

As Introduced

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 690

Representative Seitz

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A B I L L

To amend sections 4111.01, 4111.02, and 4111.10, to 1
enact section 4111.14, and to repeal section 2
4111.08 of the Revised Code to implement Section 3
34a, Article II, of the Constitution of the State 4
of Ohio and to declare an emergency. 5

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

Section 1. That sections 4111.01, 4111.02, and 4111.10 be 6
amended and section 4111.14 of the Revised Code be enacted to read 7
as follows: 8

Sec. 4111.01. ~~(A)~~ As used in ~~sections 4111.01 to 4111.17 of~~ 9
~~the Revised Code~~ this chapter: 10

~~(A)~~(1) "Wage" means compensation due to an employee by reason 11
of employment, payable in legal tender of the United States or 12
checks on banks convertible into cash on demand at full face 13
value, subject to the deductions, charges, or allowances permitted 14
by rules of the director of commerce under section 4111.05 of the 15
Revised Code. "Wage" includes an employee's commissions of which 16
the employee's employer keeps a record, but does not include 17
gratuities, except as provided by rules issued under section 18
4111.05 of the Revised Code. 19

"Wage" also includes the reasonable cost to the employer of 20

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.

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(2) "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.

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(B) As used in section 4111.03 of the Revised Code:

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

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~~(C)~~(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.

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

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

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~~(2)~~(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;

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

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~~(4)~~(d) Any individual employed as an outside salesperson

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compensated by commissions or in a bona fide executive, 51
administrative, or professional capacity as such terms are defined 52
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 53
U.S.C.A. 201, as amended; 54

~~(5)(e)~~ Any employee employed in agriculture if the employee 55
is employed by an employer who did not, during any calendar 56
quarter during the preceding calendar year, use more than five 57
hundred worker-days of agricultural labor, or if the employee is 58
the parent, spouse, child, or other member of the employer's 59
immediate family; 60

~~(6)(f)~~ Any individual who works or provides personal services 61
of a charitable nature in a hospital or health institution for 62
which compensation is not sought or contemplated; 63

~~(7)(g)~~ A member of a police or fire protection agency or 64
student employed on a part-time or seasonal basis by a political 65
subdivision of this state; 66

~~(8)(h)~~ Any individual in the employ of a camp or recreational 67
area for children under eighteen years of age and owned and 68
operated by a nonprofit organization or group of organizations 69
described in Section 501 (c)(3) of the "Internal Revenue Code of 70
1954," and exempt from income tax under Section 501 (a) of that 71
code; 72

~~(9)(i)~~ Any individual employed directly by the house of 73
representatives or directly by the senate. 74

~~(E) "Occupation" means any occupation, service, trade,~~ 75
~~business, industry, or branch or group of industries or employment~~ 76
~~or class of employment in which individuals are employed.~~ 77

Sec. 4111.02. ~~(A) Every employer and employers with less than~~ 78
~~one hundred fifty thousand dollars gross annual sales, as defined~~ 79
in Section 34a of Article II, Ohio Constitution, shall pay each of 80

the employer's employees at a wage rate of not less than the wage 81
rate specified in the "~~Fair Labor Standards Act,~~" 29 U.S.C. 206, 82
~~as now or hereafter amended, beginning on the effective date of~~ 83
~~this amendment, except as otherwise provided in this section~~ 84
Section 34a of Article II, Ohio Constitution. 85

~~(B) Every employer shall pay each employee in agriculture at 86
a wage rate not less than the wage rate described in division (A) 87
of this section. This provision does not apply to any employee 88
employed in agriculture if the employee: (1)(a) is employed as a 89
hand harvest laborer and is paid on a piece rate basis in an 90
operation which has been, and is customarily and generally 91
recognized as having been, paid on a piece rate basis in the 92
region of employment, (b) commutes daily from the employee's 93
permanent residence to the farm on which the employee is so 94
employed, and (c) has been employed in agriculture less than 95
thirteen weeks during the preceding calendar year, or (2)(a) is 96
sixteen years of age or under, is employed as a hand harvest 97
laborer, and is paid on a piece rate basis in an operation which 98
has been, and is customarily and generally recognized as having 99
been paid on a piece rate basis in the region of employment, (b) 100
is employed on the same farm as the employee's parent or person 101
standing in the place of the employee's parent, and (c) is paid at 102
the same piece rate as employees over age sixteen are paid on the 103
same farm. Such employees shall be paid no less than two dollars 104
and eighty cents per hour.~~ 105

~~(C) For any employee engaged in an occupation in which the 106
employee customarily and regularly receives tips from patrons or 107
others, the employer shall pay The director of commerce annually 108
shall adjust the wage rate as specified ~~for tipped employees in~~ 109
the "~~Fair Labor Standards Act,~~" 29 U.S.C. 203, as now or hereafter 110
amended in Section 34a of Article II, Ohio Constitution. 111~~

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 142
enforce their right to receive that wage rate in the manner set 143
forth in Section 34a of Article II, Ohio Constitution; and 144

(4) Protect the privacy of Ohio employees' pay and personal 145
information specified in Section 34a of Article II, Ohio 146
Constitution by restricting an employee's access, and access by a 147
person acting on behalf of that employee, to the employee's own 148
pay and personal information. 149

(B) In accordance with Section 34a of Article II, Ohio 150
Constitution, the terms "employer," "employee," "employ," 151
"person," and "independent contractor" have the same meanings as 152
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 153
U.S.C. 203, as amended. In construing the meaning of these terms, 154
due consideration and great weight shall be given to the United 155
States department of labor's and federal courts' interpretations 156
of those terms under the Fair Labor Standards Act and its 157
regulations. As used in division (B) of this section: 158

(1) "Employee" includes the exclusions contained in Title 42 159
United States Code section 203(e) and means individuals employed 160
in Ohio. The term "employee" incorporates any applicable 161
exemptions from the minimum wage requirements in the Fair Labor 162
Standards Act and from the definition of "employee" in this 163
chapter. 164

(2) "Employ" and "employee" do not include any person acting 165
as a volunteer. In construing who is a volunteer, "volunteer" 166
shall have the same meaning as in sections 553.101 to 553.106 of 167
Title 29 of the Code of Federal Regulations, as amended, and due 168
consideration and great weight shall be given to the United States 169
department of labor's and federal courts' interpretations of the 170
term "volunteer" under the Fair Labor Standards Act and its 171
regulations. 172

(C) In accordance with Section 34a of Article II, Ohio 173
Constitution, the state may issue licenses to employers who are 174
not subject to the Fair Labor Standards Act authorizing payment of 175
a wage below that required by Section 34a of Article II, Ohio 176
Constitution to individuals with mental or physical disabilities 177
that may otherwise adversely affect their opportunity for 178
employment. In issuing such licenses, the state shall abide by the 179
rules adopted pursuant to section 4111.06 of the Revised Code. 180

(D) In accordance with Section 34a of Article II, Ohio 181
Constitution, individuals employed in or about the property of an 182
employer or an individual's residence on a casual basis are not 183
included within the coverage of Section 34a of Article II, Ohio 184
Constitution. As used in division (D) of this section: 185

(1) "Casual basis" means employment that is irregular or 186
intermittent and that is not performed by an individual whose 187
vocation is to be employed in or about the property of the 188
employer or individual's residence. In construing who is employed 189
on a "casual basis," due consideration and great weight shall be 190
given to the United States department of labor's and federal 191
courts' interpretations of the term "casual basis" under the Fair 192
Labor Standards Act and its regulations. 193

(2) "An individual employed in or about the property of an 194
employer or individual's residence" means an individual employed 195
on a casual basis or an individual employed in or about a 196
residence on a casual basis, respectively. 197

(E) In accordance with Section 34a of Article II, Ohio 198
Constitution, an employer shall at the time of hire provide an 199
employee with the employer's name, address, telephone number, and 200
other contact information and update such information when it 201
changes. As used in division (E) of this section: 202

(1) "Other contact information" may include, where 203

applicable, the address of the employer's internet site on the 204
world wide web, the employer's electronic mail address, fax 205
number, or the name, address, and telephone number of the 206
employer's statutory agent. "Other contact information" does not 207
include the name, address, telephone number, fax number, internet 208
site address, or electronic mail address of any employee, 209
shareholder, officer, director, supervisor, manager, or other 210
individual employed by or associated with an employer. 211

(2) "When it changes" means that the employer shall provide 212
its employees with the change in its name, address, telephone 213
number, or other contact information within sixty business days 214
after the change occurs. The employer shall provide the changed 215
information by using any of its usual methods of communicating 216
with its employees, including, but not limited to, listing the 217
change on the employer's internet site on the world wide web, 218
internal computer network, or a bulletin board where it commonly 219
posts employee communications or by insertion or inclusion with 220
employees' paychecks or pay stubs. 221

(F) In accordance with Section 34a of Article II, Ohio 222
Constitution, an employer shall maintain a record of the name, 223
address, occupation, pay rate, hours worked for each day worked, 224
and each amount paid an employee for a period of not less than 225
three years following the last date the employee was employed by 226
that employer. As used in division (F) of this section: 227

(1) "Address" means an employee's home address as maintained 228
in the employer's personnel file or personnel database for that 229
employee. 230

(2)(a) With respect to employees who are not exempt from the 231
overtime pay requirements of the Fair Labor Standards Act or this 232
chapter, "pay rate" means an employee's base rate of pay. 233

(b) With respect to employees who are exempt from the 234

overtime pay requirements of the Fair Labor Standards Act or this 235
chapter, "pay rate" means an employee's annual base salary, but 236
does not include bonuses, stock options, incentives, deferred 237
compensation, or any other similar form of compensation. 238

(3) "Record" means the name, address, occupation, pay rate, 239
hours worked for each day worked, and each amount paid an employee 240
in one or more documents, databases, or other paper or electronic 241
forms of record-keeping maintained by an employer. No one 242
particular method or form of maintaining such a record or records 243
is required under this division. An employer is not required to 244
create or maintain a single record containing only the employee's 245
name, address, occupation, pay rate, hours worked for each day 246
worked, and each amount paid an employee. An employer shall 247
maintain a record or records from which the employee or person 248
acting on behalf of that employee could reasonably review the 249
information requested by the employee or person. 250

An employer is not required to maintain the records specified 251
in division (F)(3) of this section for any period before January 252
1, 2007. On and after January 1, 2007, the employer shall maintain 253
the records required by division (F)(3) of this section for three 254
years from the date the hours were worked by the employee. 255

(4)(a) With respect to employees who are not exempt from the 256
overtime pay requirements of the Fair Labor Standards Act or this 257
chapter, "hours worked for each day worked" means the total amount 258
of time worked by an employee in whatever increments the employer 259
uses for its payroll purposes during a day worked by the employee. 260
An employer is not required to keep a record of the time of day an 261
employee begins and ends work on any given day. As used in 262
division (F)(4) of this section, "day" means a fixed period of 263
twenty-four consecutive hours during which an employee performs 264
work for an employer. 265

(b) An employer is not required to keep records of "hours worked for each day worked" for employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter. 266
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(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. 270
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(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: 275
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(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. 279
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(2) "Acting on behalf of an employee" means a person acting on behalf of an employee as any of the following: 285
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(a) The certified or legally recognized collective bargaining representative for that employee under the applicable federal law or Chapter 4117. of the Revised Code; 287
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(b) The employee's attorney; 290

(c) The employee's parent, guardian, or legal custodian. 291

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. 292
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(3) "Provide" means that an employer shall provide the 296
requested information within sixty business days after the date 297
the employer receives the request, unless either of the following 298
occurs: 299

(a) The employer and the employee or person acting on behalf 300
of the employee agree to some alternative time period for 301
providing the information. 302

(b) The sixty-day period would cause a hardship on the 303
employer under the circumstances, in which case the employer must 304
provide the requested information as soon as practicable. 305

(4) A "request" made by an employee or a person acting on 306
behalf of an employee means a request by an employee or a person 307
acting on behalf of an employee for the employee's own 308
information. The employer may require that the employee provide 309
the employer with a written request that has been signed by the 310
employee and that specifically identifies the particular 311
information being requested. The employer may require that the 312
person acting on behalf of an employee provide the employer with a 313
written request that has been signed by the employee whose 314
information is being requested and notarized and that specifically 315
identifies the particular information being requested. 316

(H) In accordance with Section 34a of Article II, Ohio 317
Constitution, an employee, person acting on behalf of one or more 318
employees, and any other interested party may file a complaint 319
with the state for a violation of any provision of Section 34a of 320
Article II, Ohio Constitution or any law or regulation 321
implementing its provisions. Such complaint shall be promptly 322
investigated and resolved by the state. The employee's name shall 323
be kept confidential unless disclosure is necessary to resolution 324
of a complaint and the employee consents to disclosure. As used in 325
division (H) of this section: 326

(1) "Complaint" means a complaint of an alleged violation 327
pertaining to harm suffered by the employee filing the complaint, 328
by a person acting on behalf of one or more employees, or by an 329
interested party. 330

(2) "Acting on behalf of one or more employees" has the same 331
meaning as "acting on behalf of an employee" in division (G)(2) of 332
this section. Each employee must provide a separate written and 333
notarized authorization before the person acting on that 334
employee's or those employees' behalf may request the name, 335
address, occupation, pay rate, hours worked for each day worked, 336
and each amount paid for the particular employee. 337

(3) "Interested party" means a party who alleges to be 338
injured by the alleged violation and who has standing to file a 339
complaint under common law principles of standing. 340

(4) "Resolved by the state" means that the complaint has been 341
resolved to the satisfaction of the state. 342

(5) "Shall be kept confidential" means that the state shall 343
keep the name of the employee confidential as required by division 344
(H) of this section. 345

(I) In accordance with Section 34a of Article II, Ohio 346
Constitution, the state may on its own initiative investigate an 347
employer's compliance with Section 34a of Article II, Ohio 348
Constitution and any law or regulation implementing Section 34a of 349
Article II, Ohio Constitution. The employer shall make available 350
to the state any records related to such investigation and other 351
information required for enforcement of Section 34a of Article II, 352
Ohio Constitution or any law or regulation implementing Section 353
34a of Article II, Ohio Constitution. As used in division (I) of 354
this section: 355

(1) "Records related to such investigation and other 356
information required" means the records and information pertaining 357

to the employee or employees who filed the complaint or on whose 358
behalf the complaint was filed with the state. All records and 359
information related to investigations by the state are 360
confidential and are not a public record subject to section 149.43 361
of the Revised Code. 362

(2) "Complaint" has the same meaning as in division (H)(1) of 363
this section. 364

(J) In accordance with Section 34a of Article II, Ohio 365
Constitution, damages shall be calculated as an additional two 366
times the amount of the back wages and in the case of a violation 367
of an anti-retaliation provision an amount set by the state or 368
court sufficient to compensate the employee and deter future 369
violations, but not less than one hundred fifty dollars for each 370
day that the violation continued. The "not less than one hundred 371
fifty dollar" penalty specified in division (J) of this section 372
shall be imposed only for violations of the anti-retaliation 373
provision in Section 34a of Article II, Ohio Constitution. 374

(K) In accordance with Section 34a of Article II, Ohio 375
Constitution, an action for equitable and monetary relief may be 376
brought against an employer by the attorney general and/or an 377
employee or person acting on behalf of an employee or all 378
similarly situated employees in any court of competent 379
jurisdiction, including the court of common pleas of an employee's 380
county of residence, for any violation of Section 34a of Article 381
II, Ohio Constitution or any law or regulation implementing its 382
provisions within three years of the violation or of when the 383
violation ceased if it was of a continuing nature, or within one 384
year after notification to the employee of final disposition by 385
the state of a complaint for the same violation, whichever is 386
later. 387

(1) As used in division (K) of this section, "notification" 388

means the date on which the notice was sent to the employee by the
state.

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(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.

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(3) A civil action regarding an alleged violation of this
section shall be maintained only under division (K) of this
section. The civil action specified in division (K) of this
section supersedes the civil action specified in section 4111.10
of the Revised Code with respect to any alleged violations of this
section.

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(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.

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(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

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of providing that information to an employee or person acting on 420
behalf of an employee in response to a request by the employee or 421
person, and the employer shall not be subject to the provisions of 422
Chapters 1347. and 1349. of the Revised Code to the extent that 423
such provisions would otherwise apply. As used in division (M) of 424
this section, "such information," "acting on behalf of an 425
employee," and "request" have the same meanings as in division (G) 426
of this section. 427

(N) As used in this section, "the state" means the director 428
of commerce. 429

Section 2. That existing sections 4111.01, 4111.02, and 430
4111.10 and section 4111.08 of the Revised Code are hereby 431
repealed. 432

Section 3. This act is hereby declared to be an emergency 433
measure necessary for the immediate preservation of the public 434
peace, health, and safety. The reason for the necessity is that 435
immediate action is necessary to ensure the timely and proper 436
implementation of Section 34a of Article II, Ohio Constitution, 437
described in Section 1 of this act. Therefore, this act shall go 438
into immediate effect. 439

Section 4. If any item of law that constitutes the whole or 440
part of a codified or uncodified section of law contained in this 441
act, or if any application of any item of law that constitutes the 442
whole or part of a codified or uncodified section of law contained 443
in this act, is held invalid, the invalidity does not affect other 444
items of law or applications of items of law that can be given 445
effect without the invalid item of law or application. To this 446
end, the items of law of which the codified and uncodified 447
sections of law contained in this act are composed, and their 448
applications, are independent and severable. 449