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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 402**

124th General Assembly  
(As Rereferred by H. Rules & Reference)

**Reps. Collier, Schaffer, Lendrum, Hollister, Seitz, Calvert, Webster, Setzer, Schmidt, Gilb, Hagan, White, Sullivan, Husted, Reidelbach, Willamowski, D. Miller, Patton, Carmichael, Flowers, Schneider**

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### **BILL SUMMARY**

- Requires the chief administrative officer of a community school or a nonpublic school to issue age and schooling certificates to students who are qualified for them.
- Requires the superintendent of a local school district and a joint vocational school district to issue age and schooling certificates to students who are qualified for them.
- Eliminates the requirement that a local school district superintendent forward information about a student's application for an age and schooling certificate to the superintendent of the educational service center to which the school district belongs for approval of that certificate by the service center superintendent.
- Eliminates the requirement that an applicant for an age and schooling certificate satisfactorily complete a vocational or special education program adequate to prepare the applicant for an occupation.
- Requires superintendents that issue age and schooling certificates on and after January 1, 2002 to file the certificates with the Director of Commerce electronically.
- Permits any licensed physician or licensed physician's assistant (rather than only a school physician as under current law) to certify a student's physical condition for inclusion in the student's age and school certificate.
- Eliminates the part-time age and schooling certificate.

- Permits use of a student's athletic certificate of examination to certify a student's physical condition for an age and schooling certificate.
- Makes other changes in the law regarding age and schooling certificates.

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## CONTENT AND OPERATION

### Background

Generally, all children who reside in the state and are between six and 18 years old must attend a school that meets minimum standards set by the State Board of Education.<sup>1</sup> Under the state Minor Labor Law, an employer generally must require that employees who are under 18 years of age and have not received a high school diploma or its equivalent present age and schooling certificates before hiring those employees. An employer is required to keep the certificate on file at the establishment where the child is employed. Such a certificate may be issued by a school district superintendent upon satisfactory proof that the child is *at least 16 years old* and has "completed a vocational education or special education program adequate to prepare students for an occupation."<sup>2</sup> Special criteria apply when a child over the age of 16 who is unable to pass a test for the completion of the work of the seventh grade applies for an age and schooling certificate. Children who are age 14 or 15 may not be issued a regular certificate, but may be issued a "part-time and vacation" age and schooling certificate instead. The part-time age and schooling certificate is valid only at times when school is not in session.

Ohio Minor Labor Law provides limits on the times of day and the number of hours each day and each week that a child may work. These limits are more restrictive when school is in session, and for children who are age 14 or 15.

An age and schooling certificate is not required for the employment of a child who is age 16 or 17 during the summer vacation months or when such a child is employed at certain times of the year at a seasonal amusement or recreational establishment. In contrast, a child who is age 14 or 15 must provide an employer with a part-time and vacation age and schooling certificate during all months of the year. A certificate is not required for the employment of children who are exempt from coverage under Ohio Minor Labor Law, or who are subject

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<sup>1</sup> R.C. 3321.01, *not in the bill*.

<sup>2</sup> R.C. 3331.01. *This latter condition is eliminated by the bill (see "Elimination of vocational or special education requirement" below).*

to Ohio Minor Labor Law but are employed in agriculture, unless they reside in an agricultural labor camp (see "*Exceptions to Ohio Minor Labor Law*" below).

Age and schooling certificates may be used by an employer to comply with Federal Minor Labor Law (see **COMMENT 1**).

***Authority to issue age and schooling certificates***

(R.C. 3331.01(A), (B), and (E), 3331.02, 3331.08, 3331.09, 4109.02, and 4109.06)

Under current law, only the superintendent (or superintendent's designee) of a "city" or "exempted village" school district or an educational service center (ESC) may issue age and schooling certificates to qualified students.<sup>3</sup> A "local" school district superintendent is required to forward all information regarding a student's application for a certificate to the superintendent of the ESC to which the school district belongs for consideration by the ESC superintendent. If the ESC superintendent issues the certificate, that superintendent must send the certificate to the local school district superintendent for final signing by the child and delivery to the child. The bill eliminates the role of an ESC superintendent in issuing age and schooling certificates and permits local school district superintendents to issue them directly.

In addition, the bill authorizes joint vocational school district superintendents to issue age and schooling certificates.<sup>4</sup>

The bill further provides that the chief administrative officer of either a nonpublic school or a community school may issue age and schooling certificates to their respective qualified students.<sup>5</sup>

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<sup>3</sup> *Educational service centers (formerly called county school districts) are regional educational entities that provide curriculum development and instructional services to all local school districts in their service territories and may provide some services to other area school districts under contracts. They are not taxing authorities but do receive state and school district per pupil payments for services rendered.*

<sup>4</sup> *Joint vocational school districts (JVSD) are special taxing districts created and supported by a number of city, exempted village, and local school districts to operate vocational education facilities for the mutual benefit of all member districts. They may also contract with nonmember districts to provide services. Not all school districts belong to a JVSD.*

<sup>5</sup> *A community school (often called "charter school") is a public, nonsectarian, nonprofit school that operates independently of a school district under contract with a public sponsor (generally a school district or the State Board of Education) that must monitor the school's performance.*

**Age and school certificates for home instructed students**

(R.C. 3331.01(B)(2) and 3331.13)

Another statutory excuse for not attending school is qualified home instruction as verified by the superintendent of the school district in which the student is entitled to attend school.<sup>6</sup> Current law does not appear to address specifically the procedures that apply to a home-instructed child who applies for an age and schooling certificate. The bill permits a child who is instructed at home to apply to the superintendent that granted the excuse for nonattendance for an age and schooling certificate.

**Elimination of vocational or special education requirement**

(R.C. 3331.01(B)(1))

The bill eliminates the requirement that in order to qualify for an age and schooling requirement a student must first successfully complete a vocational or special education program that is adequate to prepare the student for an occupation.

**Electronic filing of age and schooling certificates**

(R.C. 3331.01(F), 3331.06, 3331.11, 4109.02, 4109.03, 4109.08(D), and 4109.09; Section 3)

Presently, an employer must secure from each minor covered under the state Minor Labor Law a valid age and schooling certificate, which must be available for inspection by enforcement officials. The bill requires a "superintendent" that issues an age and schooling certificate on or after January 1, 2002 to file the certificate electronically with the Director of Commerce. It goes on to specify that on and after that date "only electronically filed certificates" are valid to prove lawful employment of a minor under R.C. Chapter 4109. While the bill does not directly require nonpublic schools and community schools to file certificates electronically, it appears that only those certificates that they file electronically may be used to prove lawful employment of a minor. The effect may be force nonpublic schools and community schools to file their certificates electronically (see **COMMENT 2**).

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<sup>6</sup> R.C. 3321.04(A)(2), not in the bill. A superintendent must permit a child to be excused from attendance at school for full-time home instruction as long as the child will be taught by someone that meets State Board qualifications for such home instruction.

The bill also eliminates the requirement that employers keep the certificate on file in the workplace and requires instead that an employer must thoroughly review the minor's age and schooling certificate.

**Notice of nonuse of an age and schooling certificate**

(R.C. 3331.02(A) and 4109.03)

Currently, the Education Code, specifically R.C. 3331.02(A), requires that an employer must return a child's age and schooling certificate to the superintendent that issued it within "two days" after the child withdraws or is dismissed from the employer's services. On the other hand, the state Minor Labor Law, specifically R.C. 4109.03, provides that an employer return the certificate within "five working days" after the child's withdrawal or dismissal. Presumably to make these sections consistent, the bill amends R.C. 3331.02(A) to require an employer to "give notice of the nonuse of an age and schooling certificate within five days from the child's withdrawal or dismissal." In keeping with the bill's electronic filing provisions (which do not require the employer to keep the certificate on file after December 31, 2002), neither R.C. 3331.02(A) nor R.C. 4109.03 as amended by the bill require actual return of the unused certificate to the issuing authority.<sup>7</sup>

**Physical examination for an age and schooling certificate**

(R.C. 3331.02(A)(4) and (B))

Currently, an age and schooling certificate application must include a certificate of examination by the school physician or a physician designated by the district's health commission. The certificate of examination must indicate that the child is physically fit for the employment for which the age and schooling certificate is sought.<sup>8</sup> Under the bill, such examination may be performed and certified by any licensed physician or licensed physician's assistant and may consist of a child's athletic certificate of examination.

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<sup>7</sup> R.C. 3331.02(A) as amended by the bill does not specify who should receive notice of an unused certificate; however, R.C. 4109.03 as amended by the bill does specify that such notice be given to the superintendent or chief administrative officer that issued the certificate.

<sup>8</sup> Under current law and under the law as amended by the bill, both the certificate of physical examination and related age and schooling certificate may be "limited" to a certain occupation if the child's physical condition warrants such a limit.

**Elimination of counter signature requirements for some age and schooling certificates**

(R.C. 3331.11)

Current law provides that an age and schooling certificate is not valid for employment in any school district other than the one in which it is issued, unless it is countersigned by the "certificate-issuing authority" of the district where the child is employed.<sup>9</sup> The bill eliminates this provision leaving the law silent on the effect of a certificate for employment in another district. It is not clear whether eliminating this language means that a certificate can be used in any district with or without countersignature or whether it unequivocally cannot be used in any district other than the one for which it is issued.

**Age and schooling certificates for minors who do not reside in the state**

(R.C. 3331.01 and 3331.02(C))

Current law requires a resident of another state who wishes to work in Ohio to qualify with the proper school authority in the school district or educational service center service area in which the place of employment is located. The bill modifies this provision by requiring that any minor who does not reside in the state but who wishes to be employed in the state must submit to the superintendent of a school district or the chief administrative officer of a nonpublic school or a community school all the same information required for an age and schooling certificate for a resident minor. In evaluating these nonresident applications, the superintendent or chief administrative officer is required to use the same standards that apply to "in-state children."

**Elimination of "part-time and vacation" age and schooling certificates**

(R.C. 3331.12, 3331.14, 4109.03, and repealed R.C. 3331.05)

Current law provides for the issuance of "part-time and vacation" age and schooling certificates to minors who are at least 14 years old. The bill eliminates this type of certificate. The ramifications of this change are unclear. The bill retains the requirement that a regular certificate may not be issued unless the child has attained 16 years of age, while requiring that an employer thoroughly review a minor's certificate.

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<sup>9</sup> *The law does not appear to grant any discretion to the certificate-issuing authority to choose not to countersign a certificate if it is presented for countersignature.*

### **Elimination of "overage" certificates**

(R.C. 4109.08(B), Sections 4 and 5, and repealed R.C. 3331.15)

Current law provides for the issuance of an "overage" certificate to any person above 18 years of age if the person believes that she or he is likely to be mistaken for a minor. In addition, the law provides that when a person holding an age and schooling certificate reaches 18 years of age, the certificate must be released to that person, in effect giving that person an overage certificate. The bill eliminates these provisions for overage certificates.<sup>10</sup>

### **Exceptions to Ohio Minor Labor Law**

(R.C. 4109.06)

Under continuing law, Ohio Minor Labor Law does not apply to minors in any of the following circumstances:

(1) Minors who are students working on any properly guarded machines in the manual training department of any school when the work is performed under the personal supervision of an instructor;

(2) Students participating in a vocational program approved by the Ohio Department of Education;

(3) A minor participating in a play, pageant, or concert produced by an outdoor historical drama corporation, a professional traveling theatrical production, a professional concert tour, or a personal appearance tour as a professional motion picture star, or as an actor or performer in motion pictures or in radio or television productions in accordance with the rules adopted by the Director of Commerce;

(4) The participation without remuneration of a minor with the consent of a parent or guardian, in a performance given by a church, school, or academy, or at a concert or entertainment given solely for charitable purposes, or by a charitable or religious institution;

(5) To minors who are employed by their parents in occupations other than occupations prohibited by rule adopted under this chapter;

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<sup>10</sup> Under the electronic filing provisions of the bill, an employer does not retain possession of the certificate so there is nothing for the employer to return to the certificate holder.

(6) Minors engaged in the delivery of newspapers to the consumer;

(7) Minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence;

(8) Minors who are currently heads of households or are parents contributing to the support of their children;

(9) Minors engaged in lawn mowing, snow shoveling, and other related employment; and

(10) Minors employed in agricultural employment in connection with farms operated by their parents, grandparents, or guardians where they are members of the guardians' household, unless they reside in agricultural labor camps.

In addition, minors in the following circumstances are not subject to the requirement that they receive age and schooling certificates, although they remain subject to other requirements of Ohio Minor Labor Law:

(1) Minors who work in a sheltered workshop operated by a county board of mental retardation;

(2) Minors performing services for a nonprofit organization where the minor receives no compensation, except for any expenses incurred by the minor or except for meals provided to the minor;

(3) Minors employed in agricultural employment and who do not reside in agricultural labor camps.

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## COMMENT

1. Federal Minor Labor Law is specified in the Fair Labor Standards Act (FLSA), which defines specific circumstances under which an employer violates federal law by engaging in "oppressive child labor" (29 USCA 203(1)). Oppressive child labor, as defined by U.S. Department of Labor regulations, includes the employment of a child: who is age 14 or 15 during school hours; at times of the day not permitted by regulation, or for a greater number of hours than permitted by regulation; who is under the age of 16 in any occupation in mining or manufacturing; or, who is under the age of 18 in any occupation that is prohibited by regulation due to its hazardous nature.

For the purpose of preventing an employer from unwittingly engaging in oppressive child labor due to a child's age, the FLSA provides that the employer may have on file a certificate, conforming to regulations adopted by the U.S. Department of Labor, that certifies that the child is above the oppressive child labor age (29 CFR 570.5). The U.S. Department of Labor has authorized Ohio employers to use age and schooling certificates for this purpose (29 CFR 570.9). As noted above, the bill removes the requirement that an employer keep a paper copy of the certificate on file after January 1, 2002. It is unclear whether the electronically filed age and schooling certificate maintained by the Director of Commerce would be considered satisfactory by the U.S. Department of Labor for the federal law purpose described above.

2. Section 3 of the bill requires that an employer on or before December 31, 2001 continue to "extract" from a minor the minor's age and schooling certificate, keep it on file, and make it available for inspection by enforcement officials. In addition, that section provides that an employer must return an unused certificate to the issuing superintendent "or the authorized superintendent's representative" within "five working days" after the minor withdraws or is dismissed from the employer's services. Because the dates specified in the bill have already passed, an amendment may be necessary to revise them.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-16-01	p. 926
Rereferred to H. Commerce & Labor	01-22-02	p. 1280

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