

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 333

Representative Cross

Cosponsors: Representatives Jones, Becker, Ghanbari, Baldrige, Wilkin, Blair

A BILL

To amend sections 3314.03, 3326.11, and 3328.24 and
to enact section 3301.943 of the Revised Code to
permit public schools to enter into agreements
with third parties to provide digital student
record storage, management, and retrieval.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3314.03, 3326.11, and 3328.24 be
amended and section 3301.943 of the Revised Code be enacted to
read as follows:

Sec. 3301.943. (A) As used in this section:

(1) "Student-generated content" means materials created by
a student, including, but not limited to, essays, research
reports, portfolios, creative writing, music or other audio
files, photographs, and account information that enables ongoing
ownership of student content. "Student-generated content" does
not include student responses to a standardized assessment where
student possession and control would jeopardize the validity and
reliability of that assessment.

(2) (a) "Student records" means both of the following:

(i) Any information directly related to a student that is 19
maintained by the school district board of education. 20

(ii) Any information acquired directly from the student 21
through the use of instructional software or applications 22
assigned to the student by a teacher or other district employee. 23

(b) "Student records" does not include information that 24
cannot be used to identify an individual student, including 25
aggregated information, but can be used by a third party for any 26
of the following: 27

(i) To improve educational products, for adaptive learning 28
purposes, and for customizing student learning; 29

(ii) To demonstrate the effectiveness of the operator's 30
products in the marketing of those products; 31

(iii) For the development and improvement of educational 32
sites, services, or applications. 33

(3) "Third party" refers to a provider of digital 34
educational software or services, including cloud-based 35
services, for the digital storage, management, and retrieval of 36
student records. 37

(B) A school district board of education may enter into a 38
contract with a third party for both of the following purposes: 39

(1) To provide services, including cloud-based services, 40
for the digital storage, management, and retrieval of student 41
records; 42

(2) To provide digital educational software that 43
authorizes a third-party provider of digital educational 44
software to access, store, and use student records in accordance 45
with the contractual provisions prescribed by division (C) of 46

this section. 47

(C) A board that enters into a contract with a third party 48
for purposes of division (B) of this section shall ensure the 49
contract contains all of the following: 50

(1) A statement that student records continue to be the 51
property of and under the control of the district board. 52

(2) Notwithstanding division (C)(1) of this section, a 53
description of the means by which students may retain possession 54
and control of their own student-generated content, if 55
applicable, including options by which a student may transfer 56
student-generated content to a personal account. 57

(3) A prohibition against the third party using any 58
information in the student record for any purpose other than 59
those required or specifically permitted by the contract. 60

(4) A description of the procedures by which a parent, 61
guardian, or student, if the student is at least eighteen years 62
old, may review personally identifiable information in the 63
student's records and correct erroneous information. 64

(5) A description of the actions the third party will 65
take, including the designation and training of responsible 66
individuals, to ensure the security and confidentiality of 67
student records. Compliance with this requirement shall not, in 68
itself, absolve the third party of liability in the event of an 69
unauthorized disclosure of student records. 70

(6) A description of the procedures for notifying the 71
affected parent, guardian, or student, if the student is at 72
least eighteen years old, in the event of an unauthorized 73
disclosure of the student's records. 74

(7) A certification that a student's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced. 75
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The requirements provided in division (C)(7) of this section shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content pursuant to division (C)(2) of this section. 79
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(8) A description of how the district board and the third party will jointly ensure compliance with section 3319.321 of the Revised Code and the federal "Family Educational Rights and Privacy Act," 20 U.S.C. 1232g. 84
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(9) A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising. 88
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(10) A prohibition against the state or a school district holding the third party harmless or indemnifying the third party in any manner that violates the debt limitations imposed on the state or a school district by the laws or constitution of this state. Any contract provision that conflicts with division (C)(10) of this section is void and unenforceable. 91
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(D) In addition to any other penalties, a contract that fails to comply with the requirements of this section shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this division shall return all student records in 97
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their possession to the district board. 104

(E) If the provisions of this section are in conflict with 105
the terms of a contract in effect before the effective date of 106
this section, the provisions of this section shall not apply to 107
the district board or the third party subject to that agreement 108
until the expiration, amendment, or renewal of the agreement. 109

(F) Nothing in this section shall be construed to impose 110
liability on a third party for content provided by any other 111
third party. 112

Sec. 3314.03. A copy of every contract entered into under 113
this section shall be filed with the superintendent of public 114
instruction. The department of education shall make available on 115
its web site a copy of every approved, executed contract filed 116
with the superintendent under this section. 117

(A) Each contract entered into between a sponsor and the 118
governing authority of a community school shall specify the 119
following: 120

(1) That the school shall be established as either of the 121
following: 122

(a) A nonprofit corporation established under Chapter 123
1702. of the Revised Code, if established prior to April 8, 124
2003; 125

(b) A public benefit corporation established under Chapter 126
1702. of the Revised Code, if established after April 8, 2003. 127

(2) The education program of the school, including the 128
school's mission, the characteristics of the students the school 129
is expected to attract, the ages and grades of students, and the 130
focus of the curriculum; 131

(3) The academic goals to be achieved and the method of measurement that will be used to determine progress toward those goals, which shall include the statewide achievement assessments;	132 133 134 135
(4) Performance standards, including but not limited to all applicable report card measures set forth in section 3302.03 or 3314.017 of the Revised Code, by which the success of the school will be evaluated by the sponsor;	136 137 138 139
(5) The admission standards of section 3314.06 of the Revised Code and, if applicable, section 3314.061 of the Revised Code;	140 141 142
(6) (a) Dismissal procedures;	143
(b) A requirement that the governing authority adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student without a legitimate excuse fails to participate in seventy-two consecutive hours of the learning opportunities offered to the student.	144 145 146 147 148 149
(7) The ways by which the school will achieve racial and ethnic balance reflective of the community it serves;	150 151
(8) Requirements for financial audits by the auditor of state. The contract shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the auditor of state. Audits shall be conducted in accordance with section 117.10 of the Revised Code.	152 153 154 155 156 157
(9) An addendum to the contract outlining the facilities to be used that contains at least the following information:	158 159

(a) A detailed description of each facility used for instructional purposes;	160 161
(b) The annual costs associated with leasing each facility that are paid by or on behalf of the school;	162 163
(c) The annual mortgage principal and interest payments that are paid by the school;	164 165
(d) The name of the lender or landlord, identified as such, and the lender's or landlord's relationship to the operator, if any.	166 167 168
(10) Qualifications of teachers, including a requirement that the school's classroom teachers be licensed in accordance with sections 3319.22 to 3319.31 of the Revised Code, except that a community school may engage noncertificated persons to teach up to twelve hours per week pursuant to section 3319.301 of the Revised Code.	169 170 171 172 173 174
(11) That the school will comply with the following requirements:	175 176
(a) The school will provide learning opportunities to a minimum of twenty-five students for a minimum of nine hundred twenty hours per school year.	177 178 179
(b) The governing authority will purchase liability insurance, or otherwise provide for the potential liability of the school.	180 181 182
(c) The school will be nonsectarian in its programs, admission policies, employment practices, and all other operations, and will not be operated by a sectarian school or religious institution.	183 184 185 186
(d) The school will comply with sections 9.90, 9.91,	187

109.65, 121.22, 149.43, 2151.357, 2151.421, 2313.19, 3301.0710,	188
3301.0711, 3301.0712, 3301.0715, 3301.0729, <u>3301.943</u> , 3301.948,	189
3313.472, 3313.50, 3313.536, 3313.539, 3313.5310, 3313.608,	190
3313.609, 3313.6012, 3313.6013, 3313.6014, 3313.6015, 3313.6020,	191
3313.643, 3313.648, 3313.6411, 3313.66, 3313.661, 3313.662,	192
3313.666, 3313.667, 3313.668, 3313.67, 3313.671, 3313.672,	193
3313.673, 3313.69, 3313.71, 3313.716, 3313.718, 3313.719,	194
3313.7112, 3313.721, 3313.80, 3313.814, 3313.816, 3313.817,	195
3313.86, 3313.89, 3313.96, 3319.073, 3319.074, 3319.321,	196
3319.39, 3319.391, 3319.41, 3319.46, 3321.01, 3321.041, 3321.13,	197
3321.14, 3321.141, 3321.17, 3321.18, 3321.19, 3321.191, 3327.10,	198
4111.17, 4113.52, and 5705.391 and Chapters 117., 1347., 2744.,	199
3365., 3742., 4112., 4123., 4141., and 4167. of the Revised Code	200
as if it were a school district and will comply with section	201
3301.0714 of the Revised Code in the manner specified in section	202
3314.17 of the Revised Code.	203
(e) The school shall comply with Chapter 102. and section	204
2921.42 of the Revised Code.	205
(f) The school will comply with sections 3313.61,	206
3313.611, and 3313.614 of the Revised Code, except that for	207
students who enter ninth grade for the first time before July 1,	208
2010, the requirement in sections 3313.61 and 3313.611 of the	209
Revised Code that a person must successfully complete the	210
curriculum in any high school prior to receiving a high school	211
diploma may be met by completing the curriculum adopted by the	212
governing authority of the community school rather than the	213
curriculum specified in Title XXXIII of the Revised Code or any	214
rules of the state board of education. Beginning with students	215
who enter ninth grade for the first time on or after July 1,	216
2010, the requirement in sections 3313.61 and 3313.611 of the	217
Revised Code that a person must successfully complete the	218

curriculum of a high school prior to receiving a high school 219
diploma shall be met by completing the requirements prescribed 220
in division (C) of section 3313.603 of the Revised Code, unless 221
the person qualifies under division (D) or (F) of that section. 222
Each school shall comply with the plan for awarding high school 223
credit based on demonstration of subject area competency, and 224
beginning with the 2017-2018 school year, with the updated plan 225
that permits students enrolled in seventh and eighth grade to 226
meet curriculum requirements based on subject area competency 227
adopted by the state board of education under divisions (J) (1) 228
and (2) of section 3313.603 of the Revised Code. Beginning with 229
the 2018-2019 school year, the school shall comply with the 230
framework for granting units of high school credit to students 231
who demonstrate subject area competency through work-based 232
learning experiences, internships, or cooperative education 233
developed by the department under division (J) (3) of section 234
3313.603 of the Revised Code. 235

(g) The school governing authority will submit within four 236
months after the end of each school year a report of its 237
activities and progress in meeting the goals and standards of 238
divisions (A) (3) and (4) of this section and its financial 239
status to the sponsor and the parents of all students enrolled 240
in the school. 241

(h) The school, unless it is an internet- or computer- 242
based community school, will comply with section 3313.801 of the 243
Revised Code as if it were a school district. 244

(i) If the school is the recipient of moneys from a grant 245
awarded under the federal race to the top program, Division (A), 246
Title XIV, Sections 14005 and 14006 of the "American Recovery 247
and Reinvestment Act of 2009," Pub. L. No. 111-5, 123 Stat. 115, 248

the school will pay teachers based upon performance in 249
accordance with section 3317.141 and will comply with section 250
3319.111 of the Revised Code as if it were a school district. 251

(j) If the school operates a preschool program that is 252
licensed by the department of education under sections 3301.52 253
to 3301.59 of the Revised Code, the school shall comply with 254
sections 3301.50 to 3301.59 of the Revised Code and the minimum 255
standards for preschool programs prescribed in rules adopted by 256
the state board under section 3301.53 of the Revised Code. 257

(k) The school will comply with sections 3313.6021 and 258
3313.6023 of the Revised Code as if it were a school district 259
unless it is either of the following: 260

(i) An internet- or computer-based community school; 261

(ii) A community school in which a majority of the 262
enrolled students are children with disabilities as described in 263
division (A) (4) (b) of section 3314.35 of the Revised Code. 264

(12) Arrangements for providing health and other benefits 265
to employees; 266

(13) The length of the contract, which shall begin at the 267
beginning of an academic year. No contract shall exceed five 268
years unless such contract has been renewed pursuant to division 269
(E) of this section. 270

(14) The governing authority of the school, which shall be 271
responsible for carrying out the provisions of the contract; 272

(15) A financial plan detailing an estimated school budget 273
for each year of the period of the contract and specifying the 274
total estimated per pupil expenditure amount for each such year. 275

(16) Requirements and procedures regarding the disposition 276

of employees of the school in the event the contract is 277
terminated or not renewed pursuant to section 3314.07 of the 278
Revised Code; 279

(17) Whether the school is to be created by converting all 280
or part of an existing public school or educational service 281
center building or is to be a new start-up school, and if it is 282
a converted public school or service center building, 283
specification of any duties or responsibilities of an employer 284
that the board of education or service center governing board 285
that operated the school or building before conversion is 286
delegating to the governing authority of the community school 287
with respect to all or any specified group of employees provided 288
the delegation is not prohibited by a collective bargaining 289
agreement applicable to such employees; 290

(18) Provisions establishing procedures for resolving 291
disputes or differences of opinion between the sponsor and the 292
governing authority of the community school; 293

(19) A provision requiring the governing authority to 294
adopt a policy regarding the admission of students who reside 295
outside the district in which the school is located. That policy 296
shall comply with the admissions procedures specified in 297
sections 3314.06 and 3314.061 of the Revised Code and, at the 298
sole discretion of the authority, shall do one of the following: 299

(a) Prohibit the enrollment of students who reside outside 300
the district in which the school is located; 301

(b) Permit the enrollment of students who reside in 302
districts adjacent to the district in which the school is 303
located; 304

(c) Permit the enrollment of students who reside in any 305

other district in the state.	306
(20) A provision recognizing the authority of the	307
department of education to take over the sponsorship of the	308
school in accordance with the provisions of division (C) of	309
section 3314.015 of the Revised Code;	310
(21) A provision recognizing the sponsor's authority to	311
assume the operation of a school under the conditions specified	312
in division (B) of section 3314.073 of the Revised Code;	313
(22) A provision recognizing both of the following:	314
(a) The authority of public health and safety officials to	315
inspect the facilities of the school and to order the facilities	316
closed if those officials find that the facilities are not in	317
compliance with health and safety laws and regulations;	318
(b) The authority of the department of education as the	319
community school oversight body to suspend the operation of the	320
school under section 3314.072 of the Revised Code if the	321
department has evidence of conditions or violations of law at	322
the school that pose an imminent danger to the health and safety	323
of the school's students and employees and the sponsor refuses	324
to take such action.	325
(23) A description of the learning opportunities that will	326
be offered to students including both classroom-based and non-	327
classroom-based learning opportunities that is in compliance	328
with criteria for student participation established by the	329
department under division (H) (2) of section 3314.08 of the	330
Revised Code;	331
(24) The school will comply with sections 3302.04 and	332
3302.041 of the Revised Code, except that any action required to	333
be taken by a school district pursuant to those sections shall	334

be taken by the sponsor of the school. However, the sponsor 335
shall not be required to take any action described in division 336
(F) of section 3302.04 of the Revised Code. 337

(25) Beginning in the 2006-2007 school year, the school 338
will open for operation not later than the thirtieth day of 339
September each school year, unless the mission of the school as 340
specified under division (A) (2) of this section is solely to 341
serve dropouts. In its initial year of operation, if the school 342
fails to open by the thirtieth day of September, or within one 343
year after the adoption of the contract pursuant to division (D) 344
of section 3314.02 of the Revised Code if the mission of the 345
school is solely to serve dropouts, the contract shall be void. 346

(26) Whether the school's governing authority is planning 347
to seek designation for the school as a STEM school equivalent 348
under section 3326.032 of the Revised Code; 349

(27) That the school's attendance and participation 350
policies will be available for public inspection; 351

(28) That the school's attendance and participation 352
records shall be made available to the department of education, 353
auditor of state, and school's sponsor to the extent permitted 354
under and in accordance with the "Family Educational Rights and 355
Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. 1232g, as amended, 356
and any regulations promulgated under that act, and section 357
3319.321 of the Revised Code; 358

(29) If a school operates using the blended learning 359
model, as defined in section 3301.079 of the Revised Code, all 360
of the following information: 361

(a) An indication of what blended learning model or models 362
will be used; 363

(b) A description of how student instructional needs will be determined and documented;	364 365
(c) The method to be used for determining competency, granting credit, and promoting students to a higher grade level;	366 367
(d) The school's attendance requirements, including how the school will document participation in learning opportunities;	368 369 370
(e) A statement describing how student progress will be monitored;	371 372
(f) A statement describing how private student data will be protected;	373 374
(g) A description of the professional development activities that will be offered to teachers.	375 376
(30) A provision requiring that all moneys the school's operator loans to the school, including facilities loans or cash flow assistance, must be accounted for, documented, and bear interest at a fair market rate;	377 378 379 380
(31) A provision requiring that, if the governing authority contracts with an attorney, accountant, or entity specializing in audits, the attorney, accountant, or entity shall be independent from the operator with which the school has contracted.	381 382 383 384 385
(32) A provision requiring the governing authority to adopt an enrollment and attendance policy that requires a student's parent to notify the community school in which the student is enrolled when there is a change in the location of the parent's or student's primary residence.	386 387 388 389 390
(33) A provision requiring the governing authority to	391

adopt a student residence and address verification policy for	392
students enrolling in or attending the school.	393
(B) The community school shall also submit to the sponsor	394
a comprehensive plan for the school. The plan shall specify the	395
following:	396
(1) The process by which the governing authority of the	397
school will be selected in the future;	398
(2) The management and administration of the school;	399
(3) If the community school is a currently existing public	400
school or educational service center building, alternative	401
arrangements for current public school students who choose not	402
to attend the converted school and for teachers who choose not	403
to teach in the school or building after conversion;	404
(4) The instructional program and educational philosophy	405
of the school;	406
(5) Internal financial controls.	407
When submitting the plan under this division, the school	408
shall also submit copies of all policies and procedures	409
regarding internal financial controls adopted by the governing	410
authority of the school.	411
(C) A contract entered into under section 3314.02 of the	412
Revised Code between a sponsor and the governing authority of a	413
community school may provide for the community school governing	414
authority to make payments to the sponsor, which is hereby	415
authorized to receive such payments as set forth in the contract	416
between the governing authority and the sponsor. The total	417
amount of such payments for monitoring, oversight, and technical	418
assistance of the school shall not exceed three per cent of the	419

total amount of payments for operating expenses that the school receives from the state. 420
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(D) The contract shall specify the duties of the sponsor which shall be in accordance with the written agreement entered into with the department of education under division (B) of section 3314.015 of the Revised Code and shall include the following: 422
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(1) Monitor the community school's compliance with all laws applicable to the school and with the terms of the contract; 427
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(2) Monitor and evaluate the academic and fiscal performance and the organization and operation of the community school on at least an annual basis; 430
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(3) Report on an annual basis the results of the evaluation conducted under division (D) (2) of this section to the department of education and to the parents of students enrolled in the community school; 433
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(4) Provide technical assistance to the community school in complying with laws applicable to the school and terms of the contract; 437
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(5) Take steps to intervene in the school's operation to correct problems in the school's overall performance, declare the school to be on probationary status pursuant to section 3314.073 of the Revised Code, suspend the operation of the school pursuant to section 3314.072 of the Revised Code, or terminate the contract of the school pursuant to section 3314.07 of the Revised Code as determined necessary by the sponsor; 440
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(6) Have in place a plan of action to be undertaken in the event the community school experiences financial difficulties or 447
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closes prior to the end of a school year. 449

(E) Upon the expiration of a contract entered into under 450
this section, the sponsor of a community school may, with the 451
approval of the governing authority of the school, renew that 452
contract for a period of time determined by the sponsor, but not 453
ending earlier than the end of any school year, if the sponsor 454
finds that the school's compliance with applicable laws and 455
terms of the contract and the school's progress in meeting the 456
academic goals prescribed in the contract have been 457
satisfactory. Any contract that is renewed under this division 458
remains subject to the provisions of sections 3314.07, 3314.072, 459
and 3314.073 of the Revised Code. 460

(F) If a community school fails to open for operation 461
within one year after the contract entered into under this 462
section is adopted pursuant to division (D) of section 3314.02 463
of the Revised Code or permanently closes prior to the 464
expiration of the contract, the contract shall be void and the 465
school shall not enter into a contract with any other sponsor. A 466
school shall not be considered permanently closed because the 467
operations of the school have been suspended pursuant to section 468
3314.072 of the Revised Code. 469

Sec. 3326.11. Each science, technology, engineering, and 470
mathematics school established under this chapter and its 471
governing body shall comply with sections 9.90, 9.91, 109.65, 472
121.22, 149.43, 2151.357, 2151.421, 2313.19, 2921.42, 2921.43, 473
3301.0714, 3301.0715, 3301.0729, 3301.943, 3301.948, 3313.14, 474
3313.15, 3313.16, 3313.18, 3313.201, 3313.26, 3313.472, 3313.48, 475
3313.481, 3313.482, 3313.50, 3313.536, 3313.539, 3313.5310, 476
3313.608, 3313.6012, 3313.6013, 3313.6014, 3313.6015, 3313.6020, 477
3313.6021, 3313.61, 3313.611, 3313.614, 3313.615, 3313.643, 478

3313.648, 3313.6411, 3313.66, 3313.661, 3313.662, 3313.666, 479
3313.667, 3313.668, 3313.67, 3313.671, 3313.672, 3313.673, 480
3313.69, 3313.71, 3313.716, 3313.718, 3313.719, 3313.7112, 481
3313.721, 3313.80, 3313.801, 3313.814, 3313.816, 3313.817, 482
3313.86, 3313.89, 3313.96, 3319.073, 3319.21, 3319.32, 3319.321, 483
3319.35, 3319.39, 3319.391, 3319.41, 3319.45, 3319.46, 3321.01, 484
3321.041, 3321.05, 3321.13, 3321.14, 3321.141, 3321.17, 3321.18, 485
3321.19, 3321.191, 3327.10, 4111.17, 4113.52, and 5705.391 and 486
Chapters 102., 117., 1347., 2744., 3307., 3309., 3365., 3742., 487
4112., 4123., 4141., and 4167. of the Revised Code as if it were 488
a school district. 489

Sec. 3328.24. A college-preparatory boarding school 490
established under this chapter and its board of trustees shall 491
comply with sections 102.02, 3301.0710, 3301.0711, 3301.0712, 492
3301.0714, 3301.0729, 3301.943, 3301.948, 3313.536, 3313.6013, 493
3313.6021, 3313.6411, 3313.7112, 3313.721, 3313.89, 3319.39, 494
3319.391, and 3319.46 and Chapter 3365. of the Revised Code as 495
if the school were a school district and the school's board of 496
trustees were a district board of education. 497

Section 2. That existing sections 3314.03, 3326.11, and 498
3328.24 of the Revised Code are hereby repealed. 499

Section 3. Section 3328.24 of the Revised Code is 500
presented in this act as a composite of the section as amended 501
by both Am. Sub. H.B. 410 and Sub. S.B. 3 of the 131st General 502
Assembly. The General Assembly, applying the principle stated in 503
division (B) of section 1.52 of the Revised Code that amendments 504
are to be harmonized if reasonably capable of simultaneous 505
operation, finds that the composite is the resulting version of 506
the section in effect prior to the effective date of the section 507
as presented in this act. 508