



Am. Sub. H.B. 407
124th General Assembly
(As Passed by the General Assembly)

Reps. Buehrer, Seitz, White, Otterman, Sullivan, Redfern, Callender, Setzer, Seaver, Barrett, Carano, Woodard, Webster, Calvert, Hartnett, Fedor, Perry, Hagan, Olman, Latta, Schuring, Flowers, Hoops, Schneider, Ogg, Sferra, Niehaus, Distel, Strahorn, Lendrum, G. Smith, Key, Damschroder, Latell, Clancy, Salerno, Carmichael, Wolpert, Driehaus, Jolivette, Schmidt, Cirelli, Coates, Beatty, Sykes, Brown

Sens. Robert Gardner, Harris, Spada, Hottinger

Effective date: *

ACT SUMMARY

- Transfers jurisdiction over driver education courses conducted by school districts and educational service centers (ESCs) from the Department of Education to the Department of Public Safety.
- Requires driver education courses conducted by districts and ESCs to meet the same standards as private driver training schools after December 31, 2003.
- Prohibits awarding course credit for driver education courses conducted by districts and ESCs after December 31, 2003.
- Requires all driver education courses to include dissemination of information through an electronic medium or a presentation and discussion on anatomical gifts and anatomical gift procedures.
- Requires the Second Chance Trust Fund Advisory Committee to approve brochures, written materials, and electronic media used by driver training

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

schools to provide information to students about anatomical gifts and gift procedures.

- Prohibits the use of brochures, written materials, electronic media, or presentations that contain religious content about anatomical gifts in driver education courses conducted by districts and ESCs.
- Permits students to opt out of instruction on anatomical gifts and gift procedures for religious reasons.
- Transfers \$50,000 in FY 2003 from the Department of Education to the Department of Public Safety (ODPS) to fund ODPS's new oversight responsibilities.
- Designates March as "Eye Donor Month in Ohio."
- Prohibits the reporting of a student's name, address, and social security number to the Department of Education through the Education Management Information System (EMIS).

CONTENT AND OPERATION

Background

Under prior law, responsibility for the regulation of driver training courses for beginning drivers was divided between the Department of Education and the Department of Public Safety. Driver education courses offered at high schools or conducted by joint vocational school districts or educational service centers (ESCs) were required to meet minimum standards prescribed by the State Board of Education.¹ However, the Director of Public Safety adopted rules for the governance of driver training courses operated by private business enterprises.² In each case, the courses required 24 hours of classroom instruction and eight hours of actual behind-the-wheel instruction on the public streets and highways as well as information on insurance coverage and financial responsibility.³ In addition, the driver education curricula used by school districts and ESCs had to include

¹ *Sec. 3301.07(E).*

² *Sec. 4508.02. See O.A.C. 4501-7 for the Director's rules governing private driver training schools.*

³ *Secs. 3301.07(E), 4508.02(C), and 4508.03(A) (not in the act).*

coverage of energy conservation issues such as the relationship of improper maintenance to decreased gas mileage and the costs and benefits of different modes of travel.⁴

Additionally, each agency used different procedures to ensure that its driver education courses complied with agency standards. For example, prior law permitted any board of education or ESC to operate a driver education program in one or more of its high schools in accordance with the State Board's guidelines regarding curriculum content, parental consent, vehicle safety, and instructor qualifications.⁵ Classroom instructors in these courses were required to hold valid teacher licenses with a special endorsement to teach driver education.⁶ Prior to awarding an endorsement and annually thereafter, the Department of Education had to request the driving records of driver education teachers from the Bureau of Motor Vehicles and consider that data in deciding whether the teachers could continue to teach driver education.⁷ The Area Coordinators Office of the Department was charged with annually evaluating driver education courses and approving those that meet the guidelines.⁸

Under continuing law unchanged by the act, private driver training schools, on the other hand, must formally apply for a license from the Director of Public Safety each year. After inspecting the facilities and equipment and determining that the driver training school meets all established standards, the Director may issue a license to operate.⁹ Instructors at private driver training schools also must

⁴ *Sec. 3301.07(E).*

⁵ *Sec. 3301.17. See O.A.C. 3301-81 for the State Board's rules concerning driver education courses.*

⁶ *O.A.C. 3301-24-05(D). To qualify for the endorsement, a certified teacher must (1) be at least 21 years of age, (2) have a minimum of five years of driving experience, (3) hold a valid driver's license, (4) have never been convicted of a felony, (5) be in good physical health as verified by a licensed Ohio physician, and (6) have successfully completed six semester hours, or its equivalent, of college credit in driver and traffic safety education. O.A.C. 3301-81-04. Laboratory aide instructors also may be hired to teach the behind-the-wheel phase of driver education courses.*

⁷ *O.A.C. 3301-81-04.*

⁸ *O.A.C. 3301-81-11.*

⁹ *Secs. 4508.02 and 4508.03 (not in the act).*

be individually licensed by the Director to teach driver education classes and must renew their licenses on an annual basis.¹⁰

Transfer of departmental jurisdiction over driver education courses at public schools and ESCs

The act eliminates the dual responsibility for driver education currently in place by transferring oversight of driver education courses conducted by school districts and ESCs from the Department of Education to the Department of Public Safety.¹¹ Consequently, *all* driver education courses, regardless of where they are offered, must comply with administrative rules adopted by the Director of Public Safety. In other words, driver education courses conducted by districts or ESCs are regulated like private driver training schools under the act. This includes requiring a district or ESC to apply for and obtain an annual license from the Director to operate a driver training school and to obtain a license for each driver education instructor. Presumably to give districts and ESCs time to comply with the Director's rules, the act specifies that they may continue to operate their driver education programs under the State Board of Education's standards until December 31, 2003.¹² After that date, districts and ESCs must meet the same requirements as private driver training schools.¹³ In preparation for the

¹⁰ Secs. 4508.04 and 4508.05, neither section in the act. Each original application for an instructor license must include (1) a recent criminal abstract from the Bureau of Criminal Identification and Investigation (BCII), (2) driving record from the Bureau of Motor Vehicles, (3) proof that the applicant has passed a vision screening and tests of knowledge of traffic laws and motor driving skills, (4) a signed statement from a licensed physician verifying that the applicant is in sound physical and mental health, (5) proof of successful completion of an approved 40-hour instructor's course in driver training or possession of a valid teacher license with a driver education endorsement, and (6) a \$25 fee. In addition, the applicant must have held a valid driver's license for at least five years and be free of any convictions for a felony within the previous ten years and any convictions for a misdemeanor I or II within the past five years that could impair the applicant's ability to serve as a driving training instructor. O.A.C. 4501-7-05.

¹¹ Secs. 3301.07(E) and 4508.01(C).

¹² Under continuing law, a person under 16 years old who has been issued a temporary instruction permit to drive a motor vehicle must be accompanied by an eligible adult in the passenger's seat while driving. Eligible adults include instructors of driver education courses approved by the Department of Education or the Department of Public Safety. (Sec. 4507.05.) Temporary law in the act allows instructors of driver education courses at public schools or ESCs to accompany holders of temporary instruction permits until December 31, 2003, at which time they must be licensed by the Department of Public Safety to continue to do so (Section 4).

¹³ Section 3.

Department of Public Safety's new oversight responsibilities, the act directs the Director of Budget and Management to transfer \$50,000 in appropriations and cash in fiscal year 2003 from the Department of Education to the Department of Public Safety. If the total amount is taken from line item 200-100, as specified in the act, then the funds appropriated for Personal Services in the Department of Education decrease from \$12,113,828 to \$12,063,828 in FY 2003. This transfer must occur within 30 days after the act's effective date.¹⁴

Finally, the act makes two changes to clarify the role of the Department of Public Safety as the sole overseer of driver education courses. It eliminates a requirement that the Department of Public Safety encourage driver education in Ohio high schools since both public and private driver training courses would be conducted in accordance with the same rules under the act. Similarly, it removes language permitting the Director of Public Safety to consult with the state Superintendent of Public Instruction about developing rules for training beginning drivers, although presumably the Director could still voluntarily request the assistance of the state Superintendent.

Prohibition against awarding credit for driver education courses

Current State Board rules allow school districts to give one-quarter of a credit toward graduation to students who successfully complete a driver education course conducted entirely by the district or an ESC. Students who take a driver education course from a private establishment are not eligible to receive course credit.¹⁵ Because the act eliminates the State Board's role in driver training and treats all driver education courses uniformly, it prohibits districts from awarding course credit for driver education courses. However, districts may continue to give course credit to students who complete a driver education course at a high school or ESC prior to December 31, 2003, while the school or ESC is still functioning under the State Board's standards.¹⁶

Information on anatomical gifts and gift procedures

Currently the State Board of Education's rules may, but are not required to, include instruction in the driver education and health curricula on the donation of anatomical gifts. The act mandates that a portion of the classroom instruction time in all driver education courses, whether offered in public schools or at private driver training schools, must be used to provide students with information on

¹⁴ Section 5.

¹⁵ O.A.C. 3301-81-05.

¹⁶ Section 3.

anatomical gifts and gift procedures. It continues to permit the State Board to include such information as part of the health curriculum in public schools as well.¹⁷

Under the act, driver education courses must either disseminate information on anatomical gifts and gift procedures to students through electronic media (such as videos, CD-ROMs, or DVDs), *or* the course instructor must organize a presentation and discussion to educate students about these topics. The advisory committee for the Second Chance Trust Fund, which provides money to support statewide public education programs about organ, tissue, and eye donations, must approve all electronic media used to provide students with information about anatomical gifts.¹⁸ In addition, the committee must approve informational brochures and written materials about anatomical gifts, which driver training schools must distribute to students whenever they are provided at no cost to the schools. However, the advisory committee cannot approve brochures, written materials, or electronic media that contain religious content about anatomical gifts for use in driver education courses conducted by school districts or ESCs.

When a driver training school receives free of charge a video or other form of electronic media less than 20 minutes in length that has been approved by the advisory committee, the school *must* show it to students if the school has operable viewing equipment available. If the school receives more than one piece of approved electronic media, the instructor must choose *one* to show to students. This showing of an approved electronic medium satisfies the requirement under the act to provide instruction regarding anatomical gifts and gift procedures.

If, however, the school does not receive any free approved media or lacks proper viewing equipment, then the course instructor must organize a classroom presentation and discussion to educate students about anatomical gifts and gift procedures.¹⁹ Whenever a classroom presentation and discussion is provided, students must be given the opportunity to ask questions about the subjects raised. The instructor may handle the presentation or may arrange instead to bring in someone from outside of the school to do it, although the act prohibits the school from paying a fee to an outside speaker. Statutorily approved speakers are limited to the following:

¹⁷ *Sec. 3301.07(E).*

¹⁸ *Sec. 2108.17. See also sec. 2108.15, not in the act.*

¹⁹ *An instructor may also choose to organize a presentation and discussion even though the school has also shown some form of electronic media to students on anatomical gifts and gift procedures.*

- (1) An employee of the Department of Health or another state agency;
- (2) An employee or volunteer of the Second Chance Trust Fund;
- (3) An employee or volunteer of an organ donation procurement organization such as Lifeline of Ohio or LifeBanc;
- (4) An organ donor;
- (5) An organ recipient;
- (6) An employee or volunteer of a tissue or eye bank;
- (7) A tissue or corneal transplant recipient.

As with other materials, presentations containing religious content about anatomical gifts cannot be made to students in driver education courses at public schools and ESCs.

The act also allows a student in any driver training course to opt out of instruction on anatomical gifts and gift procedures upon written notification from the student's parent or guardian (or the student if over 18 years old) that such instruction conflicts with the religious convictions of the student or the student's parent or guardian. Students who do not participate for religious reasons must be given an alternative assignment.²⁰

Personal information that may not be submitted to the Department of Education through the Education Management Information System

The Education Management Information System (EMIS), administered by the Department of Education, is a tool for collecting, maintaining, and reporting student, staff, and financial data as required by both state and federal law. Information reported to the EMIS by school districts is used to compile numerous reports required by statute, including district and school building report cards, district-level funding and expenditure accountability reports, and school safety and discipline reports.²¹

Originally, student and staff data were collected and maintained only in the aggregate. However, in 1999 the law was changed to require the collection and maintenance of individual student and staff data.²² Federal law, through the "No

²⁰ *Sec. 4508.021.*

²¹ *Sec. 3301.0714(D). See also secs. 3302.03 and 3302.031, neither section in the act.*

²² *See Am. Sub. H.B. 282 of the 123rd General Assembly.*

Child Left Behind Act of 2001," also requires the collection and reporting of individual student information in order to qualify for certain federal funding.²³ The purpose of individual data is to allow for evaluating the effect of school district policies or programs on specific students. For example, if a student fails a test, did the student receive remediation and then pass the test?

In reporting individual student data to the EMIS, school districts use a generic identification number assigned to the student by a third party responsible for maintaining the database. Prior law prohibited the transmission of all personally identifiable student information to the Department. The act changes this broad prohibition to a specific prohibition that a student's name, address, and social security number cannot be transmitted to the Department through the EMIS. Presumably, then, other personally identifiable information (such as a telephone number) about a student could still be transmitted to the Department (see COMMENT).

Designation of "Eye Donor Month"

The act designates March as "Eye Donor Month in Ohio."²⁴

COMMENT

Neither the current EMIS statute nor the statute as amended by the act appears to conflict with other state or federal privacy laws. The most relevant provision of Ohio law in this area is R.C. 3319.321, which limits the dissemination of student information, while the most relevant provision of federal law is the "Family Educational Rights and Privacy Act" (FERPA).²⁵

Revised Code section 3319.321 has two broad prohibitions. First, no person (which includes school districts and the Department of Education) may release, or permit access to, the name or other personally identifiable information of any public school student to another person for use in a profit-making plan or activity. Second, generally no person can release or permit access to personally identifiable information, except directory information, concerning a student for any other reason without the written consent of a parent (or of the student if the

²³ *Pub. L. No. 107-110.*

²⁴ *Sec. 5.2223.*

²⁵ *FERPA is codified at 20 U.S.C. § 1232g. Regulations implementing FERPA are located at 34 C.F.R. Part 99.*

student is at least 18 years old).²⁶ However, there is an exception to this second broad prohibition that is particularly relevant in the context of reporting information to the EMIS. This exception provides that a person may release personally identifiable student information for administrative use by the state or any of its political subdivisions. Thus, it appears that under R.C. 3319.321, a school district may transmit personally identifiable student information to the Department of Education.

The federal FERPA protects records that are directly related to a student and are maintained by an educational agency. The definition of an educational agency has two components: an educational agency is (1) any educational agency or institution to which federal funds have been made available, and (2) either the institution provides educational services or instruction to students or the agency is authorized to direct and control public elementary, secondary, or postsecondary educational institutions. Consequently, FERPA applies to both school districts and the Ohio Department of Education. Without the written consent of a parent or a student over 18 years of age, a school district or the Department may only release personally identifiable information contained in student records to specified parties, such as other school officials who have a legitimate educational interest or state educational authorities. Thus, under FERPA school districts are permitted to transmit personally identifiable information about students to the Department through the EMIS.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|----------|---------------|
| Introduced | 10-17-01 | pp. 950-951 |
| Reported, H. Education | 01-30-02 | p. 1352 |
| Passed House (94-1) | 02-12-02 | pp. 1376-1377 |
| Reported, S. Education | 05-29-02 | p. 1842 |
| Passed Senate (33-0) | 06-19-02 | pp. 1926-1927 |
| House concurred in Senate amendments (86-1) | 06-19-02 | pp. 1966-1967 |

02-hb407.124/kl

²⁶ Among other things, directory information consists of a student's name, address, telephone listing, and date and place of birth.