

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 216

BY SENATOR AZINGER

[Originating in the Committee on Education; reported
on February 7, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §18-34-1, §18-34-2, §18-34-3, and §18-34-4; and to amend said code by
3 adding thereto a new article, designated §18B-21-1, §18B-21-2, §18B-21-3, and §18B-21-
4 4 all relating to student journalist press freedom; creating the Secondary Student
5 Journalist Press Freedom Restoration Act and the Higher Education Student Journalist
6 Press Freedom Act; providing for legislative findings; defining terms; providing that a
7 student journalist has the right to exercise freedom of speech and of the press in school-
8 sponsored media; allowing student media advisors to teach professional standards of
9 English and journalism to student journalists; providing expression that is not authorized
10 or protected by student journalists' freedom of expression section; prohibiting prior
11 restraint of material prepared for official school publications with certain exceptions;
12 clarifying that nothing in student journalist freedom of expression section is to be construed
13 as authorizing the publication of an advertisement in a school-sponsored media that
14 promotes the purchase of a product or service that is unlawful for purchase or use by
15 minors; providing that a student journalist cannot be disciplined for exercising freedom of
16 speech and of the press in school-sponsored media; providing that a state institution of
17 higher education student media adviser cannot be dismissed, suspended, disciplined,
18 reassigned, transferred, or otherwise retaliated against for certain specified reasons;
19 requiring adoption of written policy for the exercise of the right of student journalists to
20 freedom of speech and the press in school sponsored media; providing that no expression
21 made by students in the exercise of free speech or free press rights is deemed to be an
22 expression of school policy and no school district or employee of a school district shall be
23 held responsible in any civil or criminal action for any expression made or published by
24 students; allowing institution of proceedings for injunctive or declaratory relief to enforce
25 rights provided in student journalists' freedom of expression section; and providing that

26 the student journalist press freedom restoration acts do not apply to private middle or high
27 schools or private colleges or universities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

**ARTICLE 34. SECONDARY STUDENT JOURNALIST PRESS FREEDOM
RESTORATION ACT.**

§18-34-1. Short title.

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

§18-34-2. Legislative findings.

1 (a) The West Virginia legislature finds that:

2 (1) Freedom of expression through school-sponsored media is a fundamental principle in
3 our democratic society granted by the First Amendment to the United States Constitution and the
4 West Virginia Constitution;

5 (2) A robust and free student press is critical to the development of informed and civic-
6 minded adults;

7 (3) Student journalists are denied the right to free expression guaranteed to other
8 students, and their work censored when the speech of other students could not be infringed; and

9 (4) Teachers who defend their students' freedom of expression do so at great professional
10 risk.

§18-34-3. Definitions.

1 As used in this section:

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 middle or high school
4 under the direction 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 middle or high school student who gathers,
8 compiles, writes, edits, photographs, records, or prepares information for inclusion in school-
9 sponsored media.

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

§18-34-4. Student journalists' freedom of expression.

1 (a) Except as provided in subsection (b) of this section, a student journalist has the right
2 to exercise freedom of speech and of the press in school-sponsored media regardless of whether
3 the media is supported financially by the school, uses the facilities of the school, or is produced
4 in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of
5 this section, a student journalist is responsible for determining the news, opinion, feature, and
6 advertising content of school-sponsored media. Student media advisers may teach professional
7 standards of English and journalism to student journalists, consistent with this subsection.

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

9 (1) Is libelous or slanderous;

10 (2) Constitutes an unwarranted invasion of the rights of others;

11 (3) Is obscene;

12 (4) Violates federal or state law; or

13 (5) So incites students as to create a clear and present danger of the commission of an
14 unlawful act, the violation of a lawful school district policy, or the material and substantial
15 disruption of school activities. Administrators must base a forecast of material and substantial
16 disruption on specific facts, including past experience in the school and current events influencing
17 student behavior, and not on undifferentiated fear or apprehension.

18 (c) There shall be no prior restraint of material prepared for official school publications

19 except insofar as the material violates the standards of section (b). School officials shall have the
20 burden of showing prior justification for their limitation of student journalist expression under this
21 section and affording students a timely opportunity for appeal.

22 (d) Nothing in this section shall be construed as authorizing the publication of an
23 advertisement in school-sponsored media that promotes the purchase of a product or service that
24 is unlawful for purchase or use by minors.

25 (e) A student journalist may not be disciplined for acting in accordance with subsection (a)
26 of this section.

27 (f)(1) Each county board shall adopt a written policy for the exercise of the right of student
28 journalists to freedom of speech and the press in school-sponsored media in accordance with this
29 section.

30 (2) The policy must include reasonable provisions for the time, place, and manner of
31 distribution of student expression.

32 (3) The policy must include a provision allowing for the timely appeal within the school
33 district of decisions made pursuant to this section.

34 (g) No expression made by students in the exercise of free speech or free press rights
35 shall be deemed to be an expression of school policy, and no school district or employee of a
36 school district shall be held responsible in any civil or criminal action for any expression made or
37 published by students.

38 (h) Any student, individually or through a parent or guardian, or student media adviser may
39 institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to
40 enforce the rights provided in this section. Nothing in this section shall be construed to create any
41 private action on behalf of a student other than to seek injunctive relief allowing the publication of
42 the speech in question. A court may award reasonable attorneys' fees to a plaintiff that
43 substantially prevails.

44 (i) This article does not apply to those students in private middle or high schools.

45

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 21. HIGHER EDUCATION STUDENT JOURNALIST PRESS FREEDOM

RESTORATION ACT.

§18B-21-1. Short title.

46 This article may be cited and known as the Higher Education Student Journalist Press
47 Freedom Restoration Act.

§18B-21-2. Legislative findings.

1 (a) The West Virginia legislature finds that:

2 (1) Freedom of expression through school-sponsored media is a fundamental principle in
3 our democratic society granted by the First Amendment to the United States Constitution and the
4 West Virginia Constitution;

5 (2) A robust and free student press is critical to the development of informed and civic-
6 minded adults;

7 (3) Student journalists are denied the right to free expression guaranteed to other
8 students, and their work censored when the speech of other students could not be infringed; and

9 (4) Faculty members who defend their students' freedom of expression do so at great
10 professional risk.

§18B-21-3. Definitions.

1 As used in this section:

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 state institution of higher
4 education under the direction of a student media adviser and distributed or generally made
5 available to members of the student body. School-sponsored media does not include media
6 intended for distribution or transmission for classroom purposes only.

7 (b) "Student journalist" means a state institution of higher education student who gathers,

8 compiles, writes, edits, photographs, records, or prepares information for inclusion in school-
9 sponsored media.

10 (c) "Student media adviser" means an individual employed, appointed, or designated by a
11 state institution of higher education to supervise or provide instruction relating to school-
12 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
2 to exercise freedom of speech and of the press in school-sponsored media regardless of whether
3 the media is supported financially by the school, uses the facilities of the school, or is produced
4 in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of
5 this section, a student journalist is responsible for determining the news, opinion, feature, and
6 advertising content of school-sponsored media. Student media advisers may teach professional
7 standards of English and journalism to student journalists, consistent with this subsection.

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

9 (1) Is libelous or slanderous;

10 (2) Constitutes an unwarranted invasion of the rights of others;

11 (3) Is obscene;

12 (4) Violates federal or state law; or

13 (5) So incites students as to create a clear and present danger of the commission of an
14 unlawful act, the violation of a lawful state institution of higher education policy, or the material
15 and substantial disruption of institution activities. Administrators must base a forecast of material
16 and substantial disruption on specific facts, including past experience in the institution and current
17 events influencing student behavior, and not on undifferentiated fear or apprehension.

18 (c) There shall be no prior restraint of material prepared for official state institution of higher
19 education institution publications except insofar as the material violates the standards of section

20 (b). The state institution of higher education shall have the burden of showing prior justification

21 for their limitation of student journalist expression under this section and affording students a
22 timely opportunity for appeal.

23 (d) Nothing in this section shall be construed as authorizing the publication of an
24 advertisement in school-sponsored media that promotes the purchase of a product or service that
25 is unlawful for purchase or use by minors.

26 (e) A student journalist may not be disciplined for acting in accordance with subsection (a)
27 of this section.

28 (f) A student media adviser may not be dismissed, suspended, disciplined, reassigned,
29 transferred, or otherwise retaliated against for:

30 (1) Refusing to infringe on conduct that is protected by this section or the First Amendment
31 to the United States Constitution or the West Virginia Constitution; or

32 (2) Acting to protect a student journalist engaged in permissible conduct under subsection
33 (a) of this section or the First Amendment to the United States Constitution or the West Virginia
34 Constitution.

35 (g)(1) Each state institution of higher education governing board shall adopt a written
36 policy for the exercise of the right of student journalists to freedom of speech and the press in
37 school-sponsored media in accordance with this section.

38 (2) The policy must include reasonable provisions for the time, place, and manner of
39 distribution of student expression.

40 (3) The policy must include a provision allowing for the timely appeal within the institution
41 of decisions made pursuant to this section.

42 (h) No expression made by students in the exercise of free speech or free press rights
43 shall be deemed to be an expression of school policy, and no state institution of higher education
44 or employee of the institution shall be held responsible in any civil or criminal action for any
45 expression made or published by students.

46 (i) Any student, individually or through a parent or guardian, or student media adviser may

47 institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to
48 enforce the rights provided in this section. Nothing in this section shall be construed to create any
49 private action on behalf of a student other than to seek injunctive relief allowing the publication of
50 the speech in question. A court may award reasonable attorneys' fees to a plaintiff that
51 substantially prevails.

52 (j) This article does not apply to those students in private colleges or universities.