



Ohio Legislative Service Commission

Final Analysis

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Sub. S.B. 210

128th General Assembly
(As Passed by the General Assembly)

Sens. Coughlin and Kearney, Cafaro, Goodman, Harris, Husted, D. Miller, R. Miller, Morano, Sawyer, Schiavoni, Smith, Strahorn, Turner, Wagoner, Fedor

Reps. Bacon, Belcher, Boyd, Carney, Celeste, Chandler, Driehaus, Evans, Garrison, Goyal, Hackett, Hagan, Harris, Heard, Koziura, Letson, Luckie, Murray, Pillich, Reece, Skindell, Sykes, Weddington, B. Williams, Winburn

Effective date: September 17, 2010; certain provisions effective July 1, 2011

ACT SUMMARY

Food and beverages in schools

- Restricts the sale of certain foods and beverages to students during the regular school day and before- and after-school programs in school districts, community schools, STEM schools, and chartered nonpublic schools, beginning July 1, 2011.
- Exempts from the restrictions food and beverages sold in connection with (1) a school-sponsored fundraiser or other event held outside of the regular school day or (2) an interscholastic athletic event.
- Specifies that, when the Department of Education obtains free computer software for assessing the nutritional value of foods, it must provide the software free of charge to each public and chartered nonpublic school.
- Requires school districts to adopt standards governing beverage sales on school premises (in addition to food sales as under continuing law), and applies the requirement to adopt standards for food and beverage sales on school premises to community schools, STEM schools, and chartered nonpublic schools.

* This version updates the effective date of the act.

- Requires each school district, community school, STEM school, and chartered nonpublic school to designate staff to prepare an annual report regarding compliance with the standards for food and beverage sales.
- Prohibits the placement of vending machines in classrooms, except in specified circumstances.
- Permits breakfast provided as part of a federal school breakfast program to be offered in the classroom.
- Provides that, if the General Assembly appropriates funds for this purpose, students eligible for breakfast at a reduced price will receive it free of charge.

Physical activity pilot program

- Requires the Department of Education to administer a pilot program in which participating school districts, community schools, STEM schools, and chartered nonpublic schools must require students to participate in at least 30 minutes of moderate to rigorous physical activity each school day.

Physical education and health education

- Requires that teachers initially hired on or after July 1, 2013, to teach physical education in a school district, community school, or STEM school be licensed in physical education.
- Requires the one-half unit in health education included in the Ohio Core curriculum to provide instruction in nutrition and the benefits of physical activity.

Body mass index screenings

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools to establish body mass index (BMI) and weight status category screening programs for students in certain grades.
- Permits parents to decline to have their child undergo a BMI screening.
- Permits a school district or school to receive a waiver of the BMI screening requirements by submitting to the Superintendent of Public Instruction an affidavit stating that the district or school is unable to comply with the requirements.

State reports

- Directs the Department of Education to issue an annual report on the compliance of school districts and schools with the BMI screening requirements.

- Requires the State Board of Education to develop a measure of the following for the school district and building report cards: (1) student success in meeting the State Board's physical education standards, (2) compliance with federal requirements for local wellness policies, (3) whether the district or building is complying with the act's BMI screening requirements, and (4) whether the district or building is participating in the act's physical activity pilot program.
- Prohibits use of the measure as a factor in assigning performance ratings to districts and buildings.

Council

- Establishes the Healthy Choices for Healthy Children Council to monitor student health and wellness and make related recommendations.

Clearinghouse

- Requires the Department of Education to establish a clearinghouse of best practices regarding student nutrition, physical activity, and BMI screenings for use by schools.

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CONTENT AND OPERATION

Restrictions on food and beverage sales in schools

(R.C. 3313.814(A), 3313.816, 3313.817, 3314.03(A)(11)(d), and 3326.11; Section 3)

Beginning July 1, 2011, the act restricts the sale of certain foods and beverages to students in school districts, community (charter) schools, STEM schools, and chartered nonpublic schools.¹ These restrictions must be observed during the regular school day, as well as during periods before or after the school day in which students are participating in school-sponsored extracurricular activities, academic or enrichment programs, or latchkey programs.²

The restrictions apply only to "a la carte" items, which are individually priced food and beverage items available for sale to students through (1) a school breakfast or lunch program, (2) vending machines located on school property, or (3) a school store. They do not apply to foods and beverages that are part of a complete meal provided through a federally subsidized breakfast or lunch program and are being sold individually in a serving portion of the same size as in the complete meal (in the a la carte line in the cafeteria, for example). They also do not affect foods and beverages sold in connection with a school-sponsored fundraiser or other event held outside of the regular school day or in conjunction with an interscholastic athletic event. Finally, they do not apply to vending machines that are accessible only to staff members, such as those in the teacher's lounge.

Beverage restrictions

(R.C. 3313.816)

The act's restrictions on beverages apply somewhat differently across schools depending on the grade levels they serve. Generally, the options and serving sizes increase as students get older, although the sale of non-diet soda is prohibited in all grades during the act's time restrictions. Also, during the restricted periods, at least 50% of the a la carte beverage items available for sale through the school food service program, vending machines (except for those that sell only milk or federally subsidized complete meals), and a school store must be water or other beverages that contain no more than 10 calories per 8 ounces. It appears that each source of a la carte beverages

¹ A STEM school is a public science, technology, engineering, and math school that operates under the direction of its own governing body (see R.C. Chapter 3326.).

² A latchkey program provides school-age students with child care outside of regular school hours (R.C. 3313.207, not in the act).

must meet the 50% requirement. In other words, if the school has five vending machines, the contents of each one must be at least 50% water and other low-calorie beverages.

The following table shows the beverages that may be sold under the act.

Grades	Time period	Beverages allowed			
Schools composed primarily of grades K-4	Before January 1, 2014	Water	8 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces	8 ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per 8 ounces	No other beverage
	Starting January 1, 2014	Water	Same as above, except that the milk may contain no more than 150 calories per 8 ounces	Same as above	No other beverage
Schools composed primarily of grades 5-8	Before January 1, 2014	Water	8 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces	10 ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per 8 ounces	No other beverage
	Starting January 1, 2014	Water	Same as above, except the milk may contain no more than 150 calories per 8 ounces	Same as above	No other beverage

Grades	Time period	Beverages allowed			
Schools composed primarily of grades 9-12	Before January 1, 2014	Water	16 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces	12 ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per 8 ounces	12 ounces or less of any beverage that contains no more than 66 calories per 8 ounces, or any size of a beverage that contains no more than 10 calories per 8 ounces. The latter may include caffeinated beverages and beverages with added sweeteners, carbonation, or artificial flavoring.
	Starting January 1, 2014	Water	Same as above, except the milk may contain no more than 150 calories per 8 ounces	Same as above	Same as above

Food restrictions

Nutrition software

(R.C. 3313.817(A))

The act requires the Department of Education to provide each public and chartered nonpublic school with free computer software for assessing the nutritional value of foods, when the software is available to the Department free of charge. The free software must do all of the following:

- (1) Rate the healthiness of foods based on nutrient density;
- (2) Assess the amount of calories, total fat, saturated fat, trans fat, sugar, protein, fiber, calcium, iron, vitamin A, and vitamin C in each food item; and

(3) Evaluate the nutritional value of foods based on the Dietary Guidelines for Americans developed by the U.S. Departments of Agriculture and Health and Human Services as they pertain to children and adolescents.

Use of software

(R.C. 3313.817(B) and (C))

When software is provided, each public and chartered nonpublic school must use it to determine the nutritional value of each a la carte food item available for sale at the school. In addition, the school must do all of the following:

(1) Not sell a la carte food that is in the lowest rated category of foods designated by the software;

(2) In the first school year in which the school is required to use the software, see that at least 20% of the a la carte food items available during the restricted periods through the school food service program, vending machines, and school store are in the highest rated category of foods designated by the software and, in each school year thereafter, that at least 40% of the a la carte food items available from those sources are in that category; and

(3) Require that each a la carte food item not in the highest rated category of foods contain at least two of the following:

- (a) At least five grams of protein;
- (b) At least 10% of the recommended daily value of fiber;
- (c) At least 10% of the recommended daily value of calcium;
- (d) At least 10% of the recommended daily value of iron;
- (e) At least 10% of the recommended daily value of vitamin A; or
- (f) At least 10% of the recommended daily value of vitamin C.

Alternative nutritional standards

(R.C. 3313.817(D))

As an alternative to the act's nutritional requirements, a school may comply with the most recent guidelines for competitive foods issued by the Alliance for a Healthier Generation with respect to the sale of a la carte food items.³

Contracts with food or beverage vendors

(Section 4)

Many schools have exclusive contracts with food or beverage vendors under which the school sells the vendor's products in exchange for donations to the school or a percentage of the product sales. This income is used by schools for many purposes, such as buying supplies or supporting extracurricular activities.

If, on the act's effective date, a school district or a public or chartered nonpublic school has an existing contract with a producer or distributor of a food or beverage that requires the sale of the food or beverage in violation of the act's provisions, the district or school is exempt from those provisions until the contract expires. If the contract is renewed, the new contract must comply with the act's provisions. Otherwise, though, districts and schools must take into account the act's restrictions on food and beverage sales, and vendor contracts entered into after the act's effective date must comply with the restrictions when they take effect.

Adoption of standards for food and beverage sales by districts and schools

(R.C. 3313.814, 3314.03(A)(11)(d), and 3326.11)

Continuing law requires school districts to adopt standards governing the types of food that may be sold on school premises. These standards must specify the time and place each type of food may be sold. In adopting its standards, a district must consider each food's nutritional value.

The act applies the requirement for the adoption of standards for food sales to community schools, STEM schools, and chartered nonpublic schools. It also requires all school districts, community schools, STEM schools, and chartered nonpublic schools to adopt standards for beverage sales on school premises, including time and place

³ The Alliance for a Healthier Generation was founded by the American Heart Association and the William J. Clinton Foundation to combat childhood obesity and improve children's health. The Alliance's school food guidelines are available at <http://www.healthiergeneration.org/companies.aspx?id=2540>, visited on June 29, 2010.

restrictions. Besides considering the nutritional value of foods and beverages, districts and schools must (1) consult with a licensed dietitian, a dietetic technician registered by the Commission on Dietetic Registration, or a school nutrition specialist certified or credentialed by the School Nutrition Association in developing their standards⁴ and (2) consult the Dietary Guidelines for Americans and, to the maximum extent possible, incorporate the guidelines into their standards.

Each district's and school's standards must comply with the act's provisions regulating the nutritional content and times of sale for foods and beverages, but a district or school may adopt stricter standards if it chooses. As it is required to do for food sales under continuing law, the State Board of Education must adopt guidelines for beverage sales, which districts and schools may follow in developing their standards.

Placement of vending machines

(R.C. 3313.814(C))

The food and beverage standards adopted by districts and schools generally must prohibit the placement of vending machines in classrooms where students are provided instruction. The act makes an exception for instructional spaces where students also are served meals. For instance, if a school's cafeteria doubles as a classroom during the school day, it would not be necessary to remove vending machines from that area. Nevertheless, vending machines may be placed anywhere if they sell only milk, federally subsidized complete meals, or food and beverage items that are part of a federally subsidized complete meal and are sold as individually priced items in serving portions of the same size as in the complete meal.

Annual compliance report

(R.C. 3313.814(D))

Each school district, community school, STEM school, and chartered nonpublic school must designate staff to be responsible for seeing that the district or school meets the food and beverage standards it adopts. The staff must prepare an annual report regarding compliance with the standards, which must be submitted to the Department of Education. In addition, the district board of education or school governing authority must schedule a presentation on the report at one of its regular meetings. Copies of the report must be made available to the public upon request.

⁴ The person whom the district or school consults may be a district or school employee, a person contracted by the district or school, or a volunteer (R.C. 3313.814(B)(1)(b)).

School breakfast programs

(R.C. 3313.813 and 3314.18)

The act provides that any school district, community school, or chartered nonpublic school that participates in a federally subsidized school breakfast program may offer breakfast to pupils in their classrooms during the school day. It also provides that, in each fiscal year in which the General Assembly appropriates funds for this purpose, each school district, community school and chartered nonpublic school that participates in the breakfast program must provide free breakfasts to students eligible for breakfast at a reduced price.

Physical education teachers

(R.C. 3314.03(A)(10), 3319.076, and 3326.13)

The act prohibits a school district, STEM school, or community school from employing a classroom teacher initially hired on or after July 1, 2013, to provide instruction in physical education unless the teacher holds a valid license for teaching physical education. Under its current licensure rules, the State Board of Education issues a physical education license valid for teaching in grades pre-K to 12. To qualify for an initial license, a person must (1) have a bachelor's degree, (2) have completed an approved teacher preparation program and been recommended by the dean or head of the program, (3) have completed at least three semester hours in the teaching of reading, (4) have passed the Praxis II assessment, which measures pedagogical skills and knowledge of the subject area to be taught, and (5) have demonstrated skill in integrating educational technology into instruction.⁵

Physical activity pilot program

(R.C. 3313.6016)

The act requires the Department of Education to administer a pilot program requiring daily physical activity for students. The program is to begin in the 2011-2012 school year.

Any school district, community school, STEM school, or chartered nonpublic school annually may elect to participate by notifying the Department of its interest. If a school district elects to participate in the pilot program, each school operated by the district must participate. To the maximum extent possible, the Department must seek

⁵ Ohio Administrative Code 3301-24-05(A).

to recruit districts and schools that are located in urban, suburban, and rural areas distributed geographically throughout Ohio.

Each district or school participating in the pilot program must require students in grades K to 12, other than students who come within one of the act's exemptions, to engage in at least 30 minutes of moderate to rigorous physical activity each school day, exclusive of recess. Physical activity engaged in during the following may count toward the daily requirement:

(1) A physical education course; or

(2) A before- or after-school program or activity that is approved by the school of attendance, provided school officials are able to monitor students' participation to ensure compliance with the requirement.

Exemptions from participation in the physical activity

(R.C. 3313.6016(C) to (E))

The act exempts the following from participation in the physical activity pilot program:

(1) A student enrolled in the Post-Secondary Enrollment Options Program;⁶

(2) A student enrolled in a career-technical education program operated by the district or school; and

(3) A student enrolled in a dropout prevention and recovery program operated by the district or school.

For any period in which a student is participating in interscholastic athletics, marching band, cheerleading, or a Junior Reserve Officer Training Corps (JROTC) program, the act permits a district or school to excuse the student from the physical activity requirement. The act also permits a district or school to excuse a kindergarten student who is not enrolled in all-day kindergarten from engaging in the physical activity.

⁶ This program permits a high school student to enroll in a college on a full- or part-time basis and receive high school and college credit (see R.C. Chapter 3365.).

Pilot program report

(R.C. 3313.6016(F))

The act requires that each participating district or school annually report to the Department of Education how the district or school implemented the 30 minutes of daily physical activity and the financial costs of implementation. The Department must issue an annual report of the data collected from the districts and schools.

Health curriculum

(R.C. 3313.603)

Under continuing law, students entering ninth grade in the 2010-2011 school year or later generally must complete the Ohio Core curriculum as one condition of earning a high school diploma from a public or chartered nonpublic high school. The Ohio Core consists of 20 units of study, of which one-half unit (60 hours) is devoted to health. The act provides that the health unit must include instruction in nutrition and the benefits of nutritious foods and physical activity for overall health.

Body mass index screenings

(R.C. 3313.674, 3314.03(A)(11)(h), and 3326.11)

Under the act, each school district, community school (other than an Internet- or computer-based community school (e-school)), STEM school, and chartered nonpublic school must require each student enrolled in kindergarten, third grade, fifth grade, and ninth grade to undergo a screening for body mass index (BMI) and weight status category before May 1 of each school year. BMI is a measure of body fat based on a person's height and weight. The district or school may provide the BMI screenings itself, contract with another entity for provision of the screenings, or request the student's parent to obtain the screening from a provider selected by the parent and submit the results to the district or school. If the district or school provides the screenings itself or contracts for the screenings, the district or school is required to protect student privacy by ensuring that each student is screened alone and not in the presence of other students or staff.

Before February 1 each school year, the district or school must provide the parent of each student subject to the screening requirements with information about the screening program. If the district or school requests that parents obtain a screening from a provider of their choosing, it must provide parents with a list of providers and information about screening services available in the community to those who cannot afford a private provider.

The act requires the district or school to notify parents of any health risks associated with their child's screening results and provide parents with information about appropriately addressing the risks. For this purpose, the Department of Health, in consultation with the Department of Education and the Healthy Choices for Healthy Children Council established by the act (see "**Healthy Choices for Healthy Children Council**," below), is to develop a list of documents, pamphlets, or other resources that the district or school may distribute to parents.

The district or school must maintain the confidentiality of each student's individual screening results and may not report those results to any person other than the student's parent.

Parental opt-out

(R.C. 3313.674(D))

The parent of a student subject to the BMI screening may opt out of the requirement by submitting to the school district or school a signed statement indicating that the parent does not wish to have the student undergo the screening.

BMI waiver

(R.C. 3313.674(H))

A district or school may obtain a waiver of the BMI and weight status category screening requirements from the Superintendent of Public Instruction. To obtain the waiver, the district or school must submit an affidavit stating that it is unable to comply with the requirements. The affidavit must be attested to by the president or presiding officer of the board of education or school governing authority. The state Superintendent must grant the waiver upon receipt of the affidavit.

Reporting of BMI data to Department of Health

(R.C. 3313.674(G))

Although each individual student's BMI data is confidential, the act requires districts and schools to report *aggregated* student BMI and weight status category data, along with any demographic data required by the Director of Health, to the Department of Health. The data must be aggregated to the district level, in the case of a school district, or to the school level, in the case of a community, STEM, or chartered nonpublic school. The Department may annually publish the data, aggregated by county. If a district or school was granted a waiver (see "**BMI waiver**," above) for a school year for which data is published, the Department must note that the data for the county in which the district or school is located is incomplete. The Department is authorized to

share data reported under the screening program with other governmental entities for the purpose of monitoring population health, making reports, or public health promotional activities.

Annual report

(R.C. 3301.922)

The Department of Education is required by the act to issue an annual report on the compliance of public and chartered nonpublic schools with the act's requirements regarding BMI screenings. The Department must include in each report any data regarding student health and wellness collected by the Department in conjunction with the screening requirements. The Department must submit the report to the Governor, the General Assembly, and the Healthy Choices for Healthy Children Council (see "**Healthy Choices for Healthy Children Council**," below).

Report card measure of compliance

(R.C. 3302.032)

Continuing law requires the Department of Education to issue an annual report card for each school district and building that includes academic performance data. Districts and schools receive ratings based on this data.

The act requires the State Board of education, no later than December 31, 2011, to establish a report card measure of (1) student success in meeting the benchmarks of the State Board's physical education standards,⁷ (2) compliance with the requirements for local wellness policies prescribed by the federal Child Nutrition and WIC Reauthorization Act,⁸ (3) whether a school district or building is complying with the act's BMI screening requirements instead of operating under a waiver from those requirements, and (4) whether a school district or building is participating in the act's physical activity pilot program. Beginning with the 2012-2013 school year, the measure is to be included on the report cards. The act prohibits the measure from being used as a factor in determining academic performance ratings.

⁷ The State Board has adopted the physical education standards for grades K to 12 developed by the National Association for Sport and Physical Education.

⁸ That Act requires each school district or school that accepts federal funding for nutrition, lunch, or breakfast programs to establish a local school wellness policy. Each policy must include goals for nutrition education, physical activity, campus food provision, and other school-based activities designed to promote student wellness. Districts and schools are required to involve a broad group of individuals in policy development and to have a plan for measuring policy implementation. (42 United States Code 1751 note.)

The act specifies that the Department of Education may accept monetary donations for the purpose of establishing the report card measure.

Healthy Choices for Healthy Children Council

Membership

(R.C. 3301.92; Section 5)

The act establishes the Healthy Choices for Healthy Children Council, composed of the following:

(1) The following individuals, one each appointed by the Governor, the President of the Senate, and the Speaker of the House:

(a) Three representatives of the Ohio Children's Hospital Association;

(b) Three representatives of the Ohio Business Roundtable;

(c) Three representatives of the Ohio Chapter of the American Academy of Pediatrics. The Governor's appointment must have expertise in minority health issues and the Senate President's appointment must represent the Appalachian region of Ohio.

(d) Three representatives of school districts. The Governor's appointment must be a representative of the Ohio School Boards Association, the Senate President's appointment must be a representative of the Buckeye Association of School Administrators, and the Speaker's appointment must be a representative of the Ohio Association of School Business Officials.

(e) Three school district employees whose job responsibilities involve promoting student health and wellness. The Governor's appointment must be a school-based mental health professional, the Senate President's appointment must represent the School Nutrition Association of Ohio and be a licensed dietitian, and the Speaker's appointment must be a school nurse.

(f) Three elementary or secondary school teachers. The Governor's appointment must represent the Ohio Education Association, the Senate President's appointment must represent the Ohio Federation of Teachers, and the Speaker's appointment must be a chartered nonpublic school teacher.

(2) A representative of the Ohio Parks and Recreation Association, appointed by the Senate President;

(3) A representative of the Ohio State Alliance of Young Men's Christian Associations, appointed by the Speaker;

(4) A representative of Ohio Action for Healthy Kids, appointed by the Speaker;

(5) A representative of the Children's Hunger Alliance, appointed by the Speaker;

(6) A representative of the American Heart Association, appointed by the Speaker;

(7) A representative of the Ohio Association for Health, Physical Education, Recreation and Dance, appointed by the Governor;

(8) A representative of the Ohio Soft Drink Association, appointed by the Governor;

(9) A representative of the Ohio Dairy Producers Association, appointed by the Senate President;

(10) A representative of the Office of Healthy Ohio in the Department of Health, appointed by the Governor;

(11) A representative of the Department of Education, appointed by the Governor;

(12) A parent, appointed by the Senate President;

(13) A representative of chartered nonpublic schools, appointed by the Senate President;

(14) A member of the Senate, appointed by the Senate President; and

(15) A member of the House, appointed by the Speaker.

The organizations specified under (1) through (9) are required to submit recommendations for their representatives on the Council.

Members must be appointed within 30 days after the act's effective date and serve at the pleasure of the appointing authority. Members are not compensated. The member of the Senate and the member of the House are joint chairpersons of the Council. The chairpersons are to call the first meeting of the Council no later than 30 days after the last member of the Council has been appointed. The Council is to meet at least annually and at other times at the call of the chairpersons.

Duties

(R.C. 3301.921)

The Council is required to do all of the following:

- (1) Monitor progress in improving student health and wellness;
- (2) Make periodic policy recommendations to the State Board of Education regarding ways to improve the nutritional standards for food and beverages for sale at schools (see "**Restrictions on food and beverage sales in schools**," above);
- (3) Make recommendations for changes to the act's nutritional standards within 60 days of the U.S. Department of Agriculture adopting any regulations for the sale of food or beverages in schools;
- (4) Make periodic recommendations to the Department of Education for the development of a clearinghouse of best practices in the areas of student nutrition, physical activity for students, and BMI screenings;
- (5) Assist the Department of Health in developing a list of resources regarding health risks associated with weight status for distribution to parents under the act's BMI screening requirements (see "**Body mass index screening**," above); and
- (6) Regularly review developments in science and nutrition to ensure the Council remains informed for purposes of making its recommendations described in (2) to (4), above.

Best practices clearinghouse

(R.C. 3301.923)

The act requires the Department of Education, on receipt of the initial recommendations of the Healthy Choices for Healthy Children Council, to establish a clearinghouse of best practices that schools may use to promote student health. The Department must update the clearinghouse to reflect subsequent recommendations of the Council.

HISTORY

ACTION	DATE
Introduced	11-17-09
Reported, S. Health, Human Services & Aging	05-17-10
Passed Senate (24-7)	05-18-10
Reported, H. Health	06-02-10
Passed House (77-21)	06-02-10
Senate concurred in House amendments (24-8)	06-03-10

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