

Introduced by

Representatives Looyesen, Rick C. Becker, Haak, Mock

Senators Grabinger, Luick

1 A BILL for an Act to create and enact a new section to chapters 15-10, 15-18.1, and 15.1-06 of  
2 the North Dakota Century Code, relating to freedom of expression rights of students of public  
3 institutions of higher education and public schools.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Student journalists - Freedom of expression - Civil remedy.**

8 1. As used in this section:

- 9 a. "School-sponsored media" means any material that is prepared, substantially  
10 written, published, or broadcast by a student journalist at an institution under the  
11 supervision of the state board of higher education, distributed or generally made  
12 available to members of the student body, and prepared under the direction of a  
13 student media adviser. The term does not include any media intended for  
14 distribution or transmission solely in the classroom in which the media is  
15 produced.
- 16 b. "Student journalist" means a student of an institution under the supervision of the  
17 state board of higher education who gathers, compiles, writes, edits,  
18 photographs, records, or prepares information for dissemination in  
19 school-sponsored media.
- 20 c. "Student media adviser" means an individual employed, appointed, or designated  
21 by an institution under the supervision of the state board of higher education to  
22 supervise or provide instruction relating to school-sponsored media.
- 23 2. Except as provided in subsection 3, a student journalist has the right to exercise  
24 freedom of speech and of the press in school-sponsored media, regardless of whether

1           the media is supported financially by the institution or by use of facilities of the  
2           institution or produced in conjunction with a class in which the student is enrolled.  
3           Subject to subsection 3, a student journalist is responsible for determining the news,  
4           opinion, feature, and advertising content of school-sponsored media. This subsection  
5           may not be construed to prevent a student media adviser from teaching professional  
6           standards of English and journalism to student journalists.

7           3. This section does not authorize or protect expression by a student that:

8           a. Is libelous or slanderous;

9           b. Constitutes an unwarranted invasion of privacy;

10          c. Violates federal or state law; or

11          d. So incites students as to create a clear and present danger of the commission of  
12          an unlawful act, the violation of institution or state board of higher education  
13          policies, or the material and substantial disruption of the orderly operation of the  
14          institution.

15          4. A student enrolled in an institution under the supervision of the state board of higher  
16          education may commence a civil action to obtain damages under this section and  
17          appropriate injunctive or declaratory relief as determined by a court for a violation of  
18          subsection 2, the first amendment to the United States Constitution, or section 4 of  
19          article I of the Constitution of North Dakota.

20          **SECTION 2.** A new section to chapter 15-18.1 of the North Dakota Century Code is created  
21 and enacted as follows:

22          **Student journalists - Freedom of expression - Civil remedy.**

23          1. Notwithstanding the exemptions in section 15-18.1-02, a postsecondary educational  
24          institution may not make or enforce any rule subjecting any student to disciplinary  
25          sanctions solely on the basis of conduct that is speech or other communication which,  
26          when engaged in outside the campus or facility of the postsecondary institution, is  
27          protected from governmental restriction by the first amendment to the United States  
28          Constitution or section 4 of article I of the Constitution of North Dakota.

29          2. A student enrolled in a postsecondary institution may commence a civil action to  
30          obtain appropriate injunctive or declaratory relief as determined by a court for a  
31          violation of subsection 1.

- 1       3. This section does not apply to any postsecondary educational institution that is  
2           controlled by a religious organization, to the extent the application of this section would  
3           not be consistent with the religious tenets of the organization.
- 4       4. This section does authorize any prior restraint of student speech.
- 5       5. This section does not prohibit the imposition of discipline for harassment, threats, or  
6           intimidation, unless constitutionally protected.
- 7       6. This section does not prohibit an institution from adopting rules and policies that are  
8           designed to prevent hate violence from being directed at students in a manner that  
9           denies students full participation in the educational process, so long as the rules and  
10          policies conform to standards established by the first amendment to the United States  
11          Constitution or section 4 of article I of the Constitution of North Dakota.

12       **SECTION 3.** A new section to chapter 15.1-06 of the North Dakota Century Code is created  
13 and enacted as follows:

14       **Student journalists - Freedom of expression - Civil remedy.**

- 15       1. As used in this section:
  - 16           a. "School-sponsored media" means any material that is prepared, substantially  
17           written, published, or broadcast by a student journalist at a public school,  
18           distributed or generally made available to members of the student body, and  
19           prepared under the direction of a student media adviser. The term does not  
20           include any media intended for distribution or transmission solely in the  
21           classroom in which the media is produced.
  - 22           b. "Student journalist" means a public school student who gathers, compiles, writes,  
23           edits, photographs, records, or prepares information for dissemination in  
24           school-sponsored media.
  - 25           c. "Student media adviser" means an individual employed, appointed, or designated  
26           by a school district to supervise or provide instruction relating to  
27           school-sponsored media.
- 28       2. Except as provided in subsection 3, a student journalist has the right to exercise  
29           freedom of speech and of the press in school-sponsored media, regardless of whether  
30           the media is supported financially by the school district, by use of facilities of the  
31           school district, or produced in conjunction with a class in which the student is enrolled.

- 1           Subject to subsection 3, a student journalist is responsible for determining the news,  
2           opinion, feature, and advertising content of school-sponsored media. This subsection  
3           may not be construed to prevent a student media adviser from teaching professional  
4           standards of English and journalism to student journalists.
- 5           3. This section does not authorize or protect expression by a student that:
- 6           a. Is libelous or slanderous;
- 7           b. Constitutes an unwarranted invasion of privacy;
- 8           c. Violates federal or state law; or
- 9           d. So incites students as to create a clear and present danger of the commission of  
10           an unlawful act, the violation of school district policy, or the material and  
11           substantial disruption of the orderly operation of the school.
- 12           4. A student enrolled in a public school or the student's parent or guardian may  
13           commence a civil action to obtain damages under this section and appropriate  
14           injunctive or declaratory relief as determined by a court for a violation of subsection 2,  
15           the first amendment to the United States Constitution, or section 4 of article I of the  
16           Constitution of North Dakota.
- 17           5. Each school district shall adopt a written student freedom of expression policy in  
18           accordance with this section. The policy must include reasonable provisions for the  
19           time, place, and manner of student expression.