

ACT 24

H.B. NO. 1848

A Bill for an Act Relating to Student Journalism.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as the Hawaii Student Journalism Protection Act.

SECTION 2. The legislature finds that states may enhance the protections guaranteed by the First Amendment of the United States Constitution through state laws, rules, and regulations. The legislature further finds that student journalists attending Hawaii public schools and the University of Hawaii need additional protection against censorship, and that advisors need additional protections against retaliation for refusing to illegally censor student journalists.

Pursuant to the exclusive jurisdiction of the legislature to identify laws of statewide concern granted under article X, section 6, of the Hawaii State Constitution, the legislature further finds that allowing student journalists at the University of Hawaii to exercise freedom of speech and freedom of the press in school-sponsored media and protecting their advisors from retaliation for refusing to censor their students is a matter of statewide concern.

The purpose of this Act is to establish the Hawaii Student Journalism Protection Act to:

- (1) Allow student journalists at public schools and the University of Hawaii to exercise freedom of speech and freedom of the press in school-sponsored media; and
- (2) Protect advisors from retaliation for refusing to infringe upon student press freedom.

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Student journalists; school-sponsored media. (a) A student journalist shall be allowed to exercise freedom of speech and freedom of the press in school-sponsored media and shall not be disciplined for acting in accordance with this section. A student journalist shall be responsible for determining the news, opinion, feature, and advertising content of school-sponsored media.

(b) Nothing in this section shall be construed to prevent a student media advisor from teaching professional standards of English language use and

journalism to student journalists or determining grades and credit for those purposes.

(c) Nothing in this section shall be construed to authorize or protect student expression that:

- (1) Is libelous or slanderous;
- (2) Constitutes a clearly unwarranted invasion of personal privacy;
- (3) Violates state or federal law;
- (4) Is obscene; or
- (5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of lawful school or board policies, or the material and substantial disruption of the orderly operation of the school; provided that the determination of a risk of material and substantial disruption shall be based upon specific facts, including past experience at the school and current events influencing student behavior, and not on undifferentiated fear or apprehension of disturbance.

(d) There shall be no prior constraint of material prepared for school-sponsored media except as provided in subsection (c). School officials shall have the burden of showing justification without undue delay before a limitation of student expression under this section and shall establish a reasonable period of review for material prepared for school-sponsored media. If the period of review elapses without a decision, the material prepared for school-sponsored media shall be considered authorized.

(e) No publication or other expression of material by student journalists in the exercise of rights under this section shall be deemed to be an expression of the school, board, or department. No state agency, member of the board, officer of the department, or employee of any agency or the board shall be held responsible in any civil or criminal action for the publication or other expression of material by student journalists in the exercise of rights under this section or the First Amendment of the United States Constitution.

(f) A student media advisor shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for:

- (1) Acting to protect a student journalist engaged in conduct protected under this section or the First Amendment to the United States Constitution; or
- (2) Refusing to infringe on conduct that is protected by this section or the First Amendment to the United States Constitution.

(g) The board shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and freedom of the press in school-sponsored media in accordance with this section; provided that the policy shall include:

- (1) Reasonable provisions for the time, place, and manner of distribution of student expression; and
- (2) A procedure for the timely appeal of decisions made pursuant to this section.

(h) For the purposes of this section:

“School-sponsored media” means any material:

- (1) Prepared, written, published, or broadcast in any media by a student journalist at a school;
- (2) Distributed or generally made available, either free of charge or for a fee, to members of the student body; and
- (3) Prepared under the direction of a student media advisor, regardless of whether the material is supported financially by the school or

by use of facilities of the school or produced in conjunction with a class for which the student is enrolled.

“School-sponsored media” does not include material intended for distribution or transmission for classroom purposes only.

“Student journalist” means a student who determines, gathers, compiles, writes, edits, photographs, records, or prepares information or advertising for inclusion in school-sponsored media.

“Student media advisor” means an individual employed, appointed, or designated by a school to supervise or provide instruction relating to school-sponsored media.”

SECTION 4. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304A- Student journalists; university-sponsored media. (a) A student journalist shall be allowed to exercise freedom of speech and freedom of the press in university-sponsored media and shall not be disciplined for acting in accordance with this section. A student journalist shall be responsible for determining the news, opinion, feature, and advertising content of university-sponsored media.

(b) Nothing in this section shall be construed to prevent a student media advisor from teaching professional standards of English language use and journalism to student journalists or determining grades and credit for those purposes.

(c) Nothing in this section shall be construed to authorize or protect student expression that:

- (1) Is libelous or slanderous;
- (2) Constitutes a clearly unwarranted invasion of personal privacy;
- (3) Violates state or federal law;
- (4) Is obscene; or
- (5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of lawful university policies, or the material and substantial disruption of the orderly operation of the university; provided that the determination of a risk of material and substantial disruption shall be based upon specific facts, including past experience at the university and current events influencing student behavior, and not on undifferentiated fear or apprehension of disturbance.

(d) There shall be no prior constraint of material prepared for university-sponsored media except as provided in subsection (c). University officials shall have the burden of showing justification without undue delay before a limitation of student expression under this section and shall establish a reasonable period of review for material prepared for university-sponsored media. If the period of review elapses without a decision, the material prepared for university-sponsored media shall be considered authorized.

(e) No publication or other expression of material by student journalists in the exercise of rights under this section shall be deemed to be an expression of the university or the board of regents. No state agency, member of the board of regents, officer of the university, or employee of any agency or the board of regents shall be held responsible in any civil or criminal action for the publication or other expression of material by student journalists in the exercise of rights under this section or the First Amendment of the United States Constitution.

(f) A student media advisor shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for:

- (1) Acting to protect a student journalist engaged in conduct protected under this section or the First Amendment to the United States Constitution; or
- (2) Refusing to infringe on conduct that is protected by this section or the First Amendment to the United States Constitution.
- (g) The board of regents shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and freedom of the press in university-sponsored media in accordance with this section; provided that the policy shall include:
 - (1) Reasonable provisions for the time, place, and manner of distribution of student expression; and
 - (2) A procedure for the timely appeal of decisions made pursuant to this section.
- (h) For the purposes of this section:

“Student journalist” means a student who determines, gathers, compiles, writes, edits, photographs, records, or prepares information or advertising for inclusion in university-sponsored media.

“Student media advisor” means an individual employed, appointed, or designated by the university to supervise or provide instruction relating to university-sponsored media.

“University-sponsored media” means any material:

 - (1) Prepared, written, published, or broadcast in any media by a student journalist in the university system;
 - (2) Distributed or generally made available, either free of charge or for a fee, to members of the student body; and
 - (3) Prepared under the direction of a student media advisor, regardless of whether the material is supported financially by the university or by use of facilities of the university or produced in conjunction with a class for which the student is enrolled.

“University-sponsored media” does not include material intended for distribution or transmission for classroom purposes only.”

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 23, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.