



Lynda J. Jacobsen

*Final Analysis*  
Legislative Service Commission

**Am. Sub. S.B. 286**  
123rd General Assembly  
(As Passed by the General Assembly)

- Sens.** Gardner, Oelslager, Spada, Fingerhut, Prentiss, Shoemaker, Horn, Kearns, Blessing, McLin, White, Watts, Mumper, Herington, Espy, Ray, Hagan
- Reps.** Mead, Jacobson, Amstutz, Jolivette, Goodman, J. Beatty, Buehrer, Ferderber, A. Core, Gooding, Bender, Tiberi, Mottley, Callender, Salerno, Corbin, D. Miller, Perry, Womer Benjamin, Trakas, Robinson, Calvert, Mettler, Olman, Metzger, Williams, Verich, Clancy, Allen, Aslanides, Gardner, Widener, Carey, Jerse, Patton, Wilson, O'Brien, Vesper, Austria, Harris, Britton, DePiero, Barnes, Roberts, Jones

Effective date: \*

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**ACT SUMMARY**

- Expands the ownership rights and interests of state colleges and universities over products of research or investigation to include (1) products of research or investigation conducted in any facility of the institution and (2) products of research or investigation conducted by employees acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through the institution.
- Allows the boards of trustees of state colleges and universities to adopt rules setting forth the circumstances under which employees may acquire financial interests in companies to which the colleges and universities have assigned, licensed, transferred, or sold rights to the products of the employees' research or investigation.
- Specifies that the Ohio Ethics Commission retains authority to assist state colleges and universities in adopting these rules and in matters outside the act's scope or the scope of the rules.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires a committee of representatives of state college and university presidents to develop model rules within 90 days after the act's effective date.

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## **CONTENT AND OPERATION**

### **Background law**

Prior to the act, state colleges and universities owned the products of research or investigation conducted in their research facilities. More specifically, former law declared that the rights to and interests in discoveries, inventions, and patents that resulted from research or investigation conducted in any experiment station, bureau, laboratory, or research facility of a state college or university were the sole property of the college or university. No one else, including any faculty member, student, governmental agency, or company that used a state college's or university's research facilities, had any right or interest in the discoveries, inventions, or patents (including any income produced from them) except as assigned, licensed, transferred, or paid by the board of trustees of the college or university. The act continues these provisions, as expanded in the manners described below. (Sec. 3345.14.)

### **Expanded state colleges' and universities' ownership rights**

#### **Research conducted in other facilities of the institution**

The act adds that products of research or investigation conducted in "any other facility" of a state college or university (besides an experiment station, bureau, laboratory, or research facility) also are the sole property of the college or university, unless they are assigned, licensed, transferred, or paid by the board of trustees of the college or university (sec. 3345.14(B) and (C)). (See **COMMENT.**) The act appears to cover all research and investigation conducted *by anyone, not just employees*, in state college or university facilities.

#### **Research conducted by certain employees outside of the institution's facilities**

The act adds that products of research or investigation by certain employees of a state college's or university's facilities are the sole property of the college or university, unless they are assigned, licensed, transferred, or paid by the board of trustees of the college or university. It covers all research or investigation by employees, regardless of where the research or investigation is conducted, if the research or investigation is conducted within the scope of their employment or

with funding, equipment, or infrastructure provided by or through a state college or university. (Sec. 3345.14 (B) and (C).)

**Employees' financial interests in certain companies**

The act establishes parameters under which state college or university employees whose research or investigation products are assigned, licensed, transferred, or sold to a company may have a financial interest in that company. These arrangements are allowed notwithstanding any law to the contrary, including any contrary provisions of the Ohio Ethics Law and the criminal statutes prohibiting public officials from having unlawful interests in public contracts or soliciting improper compensation, which might be construed to technically prohibit them.<sup>1</sup> These arrangements, however, must conform with rules adopted by the boards of trustees of the individual state colleges and universities. (Sec. 3345.14 (B) and (D).)

The act allows, but does not require, a board to adopt rules setting forth the circumstances under which an employee of the college or university may solicit or accept, or a person may give or promise to give the employee, a financial interest in any firm, corporation, or other association to which the board has assigned, licensed, transferred, or sold the college or university's interests in (a) discoveries or inventions made or created by that employee or (b) patents issued to that employee (sec. 3345.14(D)(1)).<sup>2</sup>

The rules may include any provisions in the board's discretion, but at a minimum *must include all of the following* (sec. 3345.14(D)(2) and (3)):

(1) A requirement that each college or university employee disclose to the board any financial interest that the employee holds in such a firm, corporation, or other association;

(2) A requirement that those disclosures be reviewed by officials who are designated by the board and who must determine the information that must be disclosed and safeguards that must be applied to manage, reduce, or eliminate any actual or potential conflict of interest;

(3) A requirement that, in implementing the rules, all members of the board are governed by the Ohio Ethics Law and the criminal statutes mentioned above;

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<sup>1</sup> *The criminal statutes cited in the act are R.C. 2921.42 and 2921.43.*

<sup>2</sup> *The rule-making procedure is set forth in R.C. 111.15, which does not require public hearings.*

(4) Guidelines to ensure that any financial interest held by an employee does not result in misuse of students, employees, or resources of the college or university for the benefit of the firm, corporation, or other association and does not otherwise interfere with the employee's duties and responsibilities.

**Ohio Ethics Commission assistance**

The act states that the Ohio Ethics Commission retains authority to provide assistance to a college or university board of trustees in establishing the minimum requirements and guidelines in the rules mentioned above and to address any matter that is outside the act's scope or the scope of the rules established by the board (sec. 3345.14(E)).

**Model rules in 90 days**

Within 90 days after the act's effective date, a committee consisting of representatives of the presidents of state colleges and universities must develop a model set of rules for the boards of trustees of each state college and university to use in adopting their own rules under the act. The committee must consult with the Ohio Ethics Commission in developing these model rules. The president of each state college and university may designate a representative, and the committee is to be coordinated by the Executive Director of the Inter-University Council. (Section 3 of the act.)

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**COMMENT**

The act defines a "state college or university" to mean the following (sec. 3345.14(A), by cross-reference to sec. 3345.12--not in the act):

(1) The University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, Northeastern Ohio Universities College of Medicine, and Medical College of Ohio at Toledo;

(2) Any of the following "institutions of higher education"--a community college district, technical college district, university branch district, or state community college.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
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Introduced	04-26-00	pp.	1843-1844
Reported, S. Education	05-10-00	p.	1680
Passed Senate (33-0)	05-10-00	pp.	1682-1683
Reported, H. Ethics & Standards	05-17-00	p.	2003
Passed House (94-0)	05-24-00	pp.	2096-2097
Concurrence (33-0)	05-25-00	p.	1861

00-SB286.123/jc

