

# HOUSE BILL No. 6129

September 17, 1998, Introduced by Reps. Martinez and Schauer and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
(MCL 380.1 to 380.1852) by adding section 1191.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1        SEC. 1191. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-  
2 TION, A PUPIL IN A PUBLIC SCHOOL HAS THE RIGHT TO EXERCISE FREE-  
3 DOM OF EXPRESSION WHILE IN ATTENDANCE AT SCHOOL OR SCHOOL-RELATED  
4 FUNCTIONS.
- 5        (2) A SCHOOL, SCHOOL DISTRICT, SCHOOL BOARD, SCHOOL ADMINIS-  
6 TRATOR, OR OTHER SCHOOL OR SCHOOL DISTRICT EMPLOYEE SHALL NOT  
7 SUBJECT NONSPONSORED PUPIL EXPRESSION TO PRIOR REVIEW OR PRIOR  
8 RESTRAINT, EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:
- 9        (A) THE NONSPONSORED PUPIL EXPRESSION IS NOT PROTECTED UNDER  
10 SUBSECTION (5).

1 (B) THE PUPIL HAS VOLUNTARILY OBTAINED PRIOR REVIEW OF THE  
2 EXPRESSION UPON HIS OR HER OWN INITIATIVE.

3 (3) A SCHOOL BOARD, SCHOOL DISTRICT, OR SCHOOL ADMINISTRATOR  
4 SHALL NOT SUBJECT SPONSORED PUPIL EXPRESSION TO PRIOR REVIEW OR  
5 PRIOR RESTRAINT. A PUPIL MAY VOLUNTARILY OBTAIN PRIOR REVIEW OF  
6 THE EXPRESSION UPON HIS OR HER OWN INITIATIVE.

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

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

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

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

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

25 (5) IF THE SCHOOL OR THE SCHOOL BOARD HAS PREPARED AND DIS-  
26 TRIBUTED A WRITTEN PUPIL FREE-EXPRESSION POLICY UNDER SUBSECTION

1 (6), THIS SECTION DOES NOT PROTECT EXPRESSION THAT IS 1 OR MORE  
2 OF THE FOLLOWING:

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

4 (B) ACTIONABLE AS DEFAMATION UNDER STATE LAW.

5 (C) CAUSING SCHOOL ADMINISTRATORS TO REASONABLY BELIEVE  
6 THERE IS A CLEAR AND PRESENT DANGER OF EITHER OF THE FOLLOWING:

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

9 (ii) A MATERIAL AND SUBSTANTIAL DISRUPTION OF THE ORDERLY  
10 OPERATION OF THE SCHOOL OR OF ANY SCHOOL FACILITY.

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

19 (A) USE OF SCHOOL BULLETIN BOARDS.

20 (B) DISTRIBUTION OF PRINTED MATTER AND PUBLICATIONS.

21 (C) PEACEABLE ASSEMBLY.

22 (7) A SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL BOARD MEMBER, OR  
23 SCHOOL ADMINISTRATOR IS NOT LIABLE IN ANY CIVIL OR CRIMINAL  
24 ACTION FOR ANY EXPRESSION MADE BY A PUPIL UNLESS THE SCHOOL  
25 BOARD, SCHOOL DISTRICT, SCHOOL BOARD MEMBER, OR SCHOOL ADMINIS-  
26 TRATOR ALTERED OR INTERFERED WITH THE CONTENT OF THE PUPIL'S  
27 EXPRESSION.

1 (8) A PUPIL, A PARENT OR GUARDIAN ON BEHALF OF A PUPIL, OR A  
2 FACULTY ADVISER MAY BRING AN ACTION FOR INJUNCTIVE OR DECLARATORY  
3 RELIEF OR DAMAGES IN THE CIRCUIT COURT IN A COUNTY IN WHICH THE  
4 SCHOOL DISTRICT IS LOCATED TO ENFORCE THIS SECTION. BOTH OF THE  
5 FOLLOWING APPLY TO AN ACTION BROUGHT UNDER THIS SECTION:

6 (A) DAMAGES ARE RECOVERABLE ONLY FOR CONDUCT THAT WAS  
7 UNREASONABLE.

8 (B) THE PLAINTIFF MAY RECOVER REASONABLE ATTORNEY FEES.

9 (9) AS USED IN THIS SECTION:

10 (A) "PUBLICATION" MEANS PUPIL EXPRESSION, IN PRINT, BROAD-  
11 CAST, OR BY CABLE, INTENDED TO REACH A GENERAL AUDIENCE OF PUPILS  
12 OF THE SCHOOL.

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