

**SUBSTITUTE FOR
HOUSE BILL NO. 4436**

A bill to promote and safeguard the right of free speech and assembly on the campuses of public universities and community and junior colleges; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "college campus intellectual and expressive freedom act".

3 Sec. 2. As used in this act:

4 (a) "Expressive activity" includes, but is not limited to, all
5 lawful verbal or written means by which individuals may communicate
6 ideas to one another, all peaceful forms of assembly, protest,
7 speech, distributing literature, carrying signs, and circulating
8 petitions in open areas, and filming and broadcasting on the



1 internet, by any number of individuals and whether planned or
2 spontaneous.

3 (b) "Materially and substantially disrupts" means a disruption
4 that occurs when an individual significantly hinders the expressive
5 activity of another individual or group, prevents the communication
6 of a message of another individual or group, or prevents the
7 transaction of the business of a lawful meeting, gathering, or
8 procession by engaging in fighting, violence, or other unlawful
9 behavior, or when an individual physically blocks or uses threats
10 of violence to prevent another individual or group from attending,
11 listening to, viewing, or otherwise participating in an expressive
12 activity. The term does not include conduct that is protected under
13 the first amendment to the constitution of the United States or
14 section 3 or 5 of article I of the state constitution of 1963,
15 including, but not limited to, conduct that constitutes a lawful
16 protest or counter-protest in an outdoor area of a campus generally
17 accessible to members of the public, except during times when the
18 area has been reserved in advance for another event, or conduct
19 that constitutes a minor, brief, or fleeting nonviolent disruption
20 of an event that is isolated and short in duration.

21 (c) "Public institution of higher education" or "institution"
22 means a public community or junior college established under
23 section 7 of article VIII of the state constitution of 1963 or part
24 25 of the revised school code, 1976 PA 451, MCL 380.1601 to
25 380.1607, or a state university described in section 4, 5, or 6 of
26 article VIII of the state constitution of 1963.

27 (d) "Student organization" means any student group officially
28 recognized by, or seeking official recognition from, a public
29 institution of higher education that receives or seeks to receive



1 benefits from the institution.

2 Sec. 3. A public institution of higher education shall do all
3 of the following:

4 (a) Develop and adopt a policy on free expression that
5 contains at least the following:

6 (i) A statement that an essential part of the institution's
7 mission is the discovery, improvement, transmission, and
8 dissemination of knowledge by means of research, teaching,
9 discussion, and debate and that, to fulfill this function, the
10 institution will strive to ensure the fullest degree of
11 intellectual freedom and free expression.

12 (ii) A statement assuring that students and faculty are free to
13 discuss anything as the first amendment to the constitution of the
14 United States or section 3 or 5 of article I of the state
15 constitution of 1963 permits.

16 (iii) A statement assuring that students and faculty are
17 permitted to assemble and engage in expressive activity as long as
18 the activity is not unlawful, subject to the requirements of this
19 act.

20 (iv) A statement assuring any person lawfully present on campus
21 the right to protest or demonstrate there but making clear that
22 those policies must not be interpreted to permit individuals to
23 engage in conduct that materially and substantially disrupts
24 another individual's expressive activity or infringes on the rights
25 of others to engage in or listen to expressive activity that is
26 occurring in an indoor location that has been reserved for that
27 expressive activity.

28 (v) A statement assuring that the institution's campuses are
29 open to any speaker whom students, student organizations, or



1 members of the faculty have invited.

2 (vi) A statement assuring that the publicly accessible outdoor
3 areas of campuses of the institution are traditional public forums,
4 open on the same terms to any speaker. As to those areas,
5 institutions may maintain reasonable and content-neutral and
6 viewpoint-neutral restrictions on time, place, and manner of
7 expression that are narrowly tailored to a significant
8 institutional interest. Those restrictions must be clear and
9 published and provide for ample alternative means of expression. An
10 institution shall not restrict students' expressive activity only
11 to particular areas of campus, sometimes known as "free speech
12 zones", or establish permitting requirements that prohibit
13 spontaneous outdoor assemblies or outdoor distribution of
14 literature. An institution may maintain a policy that grants
15 members of the institution's community the right to reserve certain
16 outdoor spaces in advance.

17 (vii) A statement assuring that a student organization shall
18 not be denied any benefit or privilege available to any other
19 student organization, or otherwise be discriminated against, based
20 on the expressive activity of the organization or a requirement
21 that the members or leaders of the organization do any of the
22 following:

23 (A) Affirm and adhere to the organization's sincerely held
24 beliefs.

25 (B) Comply with the organization's standards of conduct.

26 (C) Further the organization's mission or purpose, as defined
27 by the organization.

28 (viii) A statement that the institution will not force or compel
29 any student or faculty member to take a position on a matter of



1 public policy. This subparagraph does not apply to curricula.

2 (ix) A statement assuring that the policy on free expression
3 adopted under this subdivision supersedes all prior provisions of
4 institutional policy or regulation to the extent that those prior
5 provisions are inconsistent with the policy on free expression
6 adopted under this subdivision and that the institution will remove
7 or revise any inconsistent prior provision of policy or regulation
8 to ensure compatibility of its policies and regulations with the
9 policy on free expression adopted under this subdivision.

10 (b) Include in freshman orientation programs, handbooks, and
11 websites information for students describing the policies and
12 regulations regarding free expression consistent with this act.

13 (c) Develop materials, programs, and procedures to ensure that
14 all individuals who have responsibility for discipline or education
15 of students, including, but not limited to, administrators, campus
16 police officers, residence life officials, and professors,
17 understand the policies, regulations, and duties of the public
18 institution of higher education regarding free expression on campus
19 consistent with this act.

20 Sec. 4. This act does not prevent a public institution of
21 higher education from prohibiting, limiting, or otherwise
22 restricting expressive activity that constitutes discriminatory
23 harassment. For purposes of this section, expressive activity
24 constitutes discriminatory harassment only if it targets an
25 individual on a basis protected by the institution or under
26 federal, state, or local law with conduct that is so severe,
27 pervasive, and objectively offensive that it effectively denies the
28 target access to an educational opportunity or benefit provided by
29 the institution. Institutions shall prohibit discriminatory



1 harassment consistent with, and no more expansively than, the
2 prohibition as described in this section.

3 Sec. 5. For any violation of this act, an individual aggrieved
4 by the violation, the attorney general, or both may bring an action
5 in a court of competent jurisdiction to obtain the following
6 remedies:

7 (a) In all cases, reasonable court costs and attorney fees.

8 (b) In all cases, injunctive relief as appropriate.

9 (c) In a case brought by or on behalf of an individual
10 aggrieved by a violation of this act, that individual's actual
11 damages or \$1,000.00, whichever is greater, to be awarded to that
12 individual.

13 Sec. 6. An action brought under section 5 must be commenced
14 not later than 1 year after the day that the cause of action
15 accrued. For purposes of calculating this 1-year limitation period,
16 a cause of action accrues each day that a violation of this act
17 persists or a policy in violation of this act remains in effect.

