

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 121

By Senator Azinger

[Introduced January 11, 2023; referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18B-21-1, §18B-21-2, §18B-21-3, and §18B-21-4, all relating to the creation
 3 of the Student Journalist Press Freedom Protection Act; making legislative findings;
 4 defining terms; requiring that public colleges and universities allow for the free expression
 5 of student journalists in school sponsored media; providing a framework and parameters
 6 for free expression; allowing for civil actions in the event that a student journalist’s rights
 7 are violated; specifying the judicial relief available in an appeal; and clarifying that
 8 provisions of the article do not apply to students and private colleges or universities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. STUDENT JOURNALIST PRESS FREEDOM PROTECTION ACT.

§18B-21-1. Short title.

1 This article may be cited and known as the Student Journalist Press Freedom Protection
 2 Act.

§18B-21-2. Legislative findings.

- 1 (a) The legislature finds that:
- 2 (1) Freedom of expression through college and university sponsored media is protected by
 3 the First Amendment to the United States Constitution and article III, section 7 of the West Virginia
 4 Constitution;
- 5 (2) A college and university student press can contribute to the continuing development of
 6 informed and civic-minded citizens; and
- 7 (3) Instructors and administrators who defend their students’ freedom of expression may
 8 sometimes do so at professional risk.
- 9 (b) It is the intent of the legislature to protect freedom of expression in school-sponsored
 10 media at public institutions of higher education in this state, and to protect the instructors and
 11 administrators who support that right, in order to encourage students to become educated,
 12 informed, and responsible members of society.

§18B-21-3.

Definitions.

1 As used in this article:

2 (a) "School-sponsored media" means any material that is prepared, substantially written,
3 published, or broadcast, in any media, by a student journalist at a public college or university under
4 the supervision of a student media adviser and distributed or generally made available to
5 members of the student body. School-sponsored media does not include media intended for
6 distribution or transmission for classroom purposes only.

7 (b) "Student journalist" means a public college or university student who writes, edits,
8 photographs, records, or prepares information for inclusion in school-sponsored media.

9 (c) "Student media adviser" means an individual employed, appointed, or designated by a
10 college or university to supervise or provide instruction relating to school-sponsored media.

§18B-21-4. Student journalists' freedom of expression.

1 (a) Except as provided in subsection (b) of this section, a student journalist has the right to
2 freedom of speech and of the press in school-sponsored media regardless of whether the media is
3 supported financially by the school, uses the facilities of the school, or is produced in conjunction
4 with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a
5 student journalist is responsible for determining the news, opinion, feature, and other news
6 reporting content of school-sponsored media. A student journalist is entitled to the protections set
7 forth in §57-3-10, of this code.

8 (b) This section does not authorize or protect expression by a student that:

9 (1) Is libelous or slanderous;

10 (2) Constitutes an actionable invasion of privacy;

11 (3) Is obscene, vulgar, or offensive to a reasonable person.

12 (4) Violates federal or state law; or

13 (5) Expressly incites students to engage in the commission of an unlawful act or acts, or
14 violate a lawful school policy, or is likely to cause the material and substantial disruption of the

15 operation of the school. Any prior restraint on publication must be based upon objective
16 determination that a violation of this subsection exists or will occur.

17 (c) There shall be no prior restraint of material prepared for official school publications
18 except insofar as the material violates the standards of subsection (b) of this section. School
19 officials have the burden of showing prior justification for their limitation of student journalist
20 expression under this section and shall afford students a timely opportunity for appeal.

21 (d) Nothing in this section shall be construed as authorizing the publication of an
22 advertisement in school-sponsored media.

23 (e) A student journalist is not subject to discipline for acting in accordance with this section.

24 (f) A student media adviser may not be dismissed, suspended, disciplined, reassigned,
25 transferred, or otherwise retaliated against for acting in conformity with this article.

26 (g)(1) Each public college or university shall adopt a written policy for the exercise of the
27 right of student journalists to freedom of speech and the press in school-sponsored media in
28 accordance with this section.

29 (2) The policy shall include a provision allowing for the timely appeal of school
30 administration decisions made regarding behavior protected by this section. A student journalist or
31 student media adviser who believes a violation of this section has occurred must exhaust school
32 administrative review procedures prior to availing himself or herself of the relief authorized by
33 subsection (i) of this section.

34 (h) A statement or position made or taken by students in the exercise of free speech or free
35 press rights shall not be considered to be an expression of school policy, and school officials shall
36 not be held responsible in any civil or criminal action for any expression made or published by
37 students.

38 (i) Any student or student media adviser may institute proceedings for injunctive or
39 declaratory relief in any court of competent jurisdiction to enforce the rights provided in this

- 40 section. Nothing in this section shall be construed to create any private cause of action on behalf of
41 a student other than for injunctive relief allowing the publication of the speech in question. A court
42 may award reasonable attorneys' fees to a plaintiff who substantially prevails.
43 (j) This article does not apply to students attending private colleges or universities.

NOTE: The purpose of this bill is to create the Student Journalist Press Freedom Restoration Act, to provide for legislative findings, to require that the West Virginia Department of Education and the West Virginia Higher Education Policy Commission allow for the free expression of student journalists on campuses of middle schools, high schools, and colleges and universities, to provide a framework and parameters for free expression, and to allow for injunctive relief in the event that this article is violated.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.