

# Changes to Ohio School District Treasurer Liability and to Teacher Payment Procedures on March 20

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Effective March 20, 2019, Ohio school treasurers will no longer be subject to strict liability for a loss of public funds.

Ohio HB 491 changes the circumstances under which school treasurers are liable for a loss of public funds and under which such loss may be considered a violation of a treasurer's professional duties. It also modifies procedures that schools, including superintendents and treasurers, must follow to pay teachers.

## What Is Strict Liability?

Currently, school treasurers are subject to strict liability, with very limited exceptions. This means that treasurers generally are liable for a loss of their schools' public funds, regardless of the reason for the loss. As an example, treasurers have been held liable for payments to improperly licensed personnel even when they have no authority in hiring and are not required to verify the accuracy of nonfinancial information, such as employee licensure.

## What Changes to Liability Does HB 491 Make?

As a result of HB 491, a school treasurer will no longer be strictly liable for a loss of public funds, but instead will be liable when the loss results from the treasurer's negligence or other wrongdoing. The law makes this change generally and, more specifically, with respect to losses resulting from reliance on nonfinancial information or data, and from any teacher payments that comply with specified procedures. A school superintendent similarly will not be liable for losses resulting from any teacher payments that comply with specified procedures.

## Treasurer Liability – In General

Under the revised law, a school treasurer will not be liable for a loss of public funds when the treasurer performs all required official duties with reasonable care, and instead will be liable only when the loss results from the treasurer's negligence or other wrongful act. In addition, the Ohio Department of Education will not consider the loss to be a violation of the treasurer's professional duties, provided the loss does not result from the treasurer's negligence or other wrongful act and the treasurer has performed all required official duties with reasonable care.

## Treasurer Liability – Reliance on Nonfinancial Information or Data

The revised law clarifies that a school treasurer will not be liable for a loss of public funds resulting from a treasurer's reliance on the accuracy of a school district's nonfinancial information or data, including reports under the education management information system, pupil transportation reports, and licensure or other credentialing information, unless the loss results from the treasurer's negligence or other wrongful act.

## Treasurer and Superintendent Liability – Teacher Payments

Under the revised law, a school treasurer and superintendent will not be liable for a loss of public funds for any teacher payments that comply with specified procedures, unless the loss results from the treasurer's or superintendent's negligence or other wrongful act.

## What Changes to Teacher Payment Procedures Does HB 491 Make?

Ohio law currently requires a teacher to file with the treasurer certain reports and a written statement from the superintendent that the teacher has filed with the treasurer a legal license to teach the subjects or grades taught. Effective March 20, 2019, prior to paying a teacher for services: (1) the treasurer must receive a written statement from the superintendent (or designee) that the teacher has filed with the superintendent (or designee) all reports required by the Ohio Department of Education, the school district, and the superintendent, and (2) the treasurer must receive a written statement from the superintendent (or designee) that the teacher has filed with the superintendent (or designee) a legal license (or copy) to teach the subjects or grades taught and the dates of its validity. Current exceptions will remain in place – e.g., with respect to: certain teachers with permits, teachers during the initial two months of employment when certain requirements are met, substitute teachers conditionally employed in accordance with law, and substitute educational assistants employed in accordance with law.

## What Does This Mean for Schools?

In light of these new liability standards, school treasurers should continue to perform all required official duties with reasonable care.

These changes to treasurer liability generally mean that a loss of public funds may not be recoverable from a treasurer unless the loss resulted from the treasurer's negligence or other wrongful act. Districts should consider how to recover and/or account for such losses, including whether any such losses are covered by insurance.

Districts should reevaluate any pending proceedings since the new liability standards will apply effective March 20, 2019, including to pending proceedings (including "any pending proceeding, investigation, or citation involving a school treasurer" that has not reached final adjudication).

Prior to March 20, 2019, schools – and specifically superintendents and treasurers – should review and implement the required teacher payment procedures, including by doing the following:

- Superintendents should designate the individual with whom teachers are required to file required reports and licenses, if this is someone other than the superintendent
- Superintendents and treasurers should implement a procedure for the superintendent (or designee) to submit the required written statements to the treasurer
- Superintendents and treasurers should review procedures for addressing times of change (e.g., when teachers change subjects or grades taught, when a teacher's licenses expire, when teachers leave employment, etc.)

Prior to March 20, 2019, schools should confirm these teacher payment requirements have been satisfied with respect to current teachers and, if not, take steps to satisfy these requirements.

One approach may be for a superintendent to provide a written statement to the treasurer confirming that, prior to March 20, 2019, all teachers who are currently employed with the district filed the required reports and copies of their legal licenses, with dates of validity, with the treasurer (or else name any other individual with whom those items were filed instead).

Even though treasurers may have on file some of the required written statements (as set forth in current law), providing a blanket statement may provide some protection in the event that a district has not regularly provided such statements in the past, and may provide a bridge between the current requirements and the requirements taking effect on March 20, 2019.

To the extent that a district has not followed the prior legal requirements, or if a district has any question regarding whether its teachers have filed the required reports or licenses, it is recommended that the district conduct an internal audit of these items and document, through the required written statements, that these required filings have occurred.

With respect to shared teacher services, since Ohio law prohibits the compensation of teachers who are not properly licensed for their positions, districts should continue to verify the licensure of such teachers.

If you have questions or concerns about treasurer liability or the required procedures for teacher payments, reach out to your legal counsel to discuss.

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