allegations of sexual harassment filed under  
13 20 U.S.C. Sections 1681 to 1688, or any amendments thereto, shall  
14 maintain and publish on its website information and procedures  
15 related to such complaints. All information relating to 20  
16 U.S.C. Sections 1681 to 1688, and any amendments thereto, shall  
17 appear together in one document or web page that is easily  
18 accessible.

19       173.1925. The attorney general shall collect information  
20 and statistics from institutions of higher education on their  
21 procedures and policies for formal complaints filed under 20  
22 U.S.C. Sections 1681 to 1688, and any amendments thereto. The  
23 information collected on each institution shall include, but not  
24 be limited to, the following:

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

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

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

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

8       (5) Demographic data including, but not limited to, gender  
9 and race noted by the institution with respect to formal  
10 complaints.

11       173.1927. If any entity of the federal government brings  
12 suit against an institution of higher education for complying  
13 with the requirements of sections 173.1898 to 173.1935, the  
14 attorney general shall have authority to bring suit on behalf of  
15 the institution against any entity in order to defend the  
16 requirements established under sections 173.1898 to 173.1935.

17       173.1930. 1. For purposes of this section, the following  
18 terms mean:

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

22       (2) "Personally identifiable information":

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

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

28       2. Notwithstanding the provisions of chapter 610, any

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

6 173.1935. 1. Sections 173.1898 to 173.1930 shall apply  
7 only to the extent they are not inconsistent with the  
8 requirements under 20 U.S.C. Sections 1681 to 1688, any  
9 amendments thereto, and any regulations promulgated thereunder.

10 2. Any provisions of sections 173.1898 to 173.1930 found to  
11 be in direct violation of 20 U.S.C. Sections 1681 to 1688, or any  
12 amendments thereto, shall be deemed null and void and shall not  
13 affect the validity of the remaining provisions of sections  
14 173.1898 to 173.1930.

15 3. Any institution of higher education not in compliance  
16 with sections 173.1898 to 173.1935 shall be ineligible to receive  
17 state funds.

18 4. No student, faculty, or alumni shall be investigated  
19 under 20 U.S.C. Sections 1681 to 1688 on the basis of political  
20 or religious beliefs, or any constitutionally granted right.

21 536.018. The term "agency" and the term "state agency" as  
22 defined by section 536.010 shall not include an institution of  
23 higher education, supported in whole or in part from state funds,  
24 if such institution has established written procedures to assure  
25 that constitutionally required due process safeguards exist and  
26 apply to a proceeding that would otherwise constitute a  
27 "contested case" as defined in section 536.010. Provisions of  
28 this section to the contrary notwithstanding, in actions arising

1 under sections 173.1898 to 173.1935, the terms "agency" and  
2 "state agency" shall include institutions of higher education, as  
3 defined in section 173.1898.