

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 617

BY SENATOR AZINGER

[Introduced March 10, 2021; referred
to the Committee on Education; and then to the
Committee on the Judiciary]

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, §18-34-4, and §18-34-5, all relating to creating
 3 the Student Journalist Press Freedom Restoration Act; providing for legislative findings;
 4 requiring that the West Virginia Department of Education and the West Virginia Higher
 5 Education Policy Commission allow for the free expression of student journalists on
 6 campuses of middle schools, high schools, and colleges and universities; providing a
 7 framework and parameters for free expression; and allowing for civil actions in the event
 8 that this article is violated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 34. STUDENT JOURNALIST PRESS FREEDOM RESTORATION ACT.

§18-34-1. Short title.

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

11 (b) It is the intent of the legislature to restore and protect freedom of expression through
 12 school-sponsored media for both public school students and students at public institutions of

13 higher education in this state, and the jobs of the teachers who appropriately support these rights,
 14 in order to encourage students to become educated, informed and responsible members of
 15 society.

§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 or
 4 college or university under the direction of a student media adviser and distributed or generally
 5 made 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 public or private middle or high school or college or
 8 university student who gathers, compiles, writes, edits, photographs, records, or prepares
 9 information for inclusion in school-sponsored media.

10 (c) "Student media adviser" means an individual employed, appointed, or designated by a
 11 public secondary school or higher education institution to supervise or provide instruction relating
 12 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 privacy;
- 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 the orderly operation of the school. Administrators must base a forecast of material
16 and substantial disruption on specific facts, including past experience in the school 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 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) A student media adviser may not be dismissed, suspended, disciplined, reassigned,
28 transferred, or otherwise retaliated against for:
- 29 Refusing to infringe on conduct that is protected by this section or the First Amendment to
30 the United States Constitution or the West Virginia Constitution; or
- 31 Acting to protect a student journalist engaged in permissible conduct under subsection (a)
32 of this section or the First Amendment to the United States Constitution or the West Virginia
33 Constitution.
- 34 (g) Each school board subject to this chapter shall adopt a written policy for the exercise
35 of the right of student journalists to freedom of speech and the press in school-sponsored media

36 in accordance with this section.

37 The policy must include reasonable provisions for the time, place, and manner of
38 distribution of student expression.

39 The policy must include a provision allowing for the timely appeal within the school district
40 of decisions made pursuant to this section.

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

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

51 (j) This article does not apply to those students in private middle or high schools, or private
52 colleges/universities.

§18-34-5. Effective date.

1 This act shall take effect upon passage.

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 civil actions 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.