

# Legislative Analysis



## AMERICAN HERITAGE DOCUMENT INSTRUCTION

Phone: (517) 373-8080  
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**Senate Bill 211 as reported from House committee**

**Sponsor: Sen. Mike Shirkey**

**House Committee: Education**

**Senate Committee: Education**

**Complete to 11-10-15**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** The bill would require public school officials to allow instruction about America's founding historical documents, without fear of censorship based on religious references.

**FISCAL IMPACT:** The bill would have no fiscal impact on state or local government.

### **THE APPARENT PROBLEM:**

The Revised School Code prescribes standards for various academic curricula and requires all public and nonpublic schools in Michigan to provide regular courses of instruction in the Constitution of the United States and the Michigan Constitution.

In addition, the Code specifies that a high school must require a one-semester course in civics in which students are taught the form and functions of the federal, state, and local governments, and the rights and responsibilities of citizens.<sup>1</sup> Some have raised concerns regarding the degree to which students are learning U.S. history and civics. According to standardized test results for the social studies, proficiency in these subjects is low and is not improving.

To improve student learning about our country's founding documents, some have suggested that the Code be amended to ensure that students are allowed to read and study them, without fear of censorship based on religious references in those documents.

### **THE CONTENT OF THE BILL:**

The bill would amend the Revised School Code to require the board of a school district or intermediate school district, or the board of directors of a public school academy (customarily called a charter school), to permit grade-level instruction for students to read and study America's founding documents, "including documents that contributed to the foundation or maintenance of America's representative form of limited government, the Bill of Rights, our free-market economic system, and patriotism."

The bill also would prohibit a school board or a school official or employee from censoring or restraining study or instruction in American history or heritage or Michigan history or

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<sup>1</sup> MCL 380.1166

heritage based on religious references in original source documents, writings, speeches, proclamations, or records. The bill would take effect 90 days after enactment.

Proposed MCL 380.1168

***HOUSE COMMITTEE ACTION:***

The members of the House Education Committee reported out the Senate-passed version of Senate Bill 211 without amendments.

***ARGUMENTS:***

***For:***

According to the National Center for Education Statistics, in 2014 only 18 percent of eighth graders tested at proficient or above on United States history, while 23 percent tested at proficient or better in civics. In both subjects, there was "no significant change" from the 2010 scores.<sup>2</sup> These statistics demonstrate that students are not learning about U.S. history and civics. Students should be encouraged to learn the lessons that are present in various documents important to state and federal history and heritage. This bill would empower and protect those who believe that documents important to the nation's heritage should be taught.

***Response:***

Critics say that this bill would be much improved if it were amended to name specific documents, such as the Declaration of Independence, United States Constitution, Bill of Rights, and Federal Papers. Like America itself—and most especially our country's public schools—diversity abounds. Consequently, the bill should be more open and inclusive so that our founding documents are embraced by all Americans. Rather than address only patriotism, critics say, it should address patriotism, liberty, and justice. Similarly, the bill should support instruction about various forms of judicial interpretation, as well as the documents and court cases that demonstrate our dynamic, ever-evolving experiment in constitutional democracy.

***For:***

Many historical documents contain references to religion or religious texts. These references can be important for understanding the meaning of historical material. Individuals who wish to discuss these texts in class or teach lessons based on documents that include those references should not have to self-censor, or be censored. This bill would ensure that an individual would not be censored or restrained from presenting or learning about U.S. or Michigan history or heritage based on religious references in original source materials.

***Against:***

Critics caution that the bill could allow the teaching of religious texts in public schools, and could lead to excessive government entanglement with religion in violation of the

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<sup>2</sup> "The Nation's Report Card: 2014 U.S. History, Geography, and Civics at Grade 8", National Center for Education Statistics, U.S. Department of Education, retrieved 6-22-2015, at: <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2015112>.

"*Lemon* test." Such instances would violate the Establishment Clause and could be challenged in court, which would cost school districts significant money to litigate.

In *Lemon v. Kurtzman*, the U.S. Supreme Court developed a three-part test to determine whether a statute violates the Establishment Clause of the First Amendment.<sup>3</sup> First, the statute must have a secular legislative purpose; second, its principal effect must neither advance nor inhibit religion; and third, the statute must not foster an excessive government entanglement with religion.<sup>4</sup>

***Against:***

The bill would create a "solution" to nonexistent "problem," as there have been few, if any, documented complaints that teachers or students have been censored or restrained from presenting or learning about U.S. or Michigan history because of religious references in source materials.

***POSITIONS:***

The Michigan Catholic Conference supports the bill. (10-8-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>3</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971)

<sup>4</sup> *Id.* at 612-13