

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 121

By Senators Azinger, Roberts, Tarr, and Maynard

[Originating in the Committee on Education; reported

on January 20, 2023]

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 high schools, colleges, and universities allow for the
5 free expression of student journalists in school sponsored media; providing a framework
6 and parameters for free expression; allowing for civil actions in the event that a student
7 journalist's rights are violated; specifying the judicial relief available in an appeal; and
8 clarifying that provisions of the article do not apply to students attending private high
9 schools, 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 high school, college, and university sponsored media is
3 protected by the First Amendment to the United States Constitution and Article III, section 7 of the
4 West Virginia Constitution;

5 (2) A high school, college, and university student press can contribute to the continuing
6 development of 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 high schools and institutions of higher education in this state, and to protect the
11 instructors and administrators who support that right, in order to encourage students to become

12 educated, informed, and responsible members of society.

§18B-21-3. Definitions.

1 As used in this article:

2 “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 high school, college, or
4 university under the supervision 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 “Student journalist” means a public high school, college, or university student who writes,
8 edits, photographs, records, or prepares information for inclusion in school-sponsored media.

9 “Student media adviser” means an individual employed, appointed, or designated by a
10 public high school, college, or university to supervise or provide instruction relating to school-
11 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. Administrators must base a forecast of material and substantial disruption
16 on specific facts, including past experience in the school and current events influencing student
17 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 subsection (b) of this section. School
20 officials have the burden of showing prior justification for their limitation of student journalists
21 expression under this section and shall afford 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 is not subject to discipline for acting in accordance with this section.

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

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

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

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

39 students.

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

45 (j) This article does not apply to students attending private high schools, colleges or
46 universities.