

SENATE BILL No. 645

June 17, 2009, Introduced by Senator SWITALSKI 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 1315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1315. (1) A SCHOOL BOARD, SCHOOL ADMINISTRATOR, OR SCHOOL
2 EMPLOYEE SHALL NOT SUBJECT A PUPIL PUBLICATION TO PRIOR REVIEW OR
3 PRIOR RESTRAINT, EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

4 (A) THE CONTENT OF THE PUPIL PUBLICATION MEETS 1 OR MORE OF
5 THE FOLLOWING:

6 (i) IS OBSCENE AS TO MINORS UNDER STATE OR FEDERAL LAW.

7 (ii) IS ACTIONABLE AS DEFAMATION OR INVASION OF PRIVACY UNDER
8 STATE OR FEDERAL LAW.

9 (iii) CAUSES A SCHOOL ADMINISTRATOR, BASED ON SPECIFIC FACTS AND
10 NOT UNDIFFERENTIATED FEAR OR APPREHENSION, TO REASONABLY BELIEVE

1 THAT THERE IS A CLEAR AND PRESENT DANGER OF EITHER OF THE
2 FOLLOWING:

3 (A) THE COMMISSION OF AN UNLAWFUL ACT OR THE VIOLATION OF A
4 LAWFUL SCHOOL REGULATION.

5 (B) A MATERIAL AND SUBSTANTIAL DISRUPTION OF THE ORDERLY
6 OPERATION OF THE SCHOOL OR OF ANY SCHOOL FACILITY.

7 (iv) CONSTITUTES ADVERTISING FOR A PRODUCT OR SERVICE THAT IS
8 ILLEGAL FOR MINORS.

9 (B) A PUPIL SEEKING TO DISSEMINATE A PUPIL PUBLICATION
10 VOLUNTARILY OBTAINS PRIOR REVIEW OF THAT PUBLICATION UPON HIS OR
11 HER OWN INITIATIVE.

12 (2) ALL OF THE FOLLOWING APPLY TO A PUPIL PUBLICATION:

13 (A) THE SCHOOL SHALL APPOINT A FACULTY ADVISER TO SUPERVISE
14 THE PRODUCTION OF THE PUBLICATION, TEACH PROFESSIONAL STANDARDS OF
15 ENGLISH AND JOURNALISM, AND ENCOURAGE FREE AND RESPONSIBLE
16 EXPRESSION OF PUPIL CONTENT. REVIEW BY THE FACULTY ADVISER OF
17 MATERIAL PREPARED FOR A PUPIL PUBLICATION TO ENCOURAGE HIGH
18 STANDARDS OF ENGLISH AND JOURNALISM IS NOT CONSIDERED TO BE A
19 RESTRAINT ON PUBLICATION OF THE MATERIAL OR AN ABRIDGMENT OF THE
20 FREEDOM OF EXPRESSION IN PUPIL PUBLICATIONS.

21 (B) THE PUPILS CONSTITUTING THE EDITORIAL STAFF ARE
22 RESPONSIBLE FOR DETERMINING THE NEWS, OPINION, AND ADVERTISING
23 CONTENT, IF ANY, OF THE PUBLICATION.

24 (C) SUBJECT TO THE PROVISIONS OF APPLICABLE COLLECTIVE
25 BARGAINING AGREEMENTS, A SCHOOL BOARD OR SCHOOL ADMINISTRATOR SHALL
26 NOT DISCIPLINE, DISCHARGE, TRANSFER, OR REASSIGN OR REMOVE FROM HIS
27 OR HER POSITION A FACULTY ADVISER FOR REFUSING TO ALTER OR

1 INTERFERE WITH THE FREE EXPRESSION RIGHTS SPECIFIED IN THIS SECTION
2 OR IN OTHER LAW.

3 (3) A PUPIL PUBLICATION OR OTHER EXPRESSION BY A PUPIL IN THE
4 EXERCISE OF RIGHTS UNDER THIS SECTION IS NOT CONSIDERED TO BE AN
5 EXPRESSION OF SCHOOL DISTRICT POLICY.

6 (4) A SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL BOARD MEMBER,
7 SCHOOL ADMINISTRATOR, OR FACULTY ADVISER IS NOT LIABLE IN ANY CIVIL
8 OR CRIMINAL ACTION FOR ANY EXPRESSION MADE BY A PUPIL UNLESS THE
9 SCHOOL BOARD, SCHOOL DISTRICT, SCHOOL BOARD MEMBER, OR SCHOOL
10 ADMINISTRATOR ALTERED OR INTERFERED WITH THE CONTENT OF THE PUPIL'S
11 EXPRESSION.

12 (5) A STUDENT EDITOR OR OTHER PUPIL OF A SCHOOL DISTRICT WHO
13 HAS ATTAINED THE AGE OF MAJORITY MAY BE FOUND LIABLE IN A CIVIL OR
14 CRIMINAL ACTION FOR CONTENT EXPRESSED IN A PUPIL PUBLICATION TO THE
15 EXTENT OF HIS OR HER RESPONSIBILITY FOR AND INVOLVEMENT IN THE
16 PREPARATION AND PUBLICATION OF THAT CONTENT.

17 (6) IF A SCHOOL BOARD OPERATES A SCHOOL THAT REGULARLY HAS A
18 PUPIL PUBLICATION, THEN NOT LATER THAN 1 YEAR FOLLOWING THE
19 EFFECTIVE DATE OF THIS SECTION, THE SCHOOL BOARD SHALL PREPARE A
20 WRITTEN PUPIL PUBLICATION POLICY CONSISTENT WITH THIS SECTION AND
21 SHALL MAKE THE POLICY AVAILABLE TO PUPILS AND PARENTS IN WRITTEN OR
22 ELECTRONIC FORM. THE POLICY MAY INCLUDE REASONABLE REGULATIONS OF
23 THE TIME, PLACE, AND MANNER FOR DISTRIBUTION OF PUPIL PUBLICATIONS.

24 (7) A PUPIL OR A FACULTY ADVISER MAY BRING AN ACTION FOR
25 INJUNCTIVE OR DECLARATORY RELIEF OR DAMAGES IN THE CIRCUIT COURT IN
26 A COUNTY IN WHICH THE SCHOOL DISTRICT IS LOCATED TO ENFORCE THIS
27 SECTION. A SUBSTANTIALLY PREVAILING PLAINTIFF IN AN ACTION UNDER

1 THIS SUBSECTION MAY RECOVER ACTUAL ATTORNEY FEES AND COURT COSTS.

2 (8) AS USED IN THIS SECTION:

3 (A) "PUPIL PUBLICATION" MEANS ANY MATTER THAT IS PREPARED,
4 SUBSTANTIALLY WRITTEN, OR PUBLISHED BY PUPILS; THAT IS DISTRIBUTED,
5 BROADCAST BY CLOSED CIRCUIT OR CABLE, OR OTHERWISE GENERALLY MADE
6 AVAILABLE TO MEMBERS OF THE STUDENT BODY, EITHER FREE OF CHARGE OR
7 FOR A FEE; AND THAT IS PREPARED UNDER THE DIRECTION OF A
8 CERTIFICATED TEACHER.

9 (B) "SCHOOL BOARD" MEANS A SCHOOL BOARD, INTERMEDIATE SCHOOL
10 BOARD, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY.

11 (C) "SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT, INTERMEDIATE
12 SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY.