



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4158/1
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2023 ASSEMBLY BILL 551

October 23, 2023 - Introduced by Representatives MICHALSKI, MURPHY, BEHNKE, BRANDTJEN, DITTRICH, GOEBEN, GUNDRUM, MAXEY, O'CONNOR, PENTERMAN, RETTINGER, S. JOHNSON and JACOBSON, cosponsored by Senators CABRAL-GUEVARA, TOMCZYK and SPREITZER. Referred to Committee on Colleges and Universities.

AUTHORS SUBJECT TO CHANGE

1 AN ACT *to amend* 36.35 (1); and *to create* 36.42, 38.43 and 118.129 of the
2 statutes; **relating to:** freedom of speech and of the press in school-sponsored
3 media.

Analysis by the Legislative Reference Bureau

This bill affords certain rights and protections to student journalists who are public school pupils or students enrolled in a University of Wisconsin System institution or technical college.

Public school pupils

Under the bill, a public school pupil journalist in grade 6 to 12 has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the school-sponsored media is supported financially by a public school, uses the facilities of the public school, or is produced in conjunction with a class in which the pupil is enrolled. The bill further establishes that a pupil journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media and prohibits a school official from exercising prior restraint of materials prepared for school-sponsored media. Under the bill, neither a pupil journalist nor a media adviser may be disciplined for acting in accordance with the bill. Finally, the bill requires each school board and operator of a charter school to adopt a policy related to pupil journalists exercising their freedom of speech and of the press in school-sponsored media and specifies that the policy must include an appeal process for pupils. Under the bill, a pupil journalist and a media adviser may bring an action in circuit court to enforce the rights established under the bill.

ASSEMBLY BILL 551***UW System and technical college students***

Under the bill, a student journalist enrolled in a UW System institution or technical college (hereafter, “school”) has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the school-sponsored media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course in which the student is enrolled. The bill further establishes that a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media and prohibits the school from exercising prior restraint of materials prepared for school-sponsored media. Under the bill, neither a student journalist nor a media adviser may be disciplined for acting in accordance with the bill. Finally, the bill requires the Board of Regents of the UW System and each technical college district board to adopt a policy related to student journalists exercising their freedom of speech and the press in school-sponsored media and specifies that the policy must include an appeal process for students. Under the bill, a student journalist and a media adviser may bring an action in circuit court to enforce the rights established under the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.35 (1) of the statutes is amended to read:

2 36.35 (1) POWER TO SUSPEND; RULES. The board may delegate the power to
3 suspend or expel students for misconduct or other cause prescribed by the board.
4 Subject to sub. (4) and s. 36.42 (5) (a), the board shall promulgate rules under ch. 227
5 governing student conduct and procedures for the administration of violations.

6 **SECTION 2.** 36.42 of the statutes is created to read:

7 **36.42 Institution-sponsored media; freedom of speech and of the press.**

8 (1) In this section:

9 (a) “Institution-sponsored media” means any material that is prepared,
10 substantially written, published, or broadcast, in any media, by a student journalist
11 at an institution, under the direction of a media adviser, and distributed or generally
12 made available to students enrolled in the institution. “Institution-sponsored

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1 media” does not include material intended solely for use in a course offered at the
2 institution.

3 (b) “Media adviser” means an individual employed, appointed, or designated
4 by an institution to supervise or provide instruction relating to
5 institution-sponsored media.

6 (c) “Student journalist” means a student enrolled in an institution who gathers,
7 compiles, writes, edits, photographs, records, or prepares information for inclusion
8 in institution-sponsored media.

9 **(2)** (a) Except as provided in sub. (3), a student journalist has the right to
10 exercise freedom of speech and of the press in institution-sponsored media
11 regardless of whether the institution-sponsored media is supported financially by
12 the institution, uses the facilities of the institution, or is produced in conjunction
13 with a course in which the student journalist is enrolled.

14 (b) Subject to sub. (3), a student journalist is responsible for determining the
15 news, opinion, feature, and advertising content of institution-sponsored media. A
16 media adviser may teach professional standards of English and journalism to
17 student journalists, consistent with this section.

18 **(3)** (a) Nothing in this section authorizes or protects expression that is any of
19 the following:

- 20 1. Libelous or slanderous.
- 21 2. Constitutes an unwarranted invasion of privacy.
- 22 3. Obscene.
- 23 4. Violates state or federal law.

ASSEMBLY BILL 551**SECTION 2**

1 5. Incites students as to create a clear and present danger of the commission
2 of an unlawful act, the violation of a lawful board policy or institution policy, or the
3 material and substantial disruption of the orderly operation of the institution.

4 (b) For purposes of par. (a) 5., an institution administrator shall base a decision
5 on whether or not an expression will create a clear and present danger of material
6 and substantial disruption of the orderly operation of the institution on specific facts,
7 including past experience in the institution and current events influencing student
8 behavior, and may not base the decision on undifferentiated fear or apprehension.

9 (c) Nothing in this section requires an institution to publish an advertisement
10 in institution-sponsored media that promotes the purchase of a product or service
11 that is unlawful for purchase or use by a person who has not attained 21 years of age.

12 **(4)** An institution may not exercise prior restraint of material prepared for
13 institution-sponsored media unless the material violates sub. (3). An institution's
14 administrators have the burden of showing prior justification for their limitation of
15 a student journalist's expression under this section and affording students a timely
16 opportunity for appeal.

17 **(5)** (a) A student journalist may not be disciplined for acting in accordance with
18 sub. (2).

19 (b) Notwithstanding any contrary provision of a personnel system established
20 under s. 36.115, a media adviser may not be dismissed, suspended, disciplined,
21 reassigned, transferred, or otherwise retaliated against for any of the following:

22 1. Refusing to infringe on conduct that is protected by this section, the First
23 Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin
24 Constitution.

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1 2. Acting to protect a student journalist engaged in permissible conduct under
2 this section, the First Amendment to the U.S. Constitution, or article I, section 3, of
3 the Wisconsin Constitution.

4 **(6)** The board shall adopt a policy, applicable to each institution, for the exercise
5 of the right of student journalists to freedom of speech and of the press in
6 institution-sponsored media in accordance with this section. The policy shall
7 include at least all of the following:

8 (a) Reasonable provisions for the time, place, and manner of distribution of
9 institution-sponsored media.

10 (b) A process to timely appeal decisions made under this section.

11 **(7)** No expression made by student journalists in the exercise of free speech or
12 free press rights is considered to be an expression of an institution's policy, and no
13 institution or institution administrator may be held responsible in any civil or
14 criminal action for an expression made or published by student journalists.

15 **(8)** A student journalist or media adviser may bring an action for injunctive or
16 declaratory relief in circuit court to enforce the rights provided in this section.
17 Nothing in this section may be construed to create a private action on behalf of a
18 student journalist other than to seek injunctive relief allowing the publication of the
19 speech in question. A court may award reasonable attorney fees to a plaintiff who
20 substantially prevails in an action brought under this subsection.

21 **SECTION 3.** 38.43 of the statutes is created to read:

22 **38.43 District board-sponsored media; freedom of speech and of the**
23 **press. (1)** In this section:

24 (a) "District board-sponsored media" means any material that is prepared,
25 substantially written, published, or broadcast, in any media, by a student journalist

ASSEMBLY BILL 551**SECTION 3**

1 at a technical college of the district, under the direction of a media adviser, and
2 distributed or generally made available to students enrolled in the technical college.
3 “District board–sponsored media” does not include material intended solely for use
4 in a course offered at the technical college.

5 (b) “Media adviser” means an individual employed, appointed, or designated
6 by a district board to supervise or provide instruction relating to district
7 board–sponsored media.

8 (c) “Student journalist” means a student enrolled in a technical college who
9 gathers, compiles, writes, edits, photographs, records, or prepares information for
10 inclusion in district board–sponsored media.

11 **(2)** (a) Except as provided in sub. (3), a student journalist has the right to
12 exercise freedom of speech and of the press in district board–sponsored media
13 regardless of whether the district board–sponsored media is supported financially
14 by the district board, uses the facilities of the district board, or is produced in
15 conjunction with a course in which the student journalist is enrolled.

16 (b) Subject to sub. (3), a student journalist is responsible for determining the
17 news, opinion, feature, and advertising content of district board–sponsored media.
18 A media adviser may teach professional standards of English and journalism to
19 student journalists, consistent with this section.

20 **(3)** (a) Nothing in this section authorizes or protects expression that is any of
21 the following:

- 22 1. Libelous or slanderous.
- 23 2. Constitutes an unwarranted invasion of privacy.
- 24 3. Obscene.
- 25 4. Violates state or federal law.

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1 5. Incites students as to create a clear and present danger of the commission
2 of an unlawful act, the violation of a lawful district board policy, or the material and
3 substantial disruption of the orderly operation of the technical college.

4 (b) For purposes of par. (a) 5., a district board administrator shall base a
5 decision on whether or not an expression will create a clear and present danger of
6 material and substantial disruption of the orderly operation of the technical college
7 on specific facts, including past experience in the technical college and current events
8 influencing student behavior, and may not base the decision on undifferentiated fear
9 or apprehension.

10 (c) Nothing in this section requires a district board to publish an advertisement
11 in district board-sponsored media that promotes the purchase of a product or service
12 that is unlawful for purchase or use by a person who has not attained 21 years of age.

13 **(4)** A district board may not exercise prior restraint of material prepared for
14 district board-sponsored media unless the material violates sub. (3). A district
15 board's administrators have the burden of showing prior justification for their
16 limitation of a student journalist's expression under this section and affording
17 students a timely opportunity for appeal.

18 **(5)** (a) A student journalist may not be disciplined for acting in accordance with
19 sub. (2).

20 (b) A media adviser may not be dismissed, suspended, disciplined, reassigned,
21 transferred, or otherwise retaliated against for any of the following:

22 1. Refusing to infringe on conduct that is protected by this section, the First
23 Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin
24 Constitution.

ASSEMBLY BILL 551**SECTION 3**

1 2. Acting to protect a student journalist engaged in permissible conduct under
2 this section, the First Amendment to the U.S. Constitution, or article I, section 3, of
3 the Wisconsin Constitution.

4 **(6)** Each district board shall adopt a policy for the exercise of the right of
5 student journalists to freedom of speech and of the press in district board-sponsored
6 media in accordance with this section. The policy shall include at least all of the
7 following:

8 (a) Reasonable provisions for the time, place, and manner of distribution of
9 district board-sponsored media.

10 (b) A process to timely appeal decisions made under this section.

11 **(7)** No expression made by student journalists in the exercise of free speech or
12 free press rights is considered to be an expression of a district board's policy, and no
13 district board or district board administrator may be held responsible in any civil or
14 criminal action for an expression made or published by student journalists.

15 **(8)** A student journalist or media adviser may bring an action for injunctive or
16 declaratory relief in circuit court to enforce the rights provided in this section.
17 Nothing in this section may be construed to create a private action on behalf of a
18 student journalist other than to seek injunctive relief allowing the publication of the
19 speech in question. A court may award reasonable attorney fees to a plaintiff who
20 substantially prevails in an action brought under this subsection.

21 **SECTION 4.** 118.129 of the statutes is created to read:

22 **118.129 School-sponsored media; freedom of speech and of the press.**

23 **(1)** In this section:

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1 (a) “Media adviser” means an individual employed, appointed, or designated
2 by a school board or charter school to supervise or provide instruction relating to
3 school-sponsored media.

4 (b) “Pupil journalist” means a pupil in grade 6 to 12 who gathers, compiles,
5 writes, edits, photographs, records, or prepares information for inclusion in
6 school-sponsored media.

7 (c) “School” means a public middle, junior high, or high school, including a
8 charter school.

9 (d) “School-sponsored media” means any material that is prepared,
10 substantially written, published, or broadcast, in any media, by a pupil journalist at
11 a school, under the direction of a media adviser, and distributed or generally made
12 available to pupils attending the school. “School-sponsored media” does not include
13 material intended solely for classroom purposes.

14 **(2)** (a) Except as provided in sub. (3), a pupil journalist has the right to exercise
15 freedom of speech and of the press in school-sponsored media regardless of whether
16 the school-sponsored media is supported financially by the school, uses the facilities
17 of the school, or is produced in conjunction with a class in which the pupil journalist
18 is enrolled.

19 (b) Subject to sub. (3), a pupil journalist is responsible for determining the
20 news, opinion, feature, and advertising content of school-sponsored media. A media
21 adviser may teach professional standards of English and journalism to pupil
22 journalists, consistent with this section.

23 **(3)** (a) Nothing in this section authorizes or protects expression that is any of
24 the following:

25 1. Libelous or slanderous.

ASSEMBLY BILL 551**SECTION 4**

1 2. Constitutes an unwarranted invasion of privacy.

2 3. Obscene.

3 4. Violates state or federal law.

4 5. Incites pupils as to create a clear and present danger of the commission of
5 an unlawful act, the violation of a lawful school district or charter school policy, or
6 the material and substantial disruption of the orderly operation of the school.

7 (b) For purposes of par. (a) 5., a school administrator shall base a decision on
8 whether or not an expression will create a clear and present danger of material and
9 substantial disruption of the orderly operation of the school on specific facts,
10 including past experience in the school and current events influencing pupil
11 behavior, and may not base the decision on undifferentiated fear or apprehension.

12 (c) Nothing in this section authorizes the publication of an advertisement in
13 school-sponsored media that promotes the purchase of a product or service that is
14 unlawful for purchase or use by minors.

15 (4) A school official may not exercise prior restraint of material prepared for
16 school-sponsored media unless the material violates sub. (3). A school official has
17 the burden of showing prior justification for his or her limitation of a pupil
18 journalist's expression under this section and affording pupils a timely opportunity
19 for appeal.

20 (5) (a) A pupil journalist may not be disciplined for acting in accordance with
21 sub. (2).

22 (b) A media adviser may not be dismissed, suspended, disciplined, reassigned,
23 transferred, or otherwise retaliated against for any of the following:

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1 1. Refusing to infringe on conduct that is protected by this section, the First
2 Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin
3 Constitution.

4 2. Acting to protect a pupil journalist engaged in permissible conduct under
5 this section, the First Amendment to the U.S. Constitution, or article I, section 3, of
6 the Wisconsin Constitution.

7 **(6)** Each school board and operator of a charter school shall adopt a policy for
8 the exercise of the right of pupil journalists to freedom of speech and of the press in
9 school-sponsored media in accordance with this section. The policy shall include at
10 least all of the following:

11 (a) Reasonable provisions for the time, place, and manner of distribution of
12 school-sponsored media.

13 (b) A process to timely appeal decisions made under this section.

14 **(7)** No expression made by pupil journalists in the exercise of free speech or free
15 press rights is considered to be an expression of school policy, and no school official,
16 school district, or charter school may be held responsible in any civil or criminal
17 action for an expression made or published by pupil journalists.

18 **(8)** A pupil journalist, individually or through a parent or guardian, or media
19 adviser may bring an action for injunctive or declaratory relief in circuit court to
20 enforce the rights provided in this section. Nothing in this section may be construed
21 to create a private action on behalf of a pupil journalist other than to seek injunctive
22 relief allowing the publication of the speech in question. A court may award
23 reasonable attorney fees to a plaintiff who substantially prevails in an action
24 brought under this subsection.

25

(END)