



HOUSE BILL No. 5058

September 19, 1995, Introduced by Reps. Profit, Martinez, Brater, Schroer and Baird and referred to the Committee on Education.

A bill to amend Act No. 451 of the Public Acts of 1976, entitled as amended
"The school code of 1976,"
as amended, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, by adding section 1307.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 451 of the Public Acts of 1976, as
2 amended, being sections 380.1 to 380.1852 of the Michigan
3 Compiled Laws, is amended by adding section 1307 to read as
4 follows:

5 SEC. 1307. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-
6 TION, A PUPIL IN A PUBLIC SCHOOL HAS THE RIGHT TO EXERCISE FREE-
7 DOM OF EXPRESSION WHILE IN ATTENDANCE AT SCHOOL OR SCHOOL-RELATED
8 FUNCTIONS.

1 (2) FOR 1 YEAR FOLLOWING THE EFFECTIVE DATE OF THE
2 AMENDATORY ACT THAT ADDED THIS SECTION, AND THEREAFTER ONLY IF
3 THE SCHOOL OR THE SCHOOL BOARD HAS PREPARED AND DISTRIBUTED A
4 WRITTEN PUPIL FREE-EXPRESSION POLICY UNDER SUBSECTION (6), THIS
5 SECTION DOES NOT PROTECT EXPRESSION THAT IS 1 OR MORE OF THE
6 FOLLOWING:

7 (A) OBSCENE AS TO MINORS UNDER STATE LAW.

8 (B) ACTIONABLE AS DEFAMATION UNDER STATE LAW.

9 (C) CAUSING SCHOOL ADMINISTRATORS, BASED ON SPECIFIC FACTS
10 AND NOT UNDIFFERENTIATED FEAR OR APPREHENSION, TO REASONABLY
11 BELIEVE THERE IS A CLEAR AND PRESENT DANGER OF EITHER OF THE
12 FOLLOWING:

13 (i) THE COMMISSION OF AN UNLAWFUL ACT OR THE VIOLATION OF A
14 LAWFUL SCHOOL REGULATION.

15 (ii) A MATERIAL AND SUBSTANTIAL DISRUPTION OF THE ORDERLY
16 OPERATION OF THE SCHOOL OR OF A SCHOOL FACILITY.

17 (3) A SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL ADMINISTRATOR,
18 OR OTHER SCHOOL EMPLOYEE SHALL NOT SUBJECT NONSPONSORED PUPIL
19 EXPRESSION TO PRIOR REVIEW OR PRIOR RESTRAINT, EXCEPT UNDER THE
20 FOLLOWING CIRCUMSTANCES:

21 (A) A SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL ADMINISTRATOR,
22 OR OTHER SCHOOL EMPLOYEE MAY SUBJECT NONSPONSORED PUPIL EXPRES-
23 SION TO PRIOR RESTRAINT IF IT IS UNPROTECTED UNDER SUBSECTION
24 (2).

25 (B) A PUPIL SEEKING TO DISSEMINATE EXPRESSION MAY VOLUN-
26 TARILY OBTAIN PRIOR REVIEW OF THAT EXPRESSION UPON HIS OR HER OWN
27 INITIATIVE.

1 (4) BOTH OF THE FOLLOWING APPLY TO SPONSORED PUPIL
2 EXPRESSION:

3 (A) A SCHOOL BOARD, SCHOOL DISTRICT, OR SCHOOL ADMINISTRATOR
4 SHALL NOT SUBJECT SPONSORED PUPIL EXPRESSION TO PRIOR REVIEW OR
5 PRIOR RESTRAINT. HOWEVER, A PUPIL SEEKING TO DISSEMINATE EXPRES-
6 SION MAY VOLUNTARILY OBTAIN PRIOR REVIEW OF THAT EXPRESSION UPON
7 HIS OR HER OWN INITIATIVE.

8 (B) ALL OF THE FOLLOWING APPLY TO PUPIL EXPRESSION IN A
9 SCHOOL-SPONSORED PUBLICATION WITH A PUPIL EDITORIAL STAFF:

10 (i) THE SCHOOL SHALL APPOINT A FACULTY ADVISER WHOM THE
11 SCHOOL MAY AUTHORIZE TO SUPERVISE THE PRODUCTION OF THE PUBLICA-
12 TION AND TEACH PROFESSIONAL STANDARDS OF JOURNALISM TO THE PUPILS
13 INVOLVED IN THE PUBLICATION.

14 (ii) THE PUPILS CONSTITUTING THE EDITORIAL STAFF ARE RESPON-
15 SIBLE FOR DETERMINING THE NEWS, OPINION, AND ADVERTISING CONTENT,
16 IF ANY, OF THE PUBLICATION.

17 (iii) THE SCHOOL MAY REQUIRE THAT THE PUBLICATION INCLUDE A
18 STATEMENT THAT NOTHING IN THE PUBLICATION IS NECESSARILY AN
19 EXPRESSION OF SCHOOL POLICY.

20 (iv) SUBJECT TO THE PROVISIONS OF APPLICABLE COLLECTIVE BAR-
21 GAINING AGREEMENTS, A SCHOOL BOARD, SCHOOL DISTRICT, OR SCHOOL
22 ADMINISTRATOR SHALL NOT DISCHARGE, TRANSFER, OR REMOVE FROM HIS
23 OR HER POSITION A FACULTY ADVISER FOR REFUSING TO ALTER OR INTER-
24 FERE WITH THE FREE EXPRESSION RIGHTS SPECIFIED IN THIS SECTION OR
25 IN OTHER LAW.

26 (5) A SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL BOARD MEMBER, OR
27 SCHOOL ADMINISTRATOR IS NOT LIABLE IN A CIVIL OR CRIMINAL ACTION

1 FOR AN EXPRESSION MADE BY A PUPIL UNLESS THE SCHOOL BOARD, SCHOOL
2 DISTRICT, SCHOOL BOARD MEMBER, OR SCHOOL ADMINISTRATOR ALTERED OR
3 INTERFERED WITH THE CONTENT OF THE PUPIL'S EXPRESSION.

4 (6) NOT LATER THAN 1 YEAR FOLLOWING THE EFFECTIVE DATE OF
5 THE AMENDATORY ACT THAT ADDED THIS SECTION, EACH SCHOOL OR THE
6 BOARD OF EACH SCHOOL DISTRICT SHALL PREPARE A WRITTEN PUPIL
7 FREE-EXPRESSION POLICY CONSISTENT WITH THIS SECTION AND DISTRIB-
8 UTE IT TO EACH PUPIL AT THE BEGINNING OF EACH SCHOOL YEAR. THE
9 POLICY MAY INCLUDE REASONABLE REGULATIONS OF THE TIME, PLACE, AND
10 MANNER OF PUPIL EXPRESSION AND SHALL PROTECT FORMS OF PUPIL
11 EXPRESSION INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

12 (A) USE OF SCHOOL BULLETIN BOARDS.

13 (B) DISTRIBUTION OF PRINTED MATTER AND PUBLICATIONS.

14 (C) WEARING OF BUTTONS, BADGES, OR OTHER INSIGNIA.

15 (D) PERFORMANCE OF THEATRICAL OR MUSICAL EVENTS.

16 (E) PEACEABLE ASSEMBLY.

17 (7) A PUPIL, A PARENT OR GUARDIAN ON BEHALF OF A PUPIL, OR A
18 FACULTY ADVISER MAY BRING AN APPROPRIATE ACTION FOR INJUNCTIVE OR
19 DECLARATORY RELIEF OR DAMAGES IN THE CIRCUIT COURT IN A COUNTY IN
20 WHICH THE SCHOOL DISTRICT IS LOCATED TO ENFORCE THIS SECTION.

21 BOTH OF THE FOLLOWING APPLY TO AN ACTION BROUGHT UNDER THIS
22 SUBSECTION:

23 (A) DAMAGES ARE RECOVERABLE ONLY FOR CONDUCT THAT WAS
24 UNREASONABLE.

25 (B) A SUBSTANTIALLY PREVAILING PLAINTIFF MAY RECOVER REASON-
26 ABLE ATTORNEY FEES.

(8) AS USED IN THIS SECTION:

(A) "PUBLICATION" MEANS PUPIL EXPRESSION, IN PRINT,
BROADCAST, OR BY CABLE, INTENDED TO REACH A GENERAL AUDIENCE OF
PUPILS OF THE SCHOOL.

(B) "SPONSORED", "SCHOOL-SPONSORED", "SPONSORED EXPRESSION",
AND "SPONSORED PUPIL EXPRESSION" MEAN EXPRESSION AUTHORIZED TO
BEAR AND BEARING THE NAME OF THE SCHOOL OR SCHOOL DISTRICT.