

(126th General Assembly)
(Amended Substitute House Bill Number 690)

AN ACT

To amend sections 4111.01, 4111.02, 4111.03, 4111.04, 4111.08, 4111.09, and 4111.10 and to enact section 4111.14 of the Revised Code to implement Section 34a, Article II, of the Constitution of the State of Ohio and to further amend section 4111.08 of the Revised Code on January 1, 2010, to apply certain record-keeping provisions only to employers subject to Ohio's overtime law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4111.01, 4111.02, 4111.03, 4111.04, 4111.08, 4111.09, and 4111.10 be amended and section 4111.14 of the Revised Code be enacted to read as follows:

Sec. 4111.01. As used in ~~sections 4111.01 to 4111.17 of the Revised Code this chapter~~:

(A) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the deductions, charges, or allowances permitted by rules of the director of commerce under section 4111.05 of the Revised Code. "Wage" includes an employee's commissions of which the employee's employer keeps a record, but does not include gratuities, except as provided by rules issued under section 4111.05 of the Revised Code.

"Wage" also includes the reasonable cost to the employer of furnishing to an employee board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to the employer's employees. The cost of board, lodging, or other facilities shall not be included as part of wage to the extent excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the employee.

(B) "~~Employ~~" means ~~to suffer or to permit to work~~.

(C) "~~Employer~~" means ~~the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership,~~

~~association, corporation, business trust, or any person or group of persons, acting in the interest of an employer in relation to an employee, but does not include an employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated.~~

~~(D) "Employee" means any individual employed by an employer but does not include:~~

~~(1) Any individual employed by the United States;~~

~~(2) Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;~~

~~(3) Any individual engaged in the delivery of newspapers to the consumer;~~

~~(4) Any individual employed as an outside salesperson compensated by commissions or in a bona-fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended;~~

~~(5) Any employee employed in agriculture if the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred worker-days of agricultural labor, or if the employee is the parent, spouse, child, or other member of the employer's immediate family;~~

~~(6) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;~~

~~(7) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state;~~

~~(8) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in Section 501 (c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under Section 501(a) of that code;~~

~~(9) Any individual employed directly by the house of representatives or directly by the senate.~~

~~(E) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which individuals are employed.~~

~~Sec. 4111.02. (A) Every employer and employers with less than one hundred fifty thousand dollars gross annual sales, as defined in Section 34a of Article II, Ohio Constitution, shall pay each of the employer's employees~~

at a wage rate of not less than the wage rate specified in the "Fair Labor Standards Act," 29 U.S.C. 206, as now or hereafter amended, beginning on the effective date of this amendment, except as otherwise provided in this section Section 34a of Article II, Ohio Constitution.

(B) Every employer shall pay each employee in agriculture at a wage rate not less than the wage rate described in division (A) of this section. This provision does not apply to any employee employed in agriculture if the employee: (1)(a) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (b) commutes daily from the employee's permanent residence to the farm on which the employee is so employed, and (c) has been employed in agriculture less than thirteen weeks during the preceding calendar year, or (2)(a) is sixteen years of age or under, is employed as a hand harvest laborer, and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece rate basis in the region of employment, (b) is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and (c) is paid at the same piece rate as employees over age sixteen are paid on the same farm. Such employees shall be paid no less than two dollars and eighty cents per hour.

(C) For any employee engaged in an occupation in which the employee customarily and regularly receives tips from patrons or others, the employer shall pay The director of commerce annually shall adjust the wage rate as specified for tipped employees in the "Fair Labor Standards Act," 29 U.S.C. 203, as now or hereafter amended in Section 34a of Article II, Ohio Constitution.

As used in this section, "employee" has the same meaning as in section 4111.14 of the Revised Code.

Sec. 4111.03. (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended.

Any employee employed in agriculture shall not be covered by the overtime provision of this section.

(B) For the purposes of this section, the number of hours worked by a county employee in any one workweek shall be deemed to include, in addition to hours actually worked, all periods in an active pay status.

(C) If a county employee elects to take compensatory time off in lieu of overtime pay, for any overtime worked, such compensatory time may be granted by the employee's administrative superior, on a time and one-half basis, at a time mutually convenient to the employee and the administrative superior within one hundred eighty days after the overtime is worked.

(D) A county appointing authority with the exception of the county department of job and family services may, by rule or resolution as is appropriate, indicate the authority's intention not to be bound by division (B) or (C) of this section, and to adopt a different policy for the calculation and payment of overtime that is embodied in those divisions. Upon adoption, the alternative policy prevails. Prior to the adoption of an alternative overtime policy, the county appointing authority with the exception of the county department of job and family services shall give a written notice of the alternative policy to each employee at least ten days prior to the effective date of the policy.

(E) As used in this section:

(1) "Employ" means to suffer or to permit to work.

(2) "Employer" means the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership, association, corporation, business trust, or any person or group of persons, acting in the interest of an employer in relation to an employee, but does not include an employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated.

(3) "Employee" means any individual employed by an employer but does not include:

(a) Any individual employed by the United States;

(b) Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;

(c) Any individual engaged in the delivery of newspapers to the consumer;

(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended;

(e) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;

(f) A member of a police or fire protection agency or student employed

on a part-time or seasonal basis by a political subdivision of this state;

(g) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in Section 501 (c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under Section 501 (a) of that code;

(h) Any individual employed directly by the house of representatives or directly by the senate.

Sec. 4111.04. The director of commerce may:

(A) Investigate and ascertain the wages of persons employed in any occupation in the state;

(B) Enter and inspect the place of business or employment of any employer for the purpose of inspecting any books, registers, payrolls, or other records of the employer that in any way relate to the question of wages, hours, and other conditions of employment of any employees, and may question the employees for the purpose of ascertaining whether sections 4111.01 to 4111.17 of the Revised Code, and the rules adopted thereunder, have been and are being obeyed. In conducting an inspection of the records of an employer, the director shall make every effort to coordinate the inspection with those conducted by the federal agency responsible for enforcement of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended. If the federal agency has completed an audit or examination of the employer's records within the sixty days prior to the date the director notifies the employer of the director's intent to examine the employer's records, the director shall accept in lieu of the director's own inspection, a report from the federal agency that the employer is in compliance with the federal act, unless the director has reasonable grounds for believing that the report is inaccurate or incomplete for the purposes of sections 4111.01 to 4111.13 of the Revised Code, or that events occurring since the audit give the director reasonable grounds for believing that a violation of sections 4111.01 to 4111.13 of the Revised Code has occurred.

(C) In the event the director is prohibited by any employer from carrying out the intent of this section, the director may apply to any court of common pleas having jurisdiction of that employer or the place of employment under issue subpoenas and compel attendance of witnesses and production of papers, books, accounts, payrolls, documents, records, and testimony relating and relevant to the director's investigation; for an order directing compliance with this section. Failure of the employer to obey the order of the court may be punished by said court as a contempt thereof.

Sec. 4111.08. Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rule adopted thereunder, shall make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee, and other information as the director of commerce prescribes by rule as necessary or appropriate for the enforcement of sections 4111.01 to 4111.17 of the Revised Code, or of the rules thereunder. Records may be opened for inspection or copying by the director at any reasonable time. Any records an employer creates on or before December 31, 2006, shall be created and maintained in accordance with this section.

Sec. 4111.09. Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. The director of commerce shall make the summary described in this section available on the web site of the department of commerce. The director shall update this summary as necessary, but not less than annually, in order to reflect changes in the minimum wage rate as required under Section 34a of Article II, Ohio Constitution. Employees and employers shall be furnished copies of the summaries and rules by the state, on request, without charge.

Sec. 4111.10. (A) Any employer who pays any employee less than wages to which the employee is entitled under ~~sections 4111.01 to 4111.17~~ section 4111.03 of the Revised Code, is liable to the employee affected for the full amount of the overtime wage rate, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees as may be allowed by the court. Any agreement between the employee and the employer to work for less than the overtime wage rate is no defense to an action.

(B) At the written request of any employee paid less than the wages to which the employee is entitled under ~~sections 4111.01 to 4111.17~~ section 4111.03 of the Revised Code, the director of commerce may take an assignment of a wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. The employer shall pay the costs and reasonable attorney's fees allowed by the court.

Sec. 4111.14. (A) Pursuant to the general assembly's authority to establish a minimum wage under Section 34 of Article II, Ohio Constitution,

this section is in implementation of Section 34a of Article II, Ohio Constitution. In implementing Section 34a of Article II, Ohio Constitution, the general assembly hereby finds that the purpose of Section 34a of Article II, Ohio Constitution is to:

(1) Ensure that Ohio employees, as defined in division (B)(1) of this section, are paid the wage rate required by Section 34a of Article II, Ohio Constitution;

(2) Ensure that covered Ohio employers maintain certain records that are directly related to the enforcement of the wage rate requirements in Section 34a of Article II, Ohio Constitution;

(3) Ensure that Ohio employees who are paid the wage rate required by Section 34a of Article II, Ohio Constitution may enforce their right to receive that wage rate in the manner set forth in Section 34a of Article II, Ohio Constitution; and

(4) Protect the privacy of Ohio employees' pay and personal information specified in Section 34a of Article II, Ohio Constitution by restricting an employee's access, and access by a person acting on behalf of that employee, to the employee's own pay and personal information.

(B) In accordance with Section 34a of Article II, Ohio Constitution, the terms "employer," "employee," "employ," "person," and "independent contractor" have the same meanings as in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 203, as amended. In construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:

(1) "Employee" means individuals employed in Ohio, but does not mean individuals who are excluded from the definition of "employee" under 29 U.S.C. 203(e) or individuals who are exempted from the minimum wage requirements in 29 U.S.C. 213 and from the definition of "employee" in this chapter.

(2) "Employ" and "employee" do not include any person acting as a volunteer. In construing who is a volunteer, "volunteer" shall have the same meaning as in sections 553.101 to 553.106 of Title 29 of the Code of Federal Regulations, as amended, and due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of the term "volunteer" under the Fair Labor Standards Act and its regulations.

(C) In accordance with Section 34a of Article II, Ohio Constitution, the state may issue licenses to employers authorizing payment of a wage below

that required by Section 34a of Article II, Ohio Constitution to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment. In issuing such licenses, the state shall abide by the rules adopted pursuant to section 4111.06 of the Revised Code.

(D)(1) In accordance with Section 34a of Article II, Ohio Constitution, individuals employed in or about the property of an employer or an individual's residence on a casual basis are not included within the coverage of Section 34a of Article II, Ohio Constitution. As used in division (D) of this section:

(a) "Casual basis" means employment that is irregular or intermittent and that is not performed by an individual whose vocation is to be employed in or about the property of the employer or individual's residence. In construing who is employed on a "casual basis," due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of the term "casual basis" under the Fair Labor Standards Act and its regulations.

(b) "An individual employed in or about the property of an employer or individual's residence" means an individual employed on a casual basis or an individual employed in or about a residence on a casual basis, respectively.

(2) In accordance with Section 34a of Article II, Ohio Constitution, employees of a solely family-owned and operated business who are family members of an owner are not included within the coverage of Section 34a of Article II, Ohio Constitution. As used in division (D)(2) of this section, "family member" means a parent, spouse, child, stepchild, sibling, grandparent, grandchild, or other member of an owner's immediate family.

(E) In accordance with Section 34a of Article II, Ohio Constitution, an employer shall at the time of hire provide an employee with the employer's name, address, telephone number, and other contact information and update such information when it changes. As used in division (E) of this section:

(1) "Other contact information" may include, where applicable, the address of the employer's internet site on the world wide web, the employer's electronic mail address, fax number, or the name, address, and telephone number of the employer's statutory agent. "Other contact information" does not include the name, address, telephone number, fax number, internet site address, or electronic mail address of any employee, shareholder, officer, director, supervisor, manager, or other individual employed by or associated with an employer.

(2) "When it changes" means that the employer shall provide its employees with the change in its name, address, telephone number, or other

contact information within sixty business days after the change occurs. The employer shall provide the changed information by using any of its usual methods of communicating with its employees, including, but not limited to, listing the change on the employer's internet site on the world wide web, internal computer network, or a bulletin board where it commonly posts employee communications or by insertion or inclusion with employees' paychecks or pay stubs.

(F) In accordance with Section 34a of Article II, Ohio Constitution, an employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee for a period of not less than three years following the last date the employee was employed by that employer. As used in division (F) of this section:

(1) "Address" means an employee's home address as maintained in the employer's personnel file or personnel database for that employee.

(2)(a) With respect to employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's base rate of pay.

(b) With respect to employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's annual base salary or other rate of pay by which the particular employee qualifies for that exemption under the Fair Labor Standards Act or this chapter, but does not include bonuses, stock options, incentives, deferred compensation, or any other similar form of compensation.

(3) "Record" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee in one or more documents, databases, or other paper or electronic forms of record-keeping maintained by an employer. No one particular method or form of maintaining such a record or records is required under this division. An employer is not required to create or maintain a single record containing only the employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee. An employer shall maintain a record or records from which the employee or person acting on behalf of that employee could reasonably review the information requested by the employee or person.

An employer is not required to maintain the records specified in division (F)(3) of this section for any period before January 1, 2007. On and after January 1, 2007, the employer shall maintain the records required by division (F)(3) of this section for three years from the date the hours were worked by the employee and for three years after the date the employee's

employment ends.

(4)(a) Except for individuals specified in division (F)(4)(b) of this section, "hours worked for each day worked" means the total amount of time worked by an employee in whatever increments the employer uses for its payroll purposes during a day worked by the employee. An employer is not required to keep a record of the time of day an employee begins and ends work on any given day. As used in division (F)(4) of this section, "day" means a fixed period of twenty-four consecutive hours during which an employee performs work for an employer.

(b) An employer is not required to keep records of "hours worked for each day worked" for individuals for whom the employer is not required to keep those records under the Fair Labor Standards Act and its regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code.

(5) "Each amount paid an employee" means the total gross wages paid to an employee for each pay period. As used in division (F)(5) of this section, "pay period" means the period of time designated by an employer to pay an employee the employee's gross wages in accordance with the employer's payroll practices under section 4113.15 of the Revised Code.

(G) In accordance with Section 34a of Article II, Ohio Constitution, an employer must provide such information without charge to an employee or person acting on behalf of an employee upon request. As used in division (G) of this section:

(1) "Such information" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid for the specific employee who has requested that specific employee's own information and does not include the name, address, occupation, pay rate, hours worked for each day worked, or each amount paid of any other employee of the employer. "Such information" does not include hours worked for each day worked by individuals for whom an employer is not required to keep that information under the Fair Labor Standards Act and its regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code.

(2) "Acting on behalf of an employee" means a person acting on behalf of an employee as any of the following:

(a) The certified or legally recognized collective bargaining representative for that employee under the applicable federal law or Chapter 4117. of the Revised Code;

(b) The employee's attorney;

(c) The employee's parent, guardian, or legal custodian.

A person "acting on behalf of an employee" must be specifically authorized by an employee in order to make a request for that employee's own name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to that employee.

(3) "Provide" means that an employer shall provide the requested information within thirty business days after the date the employer receives the request, unless either of the following occurs:

(a) The employer and the employee or person acting on behalf of the employee agree to some alternative time period for providing the information.

(b) The thirty-day period would cause a hardship on the employer under the circumstances, in which case the employer must provide the requested information as soon as practicable.

(4) A "request" made by an employee or a person acting on behalf of an employee means a request by an employee or a person acting on behalf of an employee for the employee's own information. The employer may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested. The employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested.

(H) In accordance with Section 34a of Article II, Ohio Constitution, an employee, person acting on behalf of one or more employees, and any other interested party may file a complaint with the state for a violation of any provision of Section 34a of Article II, Ohio Constitution or any law or regulation implementing its provisions. Such complaint shall be promptly investigated and resolved by the state. The employee's name shall be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. As used in division (H) of this section:

(1) "Complaint" means a complaint of an alleged violation pertaining to harm suffered by the employee filing the complaint, by a person acting on behalf of one or more employees, or by an interested party.

(2) "Acting on behalf of one or more employees" has the same meaning as "acting on behalf of an employee" in division (G)(2) of this section. Each employee must provide a separate written and notarized authorization before the person acting on that employee's or those employees' behalf may request the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid for the particular employee.

(3) "Interested party" means a party who alleges to be injured by the alleged violation and who has standing to file a complaint under common law principles of standing.

(4) "Resolved by the state" means that the complaint has been resolved to the satisfaction of the state.

(5) "Shall be kept confidential" means that the state shall keep the name of the employee confidential as required by division (H) of this section.

(I) In accordance with Section 34a of Article II, Ohio Constitution, the state may on its own initiative investigate an employer's compliance with Section 34a of Article II, Ohio Constitution and any law or regulation implementing Section 34a of Article II, Ohio Constitution. The employer shall make available to the state any records related to such investigation and other information required for enforcement of Section 34a of Article II, Ohio Constitution or any law or regulation implementing Section 34a of Article II, Ohio Constitution. The state shall investigate an employer's compliance with this section in accordance with the procedures described in section 4111.04 of the Revised Code. All records and information related to investigations by the state are confidential and are not a public record subject to section 149.43 of the Revised Code. This division does not prevent the state from releasing to or exchanging with other state and federal wage and hour regulatory authorities information related to investigations.

(J) In accordance with Section 34a of Article II, Ohio Constitution, damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. The "not less than one hundred fifty dollar" penalty specified in division (J) of this section shall be imposed only for violations of the anti-retaliation provision in Section 34a of Article II, Ohio Constitution.

(K) In accordance with Section 34a of Article II, Ohio Constitution, an action for equitable and monetary relief may be brought against an employer by the attorney general and/or an employee or person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction, including the court of common pleas of an employee's county of residence, for any violation of Section 34a of Article II, Ohio Constitution or any law or regulation implementing its provisions within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation.

whichever is later.

(1) As used in division (K) of this section, "notification" means the date on which the notice was sent to the employee by the state.

(2) No employee shall join as a party plaintiff in any civil action that is brought under division (K) of this section by an employee, person acting on behalf of an employee, or person acting on behalf of all similarly situated employees unless that employee first gives written consent to become such a party plaintiff and that consent is filed with the court in which the action is brought.

(3) A civil action regarding an alleged violation of this section shall be maintained only under division (K) of this section. This division does not preclude the joinder in a single civil action of an action under this division and an action under section 4111.10 of the Revised Code.

(4) Any agreement between an employee and employer to work for less than the wage rate specified in Section 34a of Article II, Ohio Constitution, is no defense to an action under this section.

(L) In accordance with Section 34a of Article II, Ohio Constitution, there shall be no exhaustion requirement, no procedural, pleading, or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Nothing in division (L) of this section affects the right of an employer and employee to agree to submit a dispute under this section to alternative dispute resolution, including, but not limited to, arbitration, in lieu of maintaining the civil suit specified in division (K) of this section. Nothing in this division limits the state's ability to investigate or enforce this section.

(M) An employer who provides such information specified in Section 34a of Article II, Ohio Constitution, shall be immune from any civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing that information to an employee or person acting on behalf of an employee in response to a request by the employee or person, and the employer shall not be subject to the provisions of Chapters 1347. and 1349. of the Revised Code to the extent that such provisions would otherwise apply. As used in division (M) of this section, "such information," "acting on behalf of an employee," and "request" have the same meanings as in division (G) of this section.

(N) As used in this section, "the state" means the director of commerce.

SECTION 2. That existing sections 4111.01, 4111.02, 4111.03, 4111.04,

4111.08, 4111.09, and 4111.10 of the Revised Code are hereby repealed.

SECTION 3. That section 4111.08 of the Revised Code be amended to read as follows:

Sec. 4111.08. Every employer subject to ~~sections 4111.01 to 4111.17~~ ~~section 4111.03~~ of the Revised Code, or to any rule adopted thereunder, shall make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee, and other information as the director of commerce prescribes by rule as necessary or appropriate for the enforcement of ~~sections 4111.01 to 4111.17~~ ~~section 4111.03~~ of the Revised Code, or of the rules thereunder. Records may be opened for inspection or copying by the director at any reasonable time. ~~Any records an employer creates on or before December 31, 2006, shall be created and maintained in accordance with this section.~~

SECTION 4. That existing section 4111.08 of the Revised Code, as it results from Sections 1 and 2 of this act, is hereby repealed.

SECTION 5. Sections 3 and 4 of this act take effect January 1, 2010.

SECTION 6. (A) The General Assembly, by enacting this act, intends to implement the Ohio Fair Minimum Wage Amendment in the manner in which the proponents of the Amendment described it to Ohio voters during the campaigns for the General Election on November 7, 2006.

(B) The proponents of the Ohio Fair Minimum Wage Amendment issued campaign materials, one of which was entitled "Fact vs. Fiction: Minimum Wage Opponents Shamelessly Distort Facts to Deny Low-Wage Workers a Raise," published by Ohioans for a Fair Minimum Wage, that stated all of the following upon which Ohio voters relied to be honest and accurate:

(1) The Amendment defines "employer," "employee," and "employ" as having the same meanings as under the federal Fair Labor Standards Act. Clear definitions for terms such as "employ" and "casual basis" will not necessitate litigation to clarify their meanings because those terms have

been established by federal regulations, well settled case law, or both.

(2) By referencing the federal minimum wage law directly, the Amendment ensures that the Ohio law tracks the federal minimum wage requirements with respect to individuals who volunteer their time.

(3) The Amendment does not threaten employees' privacy because employees may seek access only to their own payroll records.

(4) The Amendment allows an employer to take reasonable steps to verify that a person does in fact represent the employee.

(5) Employment law experts explain that state authorities in Ohio will undoubtedly interpret the parallel language in the Amendment in the same manner as the federal Department of Labor, clarifying that employers need not keep irrelevant records for non-hourly employees.

(C) The General Assembly enacts this act according to the proponents' campaign materials and pursuant to the authority vested in the General Assembly by the following constitutional provisions:

(1) Section 34a of Article II, Ohio Constitution, which states that "laws may be passed to implement its provisions. . . ."

(2) Section 34 of Article II, Ohio Constitution, which states that "laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power," which Section 34a of Article II, Ohio Constitution, made no attempt to amend, repeal, or otherwise modify.

SECTION 7. If any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the codified and uncodified sections of law contained in this act are composed, and their applications, are independent and severable.

SECTION 8. The amendment by this act of the section of law listed in this section is subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1c and section 1.471 of the Revised Code, the amendment, and the items of law of which the amendment is composed, take effect as specified in this section. If, however, a referendum petition is

filed against any such amendment, or against any item of law of which any such amendment is composed, the amendment, unless rejected at the referendum, goes into effect at the earliest time permitted by law that is on or after the effective date specified in this section.

Section 4111.08 of the Revised Code, as amended in Sections 3 and 4 of this act, takes effect January 1, 2010.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____