



Jennifer Stump

*Bill Analysis*  
Legislative Service Commission

## **Am. H.B. 384\***

124th General Assembly  
(As Reported by S. Education)

**Reps. Oakar, Callender, Fedor, Distel, Hartnett, Carano, Barrett, Setzer, Calvert, Woodard, Sykes, Krupinski, DePiero, Brown, Rhine, Otterman, Allen, Key, Patton, Cirelli, DeBose, Strahorn, Redfern, Ogg, Sulzer, Beatty, S. Smith, Wilson, Jerse, Mason, Latell, Seaver, Flannery, R. Miller, Bocchieri, Sferra, Coates, D. Miller, Hagan, Damschroder, Young, Roman, Hoops, Metzger, Flowers, Niehaus, Hollister**

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### **BILL SUMMARY**

- Requires each school district and each nonpublic school to have an employee trained in the performance of the Heimlich maneuver present during periods of food service to students.
- Specifies that this requirement does not create a new cause of action or substantive legal right against any person.
- Grants nonpublic schools and their employees qualified immunity from liability in connection with this requirement.

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### **CONTENT AND OPERATION**

#### **Presence of employee trained in Heimlich maneuver during food service**

(R.C. 3313.815(A))

Continuing law authorizes each school district board to provide food services to students enrolled in the district or, at cost, to residents of the district who are over 60 years old. In addition, both school districts and nonpublic schools may receive federal moneys to support school lunches, school breakfasts, milk

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\* *This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

services for children, food service equipment assistance, commodity distribution, and other special food service programs.<sup>1</sup>

The bill requires any school district or nonpublic school that operates such a food service to require at least one employee who has been trained in methods to prevent choking and who has demonstrated an ability to perform the Heimlich maneuver to be present while students are served food. The Department of Education is required to establish guidelines for use by districts and schools in implementing the requirement to have a qualified person present.

**Provisions regarding immunity from liability**

(R.C. 3313.815(B) and (C))

School districts, and their officers and employees acting within the scope of their employment, generally have immunity from tort liability in the performance of governmental functions through the Political Subdivision Sovereign Immunity Law (Revised Code Chapter 2744.). Under that law, which the bill does not change, the provision of a system of public education is explicitly *included* as a governmental function.<sup>2</sup> Therefore, provided no exception to immunity applies, a school district is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the district or one of its employees while providing a public education.<sup>3</sup> Moreover, an employee of the school district is not liable as long as the breach of law was not undertaken "with malicious purpose, in bad faith, or in a wanton or reckless manner."<sup>4</sup>

Presumably, this immunity extends to districts and their employees while providing students with food in accordance with food service programs required by federal or state law or implemented at the discretion of individual districts. However, the bill appears to underscore the sovereign immunity provisions for school districts and their employees by explicitly stating that the requirement to

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<sup>1</sup> R.C. 3313.81 and 3313.813 (neither section in the bill) and 42 U.S.C. 1751 et seq. and 42 U.S.C. 1771 et seq. The federal school food service programs pay moneys to the state, which then passes those moneys on to school districts and nonpublic schools based on the need of children enrolled in the schools. The state provides some state moneys to match these federal grants.

<sup>2</sup> R.C. 2744.01(C)(2)(c), not in the bill.

<sup>3</sup> R.C. 2744.02(A)(1), not in the bill.

<sup>4</sup> R.C. 2744.03(A)(6), not in the bill.

have an employee trained in the Heimlich maneuver present during food service periods does not create a new cause of action or legal right.

Private schools are not covered under the Sovereign Immunity Law since they are not political subdivisions. To protect nonpublic schools and their employees from liability in carrying out this provision of law, the bill grants them qualified immunity. Specifically, the bill states that a nonpublic school or an employee of a nonpublic school "is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the nonpublic school or [its] employee" in connection with the duties imposed by the bill's requirement to have an employee trained in the Heimlich maneuver present during periods of food service. Any act or omission done with malicious purpose, in bad faith, or in a wanton or reckless manner, however, falls outside the scope of qualified immunity. This immunity is similar to that provided to school districts and their employees under the Sovereign Immunity Law.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-01	p. 866
Reported, H. Education	02-12-02	pp. 1385-1386
Passed House (80-16)	02-26-02	pp. 1452-1453
Reported, S. Education	---	---

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