Jennifer Stump *Legislative Service Commission*

Am. Sub. H.B. 79

126th General Assembly
(As Passed by the General Assembly)

Reps. Raga, Latta, Setzer, C. Evans, Hagan, DeWine, McGregor, Willamowski, Gilb, Flowers, Seaver, Reidelbach, Schlichter, Reinhard, Blasdel, Brown, Bubp, Calvert, Carmichael, Cassell, Coley, Collier, Combs, Core, Daniels, Dolan, Domenick, D. Evans, Faber, Gibbs, Harwood, Healy, Hughes, Koziura, Law, Martin, Otterman, T. Patton, Schaffer, Schneider, G. Smith, J. Stewart, Strahorn, Trakas, Ujvagi, Wagoner, Webster, Widener, Williams, Wolpert, Yates, Yuko

Sens. Padgett, Fedor, Miller, Austria, Jacobson, Wilson, Zurz, Niehaus, Gardner, Cates

Effective date: March 30, 2007

ACT SUMMARY

TEACHER AND EMPLOYEE MISCONDUCT

- Requires the State Board of Education to request a criminal records check of an applicant prior to renewing an educator license.

- Requires the State Board to request a criminal records check every five years for a person teaching under an eight-year professional teaching certificate or a permanent teaching certificate issued under former law.

- Requires school districts, educational service centers, community schools, county MR/DD boards, and chartered nonpublic schools to submit to the Superintendent of Public Instruction information about specified misconduct by employees who are licensed by the State Board.

- Requires school districts, educational service centers, community schools, county MR/DD boards, and chartered nonpublic schools to keep reports of investigations of employee misconduct in the employee's personnel file, unless the Superintendent of Public Instruction determines that the misconduct does not warrant taking action against the employee's license.

- Requires each public children services agency to provide to the Superintendent of Public Instruction information about child abuse or neglect committed by a person licensed by the State Board that is directly related to the licensee's duties and responsibilities.

- Grants immunity from civil and criminal liability to employees of a public children services agency who provide information to the Superintendent of Public Instruction about child abuse or neglect committed by State Board licensees.

- Clarifies that a public children services agency must provide information to the Department of Job and Family Services about child abuse and neglect reports involving a person applying for licensure to operate a type A family day-care home or a type B family day-care home only when those reports are substantiated.

EDUCATIONAL CHOICE SCHOLARSHIPS

- Sets a permanent limit of 14,000 Educational Choice scholarships that may be awarded each year.

- Expands eligibility for scholarships to students enrolled in their resident districts or in community schools and who are or would be assigned, either in the current or next school year, to schools that have been in academic watch or academic emergency for two of three consecutive school years (and that were not excellent or effective in the most recent of those years).

- Permits a student who transfers to a new resident school district after receiving a scholarship to continue to receive scholarships if the school to which the student would be assigned in the new district is a qualifying school.

- Specifies that "excused" absences do not count in determining if a scholarship student has exceeded the 20 absences allowed each school year.

- Requires the Department of Education to adjust the formula ADM of a school district to include any scholarship student who was omitted from the ADM count.

COMMUNITY SCHOOLS

- Prohibits a person from serving on the governing authorities of more than two start-up community schools at the same time.

- Allows a start-up community school to compensate each governing authority member up to $125 for each meeting of the governing authority the member attends, but no more than $125 per month.

- Prohibits present and former members of community school governing authorities, and their immediate relatives, from being owners, employees, or consultants of any community school operator until one year after their membership has ended.

- Allows a community school operator whose contract will be terminated or not renewed to appeal the decision to the school's sponsor or, in some cases, the State Board of Education, and requires the operator to replace the school's governing authority if the operator prevails in the appeal.

- Expands a provision reducing the number of community schools an entity may sponsor by one for each of its schools that closes to apply to all sponsors.

- Repeals (1) a requirement to administer fall and spring reading and math assessments to students enrolled in community schools that are rated continuous improvement or lower, have been open less than two years, or do not have a performance rating based on achievement test data and (2) provisions imposing sanctions on certain of those schools for failure to make expected gains in student achievement.

- Requires a community school to permanently close if, after July 1, 2008, it (1) does not offer a grade higher than 3 and has been in academic emergency for four consecutive years, (2) offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for three consecutive years, and showed less than one year of academic growth in reading or math in two of those years, or (3) offers any of grades 10 to 12, has been in academic emergency for three consecutive years, and showed less than two years of academic growth in reading or math in two of those years.

- Exempts from the closing requirement community schools that operate a dropout prevention and recovery program that receives a waiver from the Department of Education.

- Requires the State Board of Education to make legislative recommendations for performance standards for community schools with dropout prevention and recovery programs eligible for a waiver.

- Requires school districts to offer property suitable for classroom space for sale to start-up community schools in the district if the district has not used the property for educational purposes for one year and has not adopted a plan to so use that property within the next three years.

- Grants a school district that sells unused property to a community school under the act's provisions the right of first refusal if the school later disposes of that property.

- Requires community schools to adopt parental involvement policies in the same manner as school districts.

- Adds two representatives of community schools to the Partnership for Continued Learning.

- Directs the Partnership for Continued Learning to study the operation and oversight of community schools and the Educational Choice Scholarship Pilot Program and make legislative recommendations.

EDUCATIONAL REGIONAL SERVICE SYSTEM

- Renames data acquisition sites as "information technology centers."

- Eliminates a provision assigning an educational service center or a school district that has territory in multiple regions of the Educational Regional Service System (ERSS) to the one region in which it has the majority of its territory.

- Designates the director of each information technology center providing services in an ERSS region as a member of the regional advisory council.

- Designates as members of an ERSS region's information technology center subcommittee the administrator of each information technology

center providing services in the region and two school district administrators appointed by each of those centers.

- Requires ERSS performance contracts to include an explanation of how regional needs and priorities for educational services have been identified by the regional advisory council and the Department of Education.

- Requires the State Regional Alliance Advisory Board to meet at least four times each year in its first two years of existence (rather than monthly, as under prior law).

OTHER EDUCATION LAW CHANGES

- Requires each school district that adopts a student acceleration policy other than the State Board of Education's model policy to submit its policy to the Department of Education for approval.

- Requires school districts, community schools, and chartered nonpublic schools, when filing a school safety plan with the Attorney General, to include the school's floor plan (rather than building blueprint as under prior law).

- Exempts the school floor plan from the Public Records Law to the extent it is kept by the Attorney General.

- Directs school districts, community schools, and chartered nonpublic schools to file school safety plans and related documents with designated recipients within 91 days after the act's effective date or 91 days after subsequent revisions.

- Specifies that the following programs are not subject to inspection under the School Health and Safety Network: (1) preschool child care programs licensed by the Department of Job and Family Services, (2) preschool child care programs not operated by a public or chartered nonpublic school, and (3) chartered kindergartens that are associated with a freestanding preschool and are not operated by a school district, educational service center, or county board of mental retardation and development disabilities.

TABLE OF CONTENTS

CONTENT AND OPERATION

Background on authority of State Board of Education to investigate licensees

In exercising its power to license educators, the State Board of Education may refuse to issue a license to an applicant, may limit a license it issues to an applicant, or may suspend, revoke, or limit a license it has previously issued for any of several statutorily specified reasons. Specifically, the State Board may take one of these actions if it determines the applicant or license holder has done any of the following:

(1) Engaged in an immoral act, incompetence, negligence, or conduct unbecoming to the person's position; or

(2) Pled guilty to, been found guilty by a jury or court of, or been convicted of any of the following:

(a) A felony;

(b) Unlawful sexual conduct with a minor, sexual imposition, or sexual importuning;

(c) An offense of violence;

(d) Any of several theft offenses;

(e) A drug abuse offense that is not a minor misdemeanor; or

(f) A violation of a municipal ordinance substantively comparable to an offense listed in (a) through (e) above.[1]

The State Board, or the Superintendent of Public Instruction on its behalf, may investigate any information that reasonably appears to be a basis for refusing, suspending, revoking, or limiting a license. The Superintendent must review the results of each investigation to determine whether the results warrant initiating an action against the applicant or licensee. All information obtained during an investigation is confidential and is not a public record. If no action is taken against the person within two years of the completion of the investigation, all records of the investigation must be expunged. If, however, the Superintendent recommends action, the State Board must provide written notice of the charges

[1] *R.C. 3319.31, not in the act.*

and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act.[2]

Criminal records checks for licensees

(R.C. 3319.291(A) and (B))

Background--initial licenses

Under continuing law, when a person initially applies for an educator license, the person must submit two sets of fingerprints and written permission for the Superintendent of Public Instruction to forward the fingerprints to the Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI). The State Board, or the Superintendent on the Board's behalf, then must request BCII to conduct a criminal records check of a first-time applicant prior to issuing a license. The State Board or Superintendent also may request BCII to conduct an FBI check of the applicant, but an FBI check is mandatory if the applicant cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time.[3] Information revealed by a criminal records check could be grounds for refusing, suspending, revoking, or limiting a license.

Criminal records checks for license renewals

The act requires the State Board or the Superintendent to request a criminal records check for all license renewals. This requirement applies to all positions for which the State Board issues licenses, including teachers, administrators, counselors, school nurses, school psychologists, educational aides and paraprofessionals, superintendents, and school district treasurers and business managers. As in the case of a first-time applicant under continuing law, if an applicant for a license renewal cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the

---

[2] R.C. 3319.311. Under the Administrative Procedure Act, the State Board's decision to refuse, limit, suspend, or revoke a license may be appealed to the appropriate county court of common pleas (R.C. 119.12, not in the act).

[3] A BCII criminal records check will show Ohio convictions for felonies and certain misdemeanors that are considered escalating misdemeanors (typically, crimes that are a misdemeanor on the first offense and a felony on subsequent offenses or when committed in certain contexts). An FBI check will report all convictions, both felony and misdemeanor, in all states.

applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

Under the State Board's licensing rules for teachers, a provisional license is valid for two years and may be renewed or upgraded to a professional license upon its expiration. Professional licenses must be renewed every five years. Therefore, the act generally requires a criminal records check at the following stages of a teacher's career: (1) upon initial application for a provisional educator license, (2) upon transition from a provisional license to a professional educator license, and (3) at five-year intervals thereafter. Licenses for nonteaching positions may be renewable on other cycles.

Periodic criminal records checks of certificate holders

Prior to September 1, 1998, the state issued provisional (four-year), professional (eight-year), and permanent (lifetime) teaching "certificates." Many individuals still teach under these certificates, which remain valid.[4] A number of them must transition to the five-year professional educator license when their four- or eight-year certificate expires and would be subject to a criminal records check under the act when they do so. However, a person who was issued a permanent teacher's certificate under the old standards may work under that certificate for the remainder of the person's career without ever having to renew it.

The act requires the State Board or the Superintendent of Public Instruction to request a criminal records check for any person who is teaching under a professional teaching certificate issued under former law upon a date prescribed by the State Board that is not later than five years after the certificate was issued or renewed. In addition, under the act, the State Board or Superintendent must request a criminal records check for any person who is teaching under a permanent teaching certificate upon a date prescribed by the State Board and every five years thereafter. Thus, persons teaching under longer running and permanent certificates issued under former law must undergo a criminal records check at least every five years in the same manner the act requires of other educators. Again, as in the case of a first-time applicant under continuing law, and renewals under the act, if the holder of one of these eight-year or permanent certificates cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that time, the State Board or Superintendent also must request an FBI check of the applicant.

[4] *R.C. 3319.222, not in the act.*

Waiver of criminal records check for certain applicants

(R.C. 3319.291(C))

The act permits the State Board to waive the criminal records check requirement, if the applicant or licensee (1) has undergone a check in the past year as a condition of employment or (2) presents a certified copy of the results of a check issued by BCII within the past year. It is possible for an applicant for a license to have undergone a check prior to applying for the license. This is because under continuing law, school districts, educational service centers, community schools, and chartered nonpublic schools must request a criminal records check of all applicants under final consideration for employment in any position responsible for the care, custody, or control of a child. If the check uncovers any of a list of statutorily designated offenses, the applicant cannot be hired for a position involving the care, custody, or control of a child.[5]

Reports by schools of licensee misconduct

(R.C. 3314.03(A)(11)(d), 3319.311, 3319.313, 3319.315, 5126.253, and 5126.255)

The act requires public and chartered nonpublic schools to report to the Superintendent of Public Instruction specified information regarding misconduct by their employees who are licensed by the State Board. Under the act, a school district or educational service center board, county MR/DD board, community school (charter school) governing authority, and the chief administrator of a chartered nonpublic school must submit the name and social security number of an employee and a factual statement of the employee's misconduct if:

(1) The board, authority, or administrator *knows* that the employee has pleaded guilty to, been found guilty by a jury or court of, or been convicted of an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child.[6] (Continuing law requires the prosecutor in a case involving a State Board licensee to report to the State Board and licensee's employer if the licensee pleads guilty to, is found guilty of, or is convicted of an offense for which the State Board may sanction the licensee.[7])

---

[5] *R.C. 3319.39, not in the act.*

[6] *See "**Background on authority of State Board of Education to investigate licensees**" above.*

[7] *R.C. 3319.52, not in the act.*

(2) The board, authority, or administrator has initiated termination or nonrenewal proceedings against, has terminated, or has not renewed the contract of the employee because the board, authority, or administrator has reasonably determined that the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child;

(3) The employee has resigned under threat of termination or nonrenewal as described in (2) above; or

(4) The employee has resigned because of or in the course of an investigation by the board, authority, or administrator regarding whether the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child. (See **COMMENT**.)

The act specifies that conduct "unbecoming to the teaching profession" is as described in rules adopted by the State Board. The act also specifies that a determination made by a board, authority, or administrator under (2) above, or a termination, nonrenewal, resignation, or other separation from employment, does not create a presumption of the employee's commission or noncommission of an act that is unbecoming to the teaching profession or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee for the care, custody, or control of a child.

The requirement to report licensee misconduct supersedes any conflicting provision of a collective bargaining agreement or employment contract entered into after the act's effective date. Information reported to the Superintendent of Public Instruction is confidential and is not a public record.

Investigation reports included in a licensee's personnel file

(R.C. 3314.03(A)(11)(d), 3319.314, and 5126.254)

The act requires a school district or educational service center board, county MR/DD board, community school governing authority, and the chief administrator of a chartered nonpublic school to require that the report of an investigation of an employee, regarding whether the employee has committed an act or offense required to be reported to the Superintendent of Public Instruction (under the act's provisions described above), be kept in the employee's personnel file. The board, authority, or administrator must require the report to be moved from the employee's personnel file to a separate public file if, after an

investigation, the Superintendent of Public Instruction determines that the results of that investigation do not warrant initiating action against the licensee.

Reports by public children services agencies of child abuse or neglect

Involving persons licensed by the State Board

(R.C. 3319.311 and 5153.176)

The act requires a public children services agency (PCSA) to promptly provide to the Superintendent of Public Instruction information regarding the agency's investigation of a report of child abuse or neglect involving a person who holds a license issued by the State Board of Education, if the agency determines that child abuse or neglect occurred and the abuse or neglect is related to the person's duties and responsibilities under the license. Generally, a PCSA is required to keep information about an investigation confidential, but the act relieves those confidentiality provisions to facilitate reporting information about licensees to the Superintendent.[8] The Superintendent may use the information received from a PCSA in determining whether the person's license should be suspended, revoked, or limited. These reporting requirements prevail over any conflicting provisions of collective bargaining agreements or employment contracts entered into after the act's effective date.

The information provided to the Superintendent by a PCSA must include (1) a summary of the nature of the allegations contained in the report and (2) the final disposition of the investigation of the report or, if the investigation is not complete, the status of the investigation. Upon written request from the Superintendent, the PCSA must provide additional information about the agency's investigation, including information about the alleged child victim, the alleged perpetrator, and other persons considered important to the investigation. That additional information is described in the table below.

Information about a PCSA investigation of child abuse or neglect provided to the Superintendent of Public Instruction	
Information about the alleged child victim	(1) Name; (2) Date of birth; (3) Address and telephone number; (4) Grade level; (5) Name and contact information of the child's parent or guardian; (6) If available, name and contact information of any medical facility that provided treatment to the child, if the child was injured in connection with the abuse or neglect;

[8] *R.C. 2151.421 and 5153.17, neither section in the act.*

Information about a PCSA investigation of child abuse or neglect provided to the Superintendent of Public Instruction	
	(7) A summary of interviews with the child, including the time and place the abuse or neglect occurred and other circumstances surrounding the incident, or the contact information of another entity that conducted interviews; and (8) Copies of written correspondence between the child and the alleged perpetrator that the PCSA used to determine that abuse or neglect occurred, unless release of the correspondence is prohibited by law.
Information about the alleged perpetrator	(1) Name; (2) Date of birth; (3) Address and telephone number; (4) Name of school district and school that employed the person when the report was made; (5) If available, name and contact information of any medical facility that treated the person, if the person was injured in connection with the abuse or neglect; (6) A summary of interviews with the person, including the time and place the abuse or neglect occurred and other circumstances surrounding the incident, or the contact information of another entity that conducted interviews; (7) Copies of written correspondence between the person and the alleged child victim that the PCSA used to determine that abuse or neglect occurred, unless release of the correspondence is prohibited by law; and (8) If the person has been the subject of previous reports where the PCSA determined that physical or sexual child abuse occurred, a summary of the chronology of those reports, the final disposition of the investigations of the reports or the status of an ongoing investigation, and any underlying documentation concerning those reports.
Information about each other person the PCSA determined to be important to the investigation (including the reporter if authorized)	(1) Name; (2) Address and telephone number; and (3) A summary of interviews with the person or the contact information of another entity that conducted interviews.

All of the information in the table must be provided to the Superintendent by the PCSA, except in two circumstances. First, if the county prosecutor intends to file criminal charges against the alleged perpetrator based on the allegations contained in the report, the prosecutor must authorize the release of the information to the Superintendent and may restrict the information so as not to interfere with the criminal case. Second, since continuing law protects the identity

of persons who report incidents of child abuse or neglect,[9] the act prohibits a PCSA from providing the Superintendent with any information about the person who made the report, unless the reporter grants written permission to release the information.

Whenever a PCSA provides information to the Superintendent about an investigation involving a licensee of the State Board, the PCSA must notify the Superintendent that the information is confidential and that permitting or encouraging unauthorized dissemination of the information is a fourth-degree misdemeanor. If the PCSA determines that any person involved in a State Board investigation of the licensee's actions commits or otherwise causes the unauthorized dissemination of information provided by the PCSA, the PCSA must provide written notification of the dissemination to the county prosecutor.

Each PCSA must document any information provided to the Superintendent in its investigative record. The documentation must include (1) a list of the information provided, (2) the date the information was provided, (3) the name of the person to whom the information was provided, (4) the reason for providing the information, (5) a copy of the prosecutor's authorization to provide the information, if necessary, and (6) a copy of any notification provided to the prosecutor regarding unauthorized dissemination of the information.

Finally, the act grants PCSA employees who provide information to the Superintendent in good faith immunity from civil or criminal liability for injury, death, or loss to person or property that results from the provision of the information.

Involving persons licensed or certified to operate a family day-care home

(R.C. 5153.175)

Prior law required a PCSA to promptly provide to the Department of Job and Family Services or a county department of job and family services any information the PCSA determined to be relevant for the purposes of evaluating the fitness of a person who had applied for licensure of a type A family day-care home or certification of a type B family day-care home. The information to be given included (1) a summary report of the chronology of abuse and neglect reports about the person and the final disposition of the investigation of the reports or, if the investigations had not been completed, the status of the investigations and (2) any underlying documentation concerning those reports.

[9] *R.C. 2151.421(H)(1), not in the act.*

Under the federal Child Abuse Prevention and Treatment Act, receipt of federal funds for child protective services is conditioned on the enactment of provisions specifying that information from a child abuse or neglect report may be shared with other governmental entities only if the report is substantiated.[10] Therefore, the act requires a PCSA to provide information to the Department of Job and Family Services or a county department of job and family services about a person applying to operate a type A or type B family day-care home only when the PCSA has determined that child abuse or neglect involving the person has actually occurred. The information required to be provided is the same as under prior law, except that the summary of previous child abuse and neglect reports involving the person must be limited to those reports where the PCSA concluded that abuse or neglect did occur. Also, the act requires the PCSA to notify the Department or county department that the information is confidential and that permitting or encouraging its unauthorized dissemination is a fourth-degree misdemeanor.

Background

A PCSA is (1) a county children services board, (2) a county department of job and family services, or (3) a private or government entity chosen by a board of county commissioners to provide protective, foster, adoption, and other similar services to children in a county.[11] Under continuing law, when a PCSA receives a report of child abuse or neglect, it must investigate the report within 24 hours to determine the circumstances surrounding the alleged incident and the persons responsible. If the child abuse or neglect allegedly occurred in or involved an "out-of-home care entity," the agency must provide written notification of the allegations and the name of the alleged perpetrator, by the end of the day following the day the agency receives the report, to the chief administrative officer of the entity (unless that person is the alleged perpetrator, in which case the agency must notify the owner or governing board of the out-of-home care entity). An "out-of-home care entity" includes a type A family day-care home, child care provided by a type B family day-care home, a public school, a chartered nonpublic school, or, if the alleged perpetrator of the abuse or neglect is an individual licensed by the State Board of Education, a nonchartered nonpublic school.[12]

[10] *42 U.S.C. § 5106a(b)(2)(A)(xii).*

[11] *R.C. 5153.01 and 5153.02, neither section in the act.*

[12] *R.C. 2151.011(B)(27) and 2151.421, neither section in the act.*

Educational Choice scholarships

(R.C. 3310.02 and 3310.03 and repealed R.C. 3310.17)

Background

The Educational Choice Scholarship Pilot Program provi des scholarships to pay tuition at chartered nonpublic schools for students in grades K to 12 who are assigned to certain underperforming schools. It does not apply to students residing in the Cleveland Municipal School District, where a scholarship pilot program has been operating since 1995. The first Educational Choice scholarships were awarded for the 2006-2007 school year.

Limit on number of scholarships

(R.C. 3310.02 and repealed R.C. 3310.17)

Prior law required the General Assembly to prescribe the maximum number of Educational Choice scholarships to be awarded each fiscal year. Temporary law enacted in the main operating budget for the 2005-2007 biennium specified that up to 14,000 scholarships could be awarded in fiscal year 2007.[13]

The act codifies that number, thereby setting a permanent annual limit of 14,000 scholarships. The act also clarifies that if the number of low-income applicants for scholarships exceeds the number of scholarships available after accommodating prior recipients, the Department of Education must hold a lottery to award the remaining scholarships.

Expansion of scholarship eligibility

(R.C. 3310.03(A))

Prior law. Previously, to be eligible for an Educational Choice scholarship, a student had to meet one of the following conditions:

(1) The student was enrolled in the student's resident school district in a school that had been in academic watch or academic emergency for three consecutive school years;[14]

---

[13] *Section 206.10.03 of Am. Sub. H.B. 66 of the 126th General Assembly.*

[14] *The ratings used to determine eligibility for Educational Choice scholarships are the most recent ratings issued prior to July 1 of the school year for which a scholarship is sought. Since the ratings are published in August, the most recent of the three consecutive performance ratings is the one issued in August of the school year prior to*

(2) The student was eligible to enroll in kindergarten in the school year for which a scholarship was sought and would have been assigned to a school described in (1) above;

(3) The student was enrolled in a community school but otherwise would have been assigned to a school described in (1) above; or

(4) The student was eligible to enroll in kindergarten in the school year for which a scholarship was sought, or was enrolled in a community school, and the student's resident school district both (a) had an intradistrict open enrollment policy that did not assign students in kindergarten or the community school student's grade level to a particular school and (b) had been in academic emergency for three consecutive school years.

The act. The act expands student eligibility for Educational Choice scholarships in two ways. First, it qualifies a student for a scholarship if the school that the student is or would be assigned to has been in academic watch or academic emergency for at least two of three consecutive school years and was not rated excellent or effective in the most recent of those years. A student described in (4) above is eligible for a scholarship under the act if the student's resident district has been in academic emergency for at least two of three consecutive years and was not rated excellent or effective in the most recent of those years. This change qualifies students assigned to schools that have shown some academic improvement, but still not enough to be excellent or effective in the most recent rating. If, for example, a school's ratings for the previous three years were academic watch, academic watch, and continuous improvement, the school's students would qualify for scholarships. However, if the school improved from academic watch to effective in that third year, the students would not be eligible.

In the reverse situation, if a school's academic performance worsens, students assigned to that school would be eligible for a scholarship sooner than under former law. For instance, if the school's ratings fell from continuous improvement to academic watch to academic emergency over a three-year period, the school's students would be eligible for scholarships after two years of the school's being in the two lowest rating categories, rather than three as previously required.

Second, the act addresses a situation in which the school a student is currently assigned to does not qualify for scholarships, but the student will be

---

the school year in which the scholarship will be used. For example, eligibility for a scholarship for the 2007-2008 school year will be based on the August 2006, 2005, and 2004 ratings.

assigned to a different school in the next school year. This scenario could occur if a student is moving from elementary school to middle school, for example, or if attendance areas are redrawn. Under prior law, the student's eligibility for a scholarship depended solely on the performance of the school to which the student was assigned at the time of application and (except for incoming kindergartners) not the school to which the student would be assigned in the year the scholarship would be used. The act takes into account the quality of the school to which the student will be assigned. Specifically, the act qualifies a student enrolled in the student's resident school district or in a community school for a scholarship if the student would be assigned, in the school year for which the scholarship is sought, to a school that meets the scholarship criteria.

Maintaining eligibility for scholarships

(R.C. 3310.03(B) and (D))

A student who receives an Educational Choice scholarship continues to be eligible for scholarships until the student completes grade 12, as long as the student takes each state achievement test prescribed for the student's grade level while enrolled in a chartered nonpublic school and is not absent from school for more than 20 days in any school year. Also, under prior law, the student's resident school district had to remain the same for the student to keep receiving scholarships.

The act allows a scholarship student who transfers to another resident school district to maintain eligibility for future scholarships if the school to which the student would be assigned in the new district meets the scholarship criteria. If the school does not meet those criteria at the time of the move, the student cannot receive additional scholarships, but presumably the student could qualify again based on the subsequent performance of that school or if the student is assigned to a different school in the new district that qualifies for scholarships.

The act also makes changes to counting absences for the purpose of maintaining scholarship eligibility. Prior law specified that absences due to illness or injury confirmed in writing by a doctor did not count toward a student's 20 permissible absences. The act eliminates this language and simply states that the 20-absence limit does not include "excused" absences. The State Board of Education must adopt rules defining excused absences for the scholarship program.

Counting scholarship students in school district ADM

(R.C. 3317.03(F)(4))

Under continuing law, the payment for each Educational Choice scholarship is deducted from the state aid account of the school district in which the scholarship student is entitled to attend school. That district must include the scholarship student in its formula ADM (average daily membership) so that it will be credited with state base-cost funding for the student prior to the deduction.[15] It is possible, however, for a scholarship student to withdraw from the nonpublic school where the scholarship was being used and not immediately reenroll in a public school. If that student is not enrolled in any school during the week in which the student's district must certify its ADM, the student might not be included in the district's ADM.[16] Yet the district would still have funding deducted to pay for the portion of the scholarship the student used, resulting in a net loss of funds for the district.

The act specifies that if a scholarship student is not included in the formula ADM of the student's resident school district, the Department of Education must adjust the district's ADM to include the student and recalculate the district's state aid payments for the entire fiscal year accordingly. This requirement applies regardless of whether the student was enrolled in a chartered nonpublic school, the school district, or a community school during the week for which the ADM is certified.[17]

Community schools

Governing authority membership

(R.C. 3314.02(E) and 3314.025)

Under continuing law, each start-up community school must be under the direction of a governing authority consisting of at least five members. There are

---

[15] R.C. 3310.08(C), not in the act, and 3317.03(A).

[16] Each school district must certify its formula ADM for the first full week in October and the first full week in February (R.C. 3317.03(A)).

[17] The act also makes a technical correction to a similar provision in continuing law for including community school students in a school district's ADM. The change conforms the provision to reflect the requirement for twice annual ADM counts, as enacted by Am. Sub. H.B. 66 of the 126th General Assembly. (R.C. 3317.03(F)(3).)

no similar guidelines concerning governing authorities of conversion community schools.

Membership on multiple governing authorities (R.C. 3314.02(E)(2)). The act prohibits a person from serving on the governing authorities of more than two start-up community schools (but not conversion schools) at the same time.

Payments for attendance at meetings (R.C. 3314.025). Under the act, the governing authority of a start-up community school may adopt a resolution to compensate its members for attending meetings of the governing authority. A member may be compensated up to $125 per meeting. However, an individual may not receive more than $125 total per month from each governing authority on which the person serves. Since the act limits members to serving on two start-up community school governing authorities, a member could not receive more than $250 per month for meeting attendance. If an individual serves on two governing authorities that meet at the same place on the same day, the individual's compensation for both meetings combined cannot be more than the highest per-member, per-meeting amount authorized by those governing authorities. That amount must be divided evenly between the two schools.

Compensation for governing authority members generally must be paid by the community school's fiscal officer from the school's operating funds. However, in the case of a school managed by an operator, the compensation must be paid by the operator from fees paid to it by the school.

Conflicts of interest (R.C. 3314.02(E)(1) and (3)). Continuing law prohibits a member of the governing authority of a start-up community school from being an owner or employee, or immediate relative of an owner or employee, of a for-profit operator hired by the governing authority to manage the school. "Immediate relative" is considered to be a spouse, child, parent, grandparent, sibling, or in-law.

The act expands this prohibition to prevent other potential conflicts of interest. First, it applies the prohibition to sitting members of governing authorities of *conversion* community schools and to former governing authority members of both conversion and start-up schools until one year after their membership has ended. Second, it extends the prohibition to include employment by or ownership of any nonprofit or for-profit community school operator, regardless of whether the operator is under contract to the governing authority. Finally, the act prohibits a governing authority member from being a consultant, or immediate relative of a consultant, of a community school operator.

Appeal of termination or nonrenewal of operator contract

(R.C. 3314.026; conforming change in R.C. 3314.014)

A community school governing authority may contract with an operator to manage the school's daily operations. The act creates an appeal procedure in cases in which the governing authority has notified the operator of its intent to terminate or not renew the operator's contract. Under that procedure, the operator may appeal the decision to the school's sponsor, except that if the sponsor has sponsored the school for less than 12 months, the appeal must be made to the State Board of Education. The sponsor or the State Board must determine whether the operator should continue to manage the school, taking into consideration whether the operator has managed the school in compliance with law and the terms of the contract between the sponsor and the school and whether the school's progress in meeting the academic goals stated in that contract has been satisfactory. If the sponsor or State Board decides that the operator should continue to manage the school, the sponsor must remove the existing governing authority and the operator must appoint a new one for the school.[18]

Caps on sponsors

(R.C. 3314.015(B)(1))

Continuing law limits the number of community schools an entity may sponsor, as indicated in the table below. These limits are based on the number of schools the entity sponsored that were open for operation as of May 1, 2005.

Limit on Schools an Entity May Sponsor	
Number of schools sponsored by entity open as of May 1, 2005	**Limit**
50 or fewer	50 schools
51-75	Number of schools sponsored by entity open as of May 1, 2005
More than 75	75 schools

[18] *Am. Sub. H.B. 276 of the 126th General Assembly, which was enacted around the same time as this act, expanded the definition of "operator" to include a nonprofit organization that provides programmatic support and oversight to a community school under a contract with the school's governing authority and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards (R.C. 3314.014, as amended by that act). Therefore, this act's appeal provisions will apply to that type of operator as well.*

Under prior law, sponsors that had a cap above 50 schools had that cap reduced by one for each of the sponsor's schools that permanently closed, until the cap reached 50. The act retains the mandatory reduction in the cap but applies it to *all* sponsors, even if their original cap is only 50. Therefore, all sponsors will have their limit reduced by one whenever one of their schools closes. The act also removes the 50-school floor for sponsors with higher caps, thereby allowing their caps to fall below 50. In effect, each individual sponsor's cap will drop by one whenever one of its schools permanently closes, with no guaranteed minimum cap.

Closing poorly performing community schools

(repealed and new R.C. 3314.35 and 3314.36; Section 4)

Prior law imposed sanctions, including permanent closure, on poorly performing community schools. The act repeals those sanctions, which had not yet been implemented, and replaces them with other provisions for closing underperforming schools. The new provisions apply to all community schools, except for certain schools operating dropout prevention and recovery programs.

Repeal of former sanctions (repealed R.C. 3314.35 and 3314.36). Under the prior law, beginning in the 2007-2008 school year, a community school was required to administer fall and spring reading and math assessments to students in grades 1 to 12 if it (1) had a performance rating of continuous improvement, academic watch, or academic emergency, (2) had been open less than two full school years, or (3) did not have a performance rating based on achievement test data. In addition, the State Board of Education had to establish expected gains in student achievement from the fall to spring assessment periods and in the graduation rate. Community schools that had been open at least two school years and either were in academic watch or academic emergency or did not have a performance rating based on achievement test data faced sanctions if the school (1) offered a diploma but did not show expected gains in its graduation rate or (2) had less than 55% of its students showing expected gains on the reading or math assessments. Those sanctions are shown in the table below.

	Consecutive years of failure to make expected gains in student achievement		
	1	**2**	**3**
Sanctions for community schools under prior law	(1) Internet- or computer-based community school (e-school) prohibited from enrolling more students than it enrolled at end of previous school year.	(1) E-school prohibited from enrolling more students than it enrolled at end of previous school year. (2) E-school had to withdraw any student for whom one of the following applied, unless the student's parent agreed to pay tuition: (a) For two consecutive school years, the student took the reading and math assessments but failed to show the expected achievement gains in both subjects; (b) For two consecutive school years, the student failed to take one or more of the reading and math assessments; or (c) For one of two consecutive school years, the student took the reading and math assessments but failed to show the expected achievement gains in both subjects and, in the other school year, failed to take one or more of the assessments.	(1) E-school prohibited from enrolling more students than it enrolled at end of previous school year. (2) E-school ineligible for state funding for any student who was required to be withdrawn in the previous school year or for whom tuition was owed. (3) School (whether a "brick and mortar" community school or an e-school) had to permanently close at end of school year.

New closure provisions (new R.C. 3314.35). The act's new closure provisions for poorly performing community schools incorporate the value-added progress dimension, which is a measure that uses achievement test data to show the academic gain made by students over time. As required by continuing law, the Department of Education will incorporate the value-added progress dimension into the school district and building performance ratings and report cards beginning in the 2007-2008 school year. As part of that process, the State Board of Education

must specify the rate of progress in reading and math that constitutes a standard year of academic growth in those subjects for each of grades 3 to 8.[19]

Under the act, a community school must close for poor performance if it meets one of the following criteria:

(1) It does not offer a grade higher than 3 and has been in academic emergency for four consecutive years;

(2) It offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for three consecutive years, and showed less than one standard year of academic growth in reading or math for two of those years; or

(3) It offers any of grades 10 to 12, has been in academic emergency for three consecutive years, and showed less than two standard years of academic growth in reading or math for two of those years. However, if the Department determines that it is not feasible to use the value-added progress dimension to evaluate high schools, those schools must close after four consecutive years of academic emergency.[20]

The first year in which community schools will be evaluated under the new closure criteria is the 2007-2008 school year. In other words, the evaluation will involve a "look back" at a school's performance in that year and up to the three previous school years. Since school performance ratings are issued each August for the previous school year, a community school may have already opened for the next school year before finding out it is subject to closure under the act's provisions. Rather than requiring the school to close immediately, the act grants the school an additional year of operation before it must permanently close. For example, a school could first meet the closure criteria in August 2008 (based on its performance in the 2007-2008 school year and previous years) and would have to close at the end of the 2008-2009 school year.

When a community school closes, the sponsor and governing authority must comply with all procedures for closure adopted by the Department under

---

[19] *R.C. 3302.01(F) and 3302.021(A), neither section in the act.*

[20] *Since there are no achievement tests given in ninth grade, using the value-added progress dimension for high schools would require measuring two years of academic growth in reading and math (*i.e., *the amount of growth between the eighth and tenth grade administrations of the achievement tests). The Department must make its determination about the viability of this option by July 1, 2008.*

continuing law.[21] Moreover, the act prohibits the governing authority from entering into a contract with another sponsor after the school closes.

Exemption for dropout programs (new R.C. 3314.36; Section 4). Community schools are exempt from the act's new closure provisions if a majority of their students are enrolled in a dropout prevention and recovery program that is operated by the school and has received a waiver from the Department of Education. The Department must grant a waiver to a dropout program that does the following:[22]

(1) Serves only students between 16 and 21 years old;

(2) Enrolls students who, at the time of their initial enrollment, are one or more grades behind their cohort age group or experience crises that interfere with their academic progress and prevent them from continuing in traditional educational programs;

(3) Requires students to pass the Ohio Graduation Tests;[23]

(4) Develops an individual career plan for each student that specifies the student matriculating to a two-year degree program, acquiring a business or industry credential, or entering an apprenticeship;

(5) Provides counseling and support related to the student's career plan during the remainder of high school; and

---

[21] The Department's procedures must address at least data reporting to the Department, handling of student records, and distribution of the school's assets in accordance with law (R.C. 3314.015(E)).

[22] These criteria are effectively identical to those specified for dropout prevention programs that need not require their students to complete the new Ohio Core minimum high school curriculum. See R.C. 3313.603(F), as amended by Am. Sub. S.B. 311 of the 126th General Assembly.

[23] Passing the Ohio Graduation Tests is a diploma requirement for most students, unless specifically exempted by law. Therefore, the act's stipulation that students of dropout programs must pass the OGTs appears merely to affirm continuing law.

(6) Prior to receiving the waiver, submits an instructional plan to the Department indicating how the State Board of Education's academic content standards will be taught and assessed.[24]

Waivers must be granted within 60 days after application. If the Department does not approve or deny a waiver within that period, the waiver is considered granted. However, to discourage community schools from starting dropout programs simply to avoid being subject to closure, a community school that did not meet the waiver eligibility criteria when it initially began operations may only receive a waiver with the State Board's approval.

Finally, the act requires the State Board to make legislative recommendations for performance standards for community schools that operate dropout programs eligible for a waiver. The recommendations, which are due one year after the act's effective date, must include criteria for closing those schools for consistently poor academic performance.

Acquisition and sale of real property

(R.C. 3313.41(G)(2) and 3314.051)

The act provides for the sale of certain unused school district property to community schools and for the subsequent disposition of that property by the schools. Specifically, the act requires school districts that have not used property suitable for classroom space for academic instruction, administration, storage, or any other educational purpose for one full school year to offer that property for sale to start-up community schools located in the district, unless the board of education adopts a resolution outlining a plan to use the property for an educational purpose within the next three school years. The district must offer the property at a price no higher than fair market value. If more than one community school accepts the offer, the district must sell the property to the school that accepted first. Presumably, if no community school accepts the offer, the district may keep the property or otherwise dispose of it.

When a community school that acquires property from a school district under the act's provisions decides to sell that property or permanently closes, the property must first be offered to the district from which it was purchased, at a price no higher than fair market value. If the district does not accept the offer within 60 days, the property may be disposed of in another manner.

---

[24] *The State Board has adopted statewide academic standards for grades K to 12 in reading, writing, math, science, and social studies that outline the knowledge and skills students are expected to learn in each grade (see R.C. 3301.079(A), not in the act).*

Parental involvement policies

(R.C. 3313.472 and 3314.03(A)(11)(d))

Continuing law requires each school district board to adopt a policy on parental involvement to build communication between parents and teachers and administrators. The policy must provide the opportunity for parents to be informed of the importance of parental involvement, methods of supporting their children's learning activities, and strategies to use at home to improve their children's academic success and development.

The act applies the requirement to adopt a parental involvement policy to community schools. It also directs the State Board of Education to adopt recommendations for the development of parental involvement policies by districts and schools. The State Board must consult with the National Center for Parents at the University of Toledo in developing its recommendations.[25]

Partnership for Continued Learning membership

(R.C. 3301.41)

The act adds two additional members to the Partnership for Continued Learning, which is a body comprised of representatives of education and workforce interests and charged with making recommendations to facilitate collaboration among providers of preschool through postsecondary education and to maintain a high-quality workforce.[26] Of the two new members, one must represent a community school sponsor and the other must be a teacher or administrator employed by a community school. The Governor appoints both members.[27]

---

[25] *Identical provisions were enacted in Am. Sub. S.B. 311.*

[26] *See R.C. 3301.42, not in the act.*

[27] *Am. Sub. S.B. 311 added four other members to the Partnership, also appointed by the Governor: one teacher employed by a school district, one teacher employed by a chartered nonpublic school, one high school career center teacher, and one representative of a comprehensive or compact career-technical school. The six new members in the two acts combined bring the Partnership's membership to 25.*

Study of community schools and voucher program

(Section 3)

The act requires the Partnership for Continued Learning to study the operation and oversight of community schools and the Educational Choice Scholarship Pilot Program and submit recommendations to the General Assembly by one year after the act's effective date. The study must include an evaluation of the impact of community schools and the Educational Choice Scholarships on students, communities, traditional public schools, and chartered nonpublic schools.

Renaming of data acquisition sites

(R.C. 3301.075, 3301.0714(D) and (M), 3312.01, 3312.03, 3312.04(D), 3312.05, 3312.08, and 3312.10)

Data acquisition sites provide administrative and instructional computer services to school districts and other education entities. These services include accounting, payroll, curriculum management, test scoring, student scheduling, and data entry for the Education Management Information System. The act renames data acquisition sites as "information technology centers."

Educational Regional Service System

(R.C. 3312.02, 3312.03, 3312.04(A), 3312.05(A)(5), 3312.09, 3312.11, and 3312.13)

The Educational Regional Service System (ERSS) is a 16-region system designed to provide support services to school districts, community schools, and chartered nonpublic schools. Subject to appropriations, funding for ERSS is scheduled to begin July 1, 2007.

Assignment to ERSS regions

(R.C. 3312.02)

Former law specified that if an educational service center (ESC) or city or exempted village school district had territory in more than one of the statutorily designated ERSS regions, the ESC (and each local school district within the ESC's territory) or the city or exempted village district was considered to be part of the region in which it had the majority of its territory. The act repeals this provision. Therefore, it appears that an ESC or school district, including a local district, may be part of each region in which it has territory and be eligible for the services and funding available in those regions.

Membership of ERSS regional advisory councils

(R.C. 3312.03)

Each ERSS region must have an advisory council to identify regional needs and priorities for educational services, coordinate service delivery, and make spending recommendations to the region's fiscal agent. Under prior law, the council's membership included the director of each information technology center (see "***Renaming of data acquisition sites***" above) *located* in the region. The act instead requires each regional advisory council to include the director of each information technology center *providing services* in the region.

Membership of information technology center subcommittees

(R.C. 3312.05(A)(5))

Each ERSS regional advisory council must have five specialized subcommittees, including an information technology center subcommittee. Formerly, that subcommittee's membership included the members of the governing authority of each information technology center located in the region. The act replaces those members with the administrator of each information technology center providing services in the region and two school district administrators appointed by each of those centers. As under prior law, the subcommittee also includes a classroom teacher.

Performance contracts

(R.C. 3312.04(A), 3312.09, and 3312.13)

Under ERSS, the Department of Education must enter into performance contracts with the fiscal agent of each region for the implementation of state and regional education initiatives and school improvement efforts. The act requires the Department, when entering into these contracts, to consider the regional needs and priorities for educational services identified by the regional advisory council and any services that will be provided to the region as part of the Department's ongoing support for struggling public schools.[28] Each performance contract must include an explanation of how the regional needs and priorities have been identified by the regional advisory council, its subcommittees, and the

[28] *Continuing law requires the Department of Education to establish a system of intensive support for the improvement of school districts and schools. The system must give priority to districts and schools that are in academic watch or academic emergency. (R.C. 3302.04(A), not in the act.)*

Department. Also, if the region's struggling schools will receive support services from the Department, those services must be outlined in the contract.

State Regional Alliance Advisory Board meetings

(R.C. 3312.11)

The State Regional Alliance Advisory Board is the state-level coordinating body for ERSS. Prior law required that, for two years after its initial meeting, the Board had to hold regular meetings at least monthly. The act specifies that the Board must only meet at least four times a year during that period.

Student acceleration policies

(R.C. 3324.10)

Under continuing law, school districts must implement a student acceleration policy beginning in the 2006-2007 school year. This policy must either be the model policy adopted by the State Board of Education or another policy adopted by the district board of education that covers whole grade acceleration, subject area acceleration, early high school graduation, and other issues addressed in the model policy. The act requires each district that adopts its own policy to submit the policy to the Department of Education for review and approval. It further requires the Department to provide technical assistance, upon request, to districts that develop their own acceleration policies.

School safety plans

(R.C. 3313.536)

Continuing law requires school districts, community schools, and chartered nonpublic schools to adopt a school safety plan for each school under their control. The plan and school building blueprint must be filed with each law enforcement agency that has jurisdiction over the school and, upon request, with the fire department serving the political subdivision in which the school is located. Law retained in part by the act also requires the plan and blueprint to be filed with the Attorney General for posting on the Ohio Law Enforcement Gateway (OLEG), which is a closed electronic database exclusively for use by law enforcement personnel.

The act makes additional specifications regarding the filing of school safety plans and related documents. First, it retains the requirement to file a school's safety plan with the Attorney General for posting on OLEG, but it specifies that a copy of the school's *floor plan*, rather than a blueprint, must be filed along with it. Second, it requires all safety plans, blueprints, and floor plans to be filed with

designated recipients within 91 days after the act's effective date. If any of those documents are subsequently revised, an updated copy must be filed within 91 days after the revision.

Finally, under the Public Records Law, copies of school safety plans and blueprints are considered "security records" and "infrastructure records," respectively, which, due to their sensitive nature, are not public records.[29] Therefore, they are not subject to mandatory release or disclosure under that Law while in the possession of a public office.[30] However, simple floor plans were formerly excluded from the public records exemption, thereby making them subject to public disclosure if kept by a public office. The act specifically states that the floor plan of a public or chartered nonpublic school filed with the Attorney General in conjunction with the safety plan requirement is not a public record to the extent that it is a record held by the Attorney General. In other words, if the floor plan is held by another public office, such as a school district or police department, it remains a public record and must be disclosed upon request. Also, floor plans of buildings housing other public offices, such as courthouses or local health departments, are still public records if kept by a public office.

School Health and Safety Network

(R.C. 3701.93)

As part of the School Health and Safety Network, each local board of health must conduct annual inspections of all public and chartered nonpublic schools within its jurisdiction to identify dangerous health and safety conditions. If hazardous conditions are found, the district or school must develop a plan to abate the conditions.[31]

The act specifies that the following programs and schools are not subject to inspection under the School Health and Safety Network: (1) preschool child care programs licensed by the Department of Job and Family Services, (2) preschool child care programs operated by an entity other than a public or chartered nonpublic school, and (3) chartered kindergartens that are associated with a freestanding preschool and are not operated by a school district, educational service center, or county board of mental retardation and development disabilities.

---

[29] R.C. 149.433, not in the act.

[30] A "public office" includes "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by [Ohio law] for the exercise of any function of government" (R.C. 149.011, not in the act).

[31] R.C. 3701.931 and 3701.933, neither section in the act.

Preschool child care programs operated by public or chartered nonpublic schools remain subject to inspection as under prior law.

COMMENT

Although silent on the issue, the act by its operation appears to restrict a school's ability to enter into a termination agreement that prohibits the school from revealing the reason that a former employee resigned or was terminated.

Continuing law also provides a qualified immunity against civil liability for damages for public employers, including school districts and community schools, in disclosing information about the performance of former employees.[32]

HISTORY

ACTION	DATE
Introduced	02-23-05
Reported, H. Education	06-09-05
Passed House (93-0)	06-15-05
Reported, S. Education	10-26-05
Passed Senate (31-0)	10-26-05
House refused to concur in Senate amendments (0-93)	11-16-05
Senate requested conference committee	11-17-05
House acceded to request for conference committee	02-16-06
House agreed to conference committee report (72-22)	12-19-06
Senate agreed to conference committee report (21-12)	12-19-06

06-hb79-126.doc/kl

[32] *R.C. 4113.71, not in the act.*