

As Passed by the Senate

126th General Assembly

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Am. Sub. H. B. No. 690

Representatives Seitz, Brinkman, Combs, Evans, D., Flowers, Gibbs, Hood,

Martin, Reidelbach, Schneider, Setzer, Webster

Senators Cates, Stivers, Harris, Wachtmann, Armbruster, Schuler

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A B I L L

To amend sections 4111.01, 4111.02, 4111.03, 4111.04, 1
4111.08, 4111.09, and 4111.10 and to enact section 2
4111.14 of the Revised Code to implement Section 3
34a, Article II, of the Constitution of the State 4
of Ohio and to further amend section 4111.08 of 5
the Revised Code on January 1, 2010, to apply 6
certain record-keeping provisions only to 7
employers subject to Ohio's overtime law. 8

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

Section 1. That sections 4111.01, 4111.02, 4111.03, 4111.04, 9
4111.08, 4111.09, and 4111.10 be amended and section 4111.14 of 10
the Revised Code be enacted to read as follows: 11

Sec. 4111.01. As used in ~~sections 4111.01 to 4111.17 of the~~ 12
~~Revised Code~~ this chapter: 13

(A) "Wage" means compensation due to an employee by reason of 14
employment, payable in legal tender of the United States or checks 15
on banks convertible into cash on demand at full face value, 16
subject to the deductions, charges, or allowances permitted by 17
rules of the director of commerce under section 4111.05 of the 18

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.

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"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.

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

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~~(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.~~

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

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

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~~(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;~~

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

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~~(4) Any individual employed as an outside salesperson 49
compensated by commissions or in a bona fide executive, 50
administrative, or professional capacity as such terms are defined 51
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 52
U.S.C.A. 201, as amended; 53~~

~~(5) Any employee employed in agriculture if the employee is 54
employed by an employer who did not, during any calendar quarter 55
during the preceding calendar year, use more than five hundred 56
worker days of agricultural labor, or if the employee is the 57
parent, spouse, child, or other member of the employer's immediate 58
family; 59~~

~~(6) Any individual who works or provides personal services of 60
a charitable nature in a hospital or health institution for which 61
compensation is not sought or contemplated; 62~~

~~(7) A member of a police or fire protection agency or student 63
employed on a part time or seasonal basis by a political 64
subdivision of this state; 65~~

~~(8) Any individual in the employ of a camp or recreational 66
area for children under eighteen years of age and owned and 67
operated by a nonprofit organization or group of organizations 68
described in Section 501 (c)(3) of the "Internal Revenue Code of 69
1954," and exempt from income tax under Section 501 (a) of that 70
code; 71~~

~~(9) Any individual employed directly by the house of 72
representatives or directly by the senate. 73~~

~~(E) "Occupation" means any occupation, service, trade, 74
business, industry, or branch or group of industries or employment 75
or class of employment in which individuals are employed. 76~~

~~Sec. 4111.02. (A) Every employer and employers with less than 77
one hundred fifty thousand dollars gross annual sales, as defined 78~~

in Section 34a of Article II, Ohio Constitution, shall pay each of 79
the employer's employees at a wage rate of not less than the wage 80
rate specified in the "~~Fair Labor Standards Act,~~" 29 U.S.C. 206, 81
~~as now or hereafter amended, beginning on the effective date of~~ 82
~~this amendment, except as otherwise provided in this section~~ 83
Section 34a of Article II, Ohio Constitution. 84

~~(B) Every employer shall pay each employee in agriculture at 85
a wage rate not less than the wage rate described in division (A) 86
of this section. This provision does not apply to any employee 87
employed in agriculture if the employee: (1)(a) is employed as a 88
hand harvest laborer and is paid on a piece rate basis in an 89
operation which has been, and is customarily and generally 90
recognized as having been, paid on a piece rate basis in the 91
region of employment, (b) commutes daily from the employee's 92
permanent residence to the farm on which the employee is so 93
employed, and (c) has been employed in agriculture less than 94
thirteen weeks during the preceding calendar year, or (2)(a) is 95
sixteen years of age or under, is employed as a hand harvest 96
laborer, and is paid on a piece rate basis in an operation which 97
has been, and is customarily and generally recognized as having 98
been paid on a piece rate basis in the region of employment, (b) 99
is employed on the same farm as the employee's parent or person 100
standing in the place of the employee's parent, and (c) is paid at 101
the same piece rate as employees over age sixteen are paid on the 102
same farm. Such employees shall be paid no less than two dollars 103
and eighty cents per hour.~~ 104

~~(C) For any employee engaged in an occupation in which the 105
employee customarily and regularly receives tips from patrons or 106
others, the employer shall pay The director of commerce annually 107
shall adjust the wage rate as specified for tipped employees in 108
the "~~Fair Labor Standards Act,~~" 29 U.S.C. 203, as now or hereafter 109
~~amended~~ in Section 34a of Article II, Ohio Constitution. 110~~

As used in this section, "employee" has the same meaning as 111
in section 4111.14 of the Revised Code. 112

Sec. 4111.03. (A) An employer shall pay an employee for 113
overtime at a wage rate of one and one-half times the employee's 114
wage rate for hours worked in excess of forty hours in one 115
workweek, in the manner and methods provided in and subject to the 116
exemptions of section 7 and section 13 of the "Fair Labor 117
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 118
amended. 119

Any employee employed in agriculture shall not be covered by 120
the overtime provision of this section. 121

(B) For the purposes of this section, the number of hours 122
worked by a county employee in any one workweek shall be deemed to 123
include, in addition to hours actually worked, all periods in an 124
active pay status. 125

(C) If a county employee elects to take compensatory time off 126
in lieu of overtime pay, for any overtime worked, such 127
compensatory time may be granted by the employee's administrative 128
superior, on a time and one-half basis, at a time mutually 129
convenient to the employee and the administrative superior within 130
one hundred eighty days after the overtime is worked. 131

(D) A county appointing authority with the exception of the 132
county department of job and family services may, by rule or 133
resolution as is appropriate, indicate the authority's intention 134
not to be bound by division (B) or (C) of this section, and to 135
adopt a different policy for the calculation and payment of 136
overtime that is embodied in those divisions. Upon adoption, the 137
alternative policy prevails. Prior to the adoption of an 138
alternative overtime policy, the county appointing authority with 139
the exception of the county department of job and family services 140

shall give a written notice of the alternative policy to each 141
employee at least ten days prior to the effective date of the 142
policy. 143

(E) As used in this section: 144

(1) "Employ" means to suffer or to permit to work. 145

(2) "Employer" means the state of Ohio, its 146
instrumentalities, and its political subdivisions and their 147
instrumentalities, any individual, partnership, association, 148
corporation, business trust, or any person or group of persons, 149
acting in the interest of an employer in relation to an employee, 150
but does not include an employer whose annual gross volume of 151
sales made for business done is less than one hundred fifty 152
thousand dollars, exclusive of excise taxes at the retail level 153
which are separately stated. 154

(3) "Employee" means any individual employed by an employer 155
but does not include: 156

(a) Any individual employed by the United States; 157

(b) Any individual employed as a baby-sitter in the 158
employer's home, or a live-in companion to a sick, convalescing, 159
or elderly person whose principal duties do not include 160
housekeeping; 161

(c) Any individual engaged in the delivery of newspapers to 162
the consumer; 163

(d) Any individual employed as an outside salesperson 164
compensated by commissions or employed in a bona fide executive, 165
administrative, or professional capacity as such terms are defined 166
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 167
U.S.C.A. 201, as amended; 168

(e) Any individual who works or provides personal services of 169
a charitable nature in a hospital or health institution for which 170

<u>compensation is not sought or contemplated;</u>	171
<u>(f) A member of a police or fire protection agency or student</u>	172
<u>employed on a part-time or seasonal basis by a political</u>	173
<u>subdivision of this state;</u>	174
<u>(g) Any individual in the employ of a camp or recreational</u>	175
<u>area for children under eighteen years of age and owned and</u>	176
<u>operated by a nonprofit organization or group of organizations</u>	177
<u>described in Section 501 (c)(3) of the "Internal Revenue Code of</u>	178
<u>1954," and exempt from income tax under Section 501 (a) of that</u>	179
<u>code;</u>	180
<u>(h) Any individual employed directly by the house of</u>	181
<u>representatives or directly by the senate.</u>	182
Sec. 4111.04. The director of commerce may:	183
(A) Investigate and ascertain the wages of persons employed	184
in any occupation in the state;	185
(B) Enter and inspect the place of business or employment of	186
any employer for the purpose of inspecting any books, registers,	187
payrolls, or other records of the employer that in any way relate	188
to the question of wages, hours, and other conditions of	189
employment of any employees, and may question the employees for	190
the purpose of ascertaining whether sections 4111.01 to 4111.17 of	191
the Revised Code, and the rules adopted thereunder, have been and	192
are being obeyed. In conducting an inspection of the records of an	193
employer, the director shall make every effort to coordinate the	194
inspection with those conducted by the federal agency responsible	195
for enforcement of the "Fair Labor Standards Act of 1938," 52	196
Stat. 1060, 29 U.S.C.A. 201, as amended. If the federal agency has	197
completed an audit or examination of the employer's records within	198
the sixty days prior to the date the director notifies the	199
employer of the director's intent to examine the employer's	200

records, the director shall accept in lieu of the director's own 201
inspection, a report from the federal agency that the employer is 202
in compliance with the federal act, unless the director has 203
reasonable grounds for believing that the report is inaccurate or 204
incomplete for the purposes of sections 4111.01 to 4111.13 of the 205
Revised Code, or that events occurring since the audit give the 206
director reasonable grounds for believing that a violation of 207
sections 4111.01 to 4111.13 of the Revised Code has occurred. 208

(C) In the event the director is prohibited by any employer 209
from carrying out the intent of this section, the director may 210
~~apply to any court of common pleas having jurisdiction of that~~ 211
~~employer or the place of employment under issue subpoenas and~~ 212
~~compel attendance of witnesses and production of papers, books,~~ 213
~~accounts, payrolls, documents, records, and testimony relating and~~ 214
~~relevant to the director's investigation, for an order directing~~ 215
~~compliance with this section. Failure of the employer to obey the~~ 216
~~order of the court may be punished by said court as a contempt~~ 217
~~thereof.~~ 218

Sec. 4111.08. Every employer subject to sections 4111.01 to 219
4111.17 of the Revised Code, or to any rule adopted thereunder, 220
shall make and keep for a period of not less than three years a 221
record of the name, address, and occupation of each of the 222
employer's employees, the rate of pay and the amount paid each pay 223
period to each employee, the hours worked each day and each work 224
week by the employee, and other information as the director of 225
commerce prescribes by rule as necessary or appropriate for the 226
enforcement of sections 4111.01 to 4111.17 of the Revised Code, or 227
of the rules thereunder. Records may be opened for inspection or 228
copying by the director at any reasonable time. Any records an 229
employer creates on or before December 31, 2006, shall be created 230
and maintained in accordance with this section. 231

Sec. 4111.09. Every employer subject to sections 4111.01 to 232
4111.17 of the Revised Code, or to any rules issued thereunder, 233
shall keep a summary of the sections, approved by the director of 234
commerce, and copies of any applicable rules issued thereunder, or 235
a summary of the rules, posted in a conspicuous and accessible 236
place in or about the premises wherein any person subject thereto 237
is employed. The director of commerce shall make the summary 238
described in this section available on the web site of the 239
department of commerce. The director shall update this summary as 240
necessary, but not less than annually, in order to reflect changes 241
in the minimum wage rate as required under Section 34a of Article 242
II, Ohio Constitution. Employees and employers shall be furnished 243
copies of the summaries and rules by the state, on request, 244
without charge. 245

Sec. 4111.10. (A) Any employer who pays any employee less 246
than wages to which the employee is entitled under ~~sections~~ 247
~~4111.01 to 4111.17~~ section 4111.03 of the Revised Code, is liable 248
to the employee affected for the full amount of the overtime wage 249
rate, less any amount actually paid to the employee by the 250
employer, and for costs and reasonable attorney's fees as may be 251
allowed by the court. Any agreement between the employee and the 252
employer to work for less than the overtime wage rate is no 253
defense to an action. 254

(B) At the written request of any employee paid less than the 255
wages to which the employee is entitled under ~~sections 4111.01 to~~ 256
~~4111.17~~ section 4111.03 of the Revised Code, the director of 257
commerce may take an assignment of a wage claim in trust for the 258
assigning employee and may bring any legal action necessary to 259
collect the claim. The employer shall pay the costs and reasonable 260
attorney's fees allowed by the court. 261

Sec. 4111.14. (A) Pursuant to the general assembly's 262
authority to establish a minimum wage under Section 34 of Article 263
II, Ohio Constitution, this section is in implementation of 264
Section 34a of Article II, Ohio Constitution. In implementing 265
Section 34a of Article II, Ohio Constitution, the general assembly 266
hereby finds that the purpose of Section 34a of Article II, Ohio 267
Constitution is to: 268

(1) Ensure that Ohio employees, as defined in division (B)(1) 269
of this section, are paid the wage rate required by Section 34a of 270
Article II, Ohio Constitution; 271

(2) Ensure that covered Ohio employers maintain certain 272
records that are directly related to the enforcement of the wage 273
rate requirements in Section 34a of Article II, Ohio Constitution; 274

(3) Ensure that Ohio employees who are paid the wage rate 275
required by Section 34a of Article II, Ohio Constitution may 276
enforce their right to receive that wage rate in the manner set 277
forth in Section 34a of Article II, Ohio Constitution; and 278

(4) Protect the privacy of Ohio employees' pay and personal 279
information specified in Section 34a of Article II, Ohio 280
Constitution by restricting an employee's access, and access by a 281
person acting on behalf of that employee, to the employee's own 282
pay and personal information. 283

(B) In accordance with Section 34a of Article II, Ohio 284
Constitution, the terms "employer," "employee," "employ," 285
"person," and "independent contractor" have the same meanings as 286
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 287
U.S.C. 203, as amended. In construing the meaning of these terms, 288
due consideration and great weight shall be given to the United 289
States department of labor's and federal courts' interpretations 290
of those terms under the Fair Labor Standards Act and its 291

regulations. As used in division (B) of this section:

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(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.

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(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.

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(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.

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(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:

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(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

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on a "casual basis," due consideration and great weight shall be 323
given to the United States department of labor's and federal 324
courts' interpretations of the term "casual basis" under the Fair 325
Labor Standards Act and its regulations. 326

(b) "An individual employed in or about the property of an 327
employer or individual's residence" means an individual employed 328
on a casual basis or an individual employed in or about a 329
residence on a casual basis, respectively. 330

(2) In accordance with Section 34a of Article II, Ohio 331
Constitution, employees of a solely family-owned and operated 332
business who are family members of an owner are not included 333
within the coverage of Section 34a of Article II, Ohio 334
Constitution. As used in division (D)(2) of this section, "family 335
member" means a parent, spouse, child, stepchild, sibling, 336
grandparent, grandchild, or other member of an owner's immediate 337
family. 338

(E) In accordance with Section 34a of Article II, Ohio 339
Constitution, an employer shall at the time of hire provide an 340
employee with the employer's name, address, telephone number, and 341
other contact information and update such information when it 342
changes. As used in division (E) of this section: 343

(1) "Other contact information" may include, where 344
applicable, the address of the employer's internet site on the 345
world wide web, the employer's electronic mail address, fax 346
number, or the name, address, and telephone number of the 347
employer's statutory agent. "Other contact information" does not 348
include the name, address, telephone number, fax number, internet 349
site address, or electronic mail address of any employee, 350
shareholder, officer, director, supervisor, manager, or other 351
individual employed by or associated with an employer. 352

(2) "When it changes" means that the employer shall provide 353

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.

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(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:

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

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(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.

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(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.

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(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

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forms of record-keeping maintained by an employer. No one 385
particular method or form of maintaining such a record or records 386
is required under this division. An employer is not required to 387
create or maintain a single record containing only the employee's 388
name, address, occupation, pay rate, hours worked for each day 389
worked, and each amount paid an employee. An employer shall 390
maintain a record or records from which the employee or person 391
acting on behalf of that employee could reasonably review the 392
information requested by the employee or person. 393

An employer is not required to maintain the records specified 394
in division (F)(3) of this section for any period before January 395
1, 2007. On and after January 1, 2007, the employer shall maintain 396
the records required by division (F)(3) of this section for three 397
years from the date the hours were worked by the employee and for 398
three years after the date the employee's employment ends. 399

(4)(a) Except for individuals specified in division (F)(4)(b) 400
of this section, "hours worked for each day worked" means the 401
total amount of time worked by an employee in whatever increments 402
the employer uses for its payroll purposes during a day worked by 403
the employee. An employer is not required to keep a record of the 404
time of day an employee begins and ends work on any given day. As 405
used in division (F)(4) of this section, "day" means a fixed 406
period of twenty-four consecutive hours during which an employee 407
performs work for an employer. 408

(b) An employer is not required to keep records of "hours 409
worked for each day worked" for individuals for whom the employer 410
is not required to keep those records under the Fair Labor 411
Standards Act and its regulations or individuals who are not 412
subject to the overtime pay requirements specified in section 413
4111.03 of the Revised Code. 414

(5) "Each amount paid an employee" means the total gross 415

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.

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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:

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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. "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.

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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:

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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;

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(b) The employee's attorney;

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

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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

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worked for each day worked, and each amount paid to that employee. 446

(3) "Provide" means that an employer shall provide the 447
requested information within thirty business days after the date 448
the employer receives the request, unless either of the following 449
occurs: 450

(a) The employer and the employee or person acting on behalf 451
of the employee agree to some alternative time period for 452
providing the information. 453

(b) The thirty-day period would cause a hardship on the 454
employer under the circumstances, in which case the employer must 455
provide the requested information as soon as practicable. 456

(4) A "request" made by an employee or a person acting on 457
behalf of an employee means a request by an employee or a person 458
acting on behalf of an employee for the employee's own 459
information. The employer may require that the employee provide 460
the employer with a written request that has been signed by the 461
employee and notarized and that reasonably specifies the 462
particular information being requested. The employer may require 463
that the person acting on behalf of an employee provide the 464
employer with a written request that has been signed by the 465
employee whose information is being requested and notarized and 466
that reasonably specifies the particular information being 467
requested. 468

(H) In accordance with Section 34a of Article II, Ohio 469
Constitution, an employee, person acting on behalf of one or more 470
employees, and any other interested party may file a complaint 471
with the state for a violation of any provision of Section 34a of 472
Article II, Ohio Constitution or any law or regulation 473
implementing its provisions. Such complaint shall be promptly 474
investigated and resolved by the state. The employee's name shall 475
be kept confidential unless disclosure is necessary to resolution 476

of a complaint and the employee consents to disclosure. As used in
division (H) of this section:

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(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.

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(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.

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(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.

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

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(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.

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(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

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procedures described in section 4111.04 of the Revised Code. All 508
records and information related to investigations by the state are 509
confidential and are not a public record subject to section 149.43 510
of the Revised Code. This division does not prevent the state from 511
releasing to or exchanging with other state and federal wage and 512
hour regulatory authorities information related to investigations. 513

(J) In accordance with Section 34a of Article II, Ohio 514
Constitution, damages shall be calculated as an additional two 515
times the amount of the back wages and in the case of a violation 516
of an anti-retaliation provision an amount set by the state or 517
court sufficient to compensate the employee and deter future 518
violations, but not less than one hundred fifty dollars for each 519
day that the violation continued. The "not less than one hundred 520
fifty dollar" penalty specified in division (J) of this section 521
shall be imposed only for violations of the anti-retaliation 522
provision in Section 34a of Article II, Ohio Constitution. 523

(K) In accordance with Section 34a of Article II, Ohio 524
Constitution, an action for equitable and monetary relief may be 525
brought against an employer by the attorney general and/or an 526
employee or person acting on behalf of an employee or all 527
similarly situated employees in any court of competent 528
jurisdiction, including the court of common pleas of an employee's 529
county of residence, for any violation of Section 34a of Article 530
II, Ohio Constitution or any law or regulation implementing its 531
provisions within three years of the violation or of when the 532
violation ceased if it was of a continuing nature, or within one 533
year after notification to the employee of final disposition by 534
the state of a complaint for the same violation, whichever is 535
later. 536

(1) As used in division (K) of this section, "notification" 537
means the date on which the notice was sent to the employee by the 538
state. 539

(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. 540
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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. 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. 547
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(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. 552
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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. Nothing in this division limits the state's ability to investigate or enforce this section. 556
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(M) An employer who provides such information specified in 570

Section 34a of Article II, Ohio Constitution, shall be immune from 571
any civil liability for injury, death, or loss to person or 572
property that otherwise might be incurred or imposed as a result 573
of providing that information to an employee or person acting on 574
behalf of an employee in response to a request by the employee or 575
person, and the employer shall not be subject to the provisions of 576
Chapters 1347. and 1349. of the Revised Code to the extent that 577
such provisions would otherwise apply. As used in division (M) of 578
this section, "such information," "acting on behalf of an 579
employee," and "request" have the same meanings as in division (G) 580
of this section. 581

(N) As used in this section, "the state" means the director 582
of commerce. 583

Section 2. That existing sections 4111.01, 4111.02, 4111.03, 584
4111.04, 4111.08, 4111.09, and 4111.10 of the Revised Code are 585
hereby repealed. 586

Section 3. That section 4111.08 of the Revised Code be 587
amended to read as follows: 588

Sec. 4111.08. Every employer subject to ~~sections 4111.01 to~~ 589
~~4111.17~~ section 4111.03 of the Revised Code, or to any rule 590
adopted thereunder, shall make and keep for a period of not less 591
than three years a record of the name, address, and occupation of 592
each of the employer's employees, the rate of pay and the amount 593
paid each pay period to each employee, the hours worked each day 594
and each work week by the employee, and other information as the 595
director of commerce prescribes by rule as necessary or 596
appropriate for the enforcement of ~~sections 4111.01 to 4111.17~~ 597
section 4111.03 of the Revised Code, or of the rules thereunder. 598
Records may be opened for inspection or copying by the director at 599
any reasonable time. ~~Any records an employer creates on or before~~ 600

~~December 31, 2006, shall be created and maintained in accordance~~ 601
~~with this section.~~ 602

Section 4. That existing section 4111.08 of the Revised Code, 603
as it results from Sections 1 and 2 of this act, is hereby 604
repealed. 605

Section 5. Sections 3 and 4 of this act take effect January 606
1, 2010. 607

Section 6. (A) The General Assembly, by enacting this act, 608
intends to implement the Ohio Fair Minimum Wage Amendment in the 609
manner in which the proponents of the Amendment described it to 610
Ohio voters during the campaigns for the General Election on 611
November 7, 2006. 612

(B) The proponents of the Ohio Fair Minimum Wage Amendment 613
issued campaign materials, one of which was entitled "Fact vs. 614
Fiction: Minimum Wage Opponents Shamelessly Distort Facts to Deny 615
Low-Wage Workers a Raise," published by Ohioans for a Fair Minimum 616
Wage, that stated all of the following upon which Ohio voters 617
relied to be honest and accurate: 618

(1) The Amendment defines "employer," "employee," and 619
"employ" as having the same meanings as under the federal Fair 620
Labor Standards Act. Clear definitions for terms such as "employ" 621
and "casual basis" will not necessitate litigation to clarify 622
their meanings because those terms have been established by 623
federal regulations, well settled case law, or both. 624

(2) By referencing the federal minimum wage law directly, the 625
Amendment ensures that the Ohio law tracks the federal minimum 626
wage requirements with respect to individuals who volunteer their 627
time. 628

(3) The Amendment does not threaten employees' privacy 629

because employees may seek access only to their own payroll 630
records. 631

(4) The Amendment allows an employer to take reasonable steps 632
to verify that a person does in fact represent the employee. 633

(5) Employment law experts explain that state authorities in 634
Ohio will undoubtedly interpret the parallel language in the 635
Amendment in the same manner as the federal Department of Labor, 636
clarifying that employers need not keep irrelevant records for 637
non-hourly employees. 638

(C) The General Assembly enacts this act according to the 639
proponents' campaign materials and pursuant to the authority 640
vested in the General Assembly by the following constitutional 641
provisions: 642

(1) Section 34a of Article II, Ohio Constitution, which 643
states that "laws may be passed to implement its provisions. . . ." 644

(2) Section 34 of Article II, Ohio Constitution, which states 645
that "laws may be passed fixing and regulating the hours of labor, 646
establishing a minimum wage, and providing for the comfort, 647
health, safety and general welfare of all employees; and no other 648
provision of the constitution shall impair or limit this power," 649
which Section 34a of Article II, Ohio Constitution, made no 650
attempt to amend, repeal, or otherwise modify. 651

Section 7. If any item of law that constitutes the whole or 652
part of a codified or uncodified section of law contained in this 653
act, or if any application of any item of law that constitutes the 654
whole or part of a codified or uncodified section of law contained 655
in this act, is held invalid, the invalidity does not affect other 656
items of law or applications of items of law that can be given 657
effect without the invalid item of law or application. To this 658
end, the items of law of which the codified and uncodified 659

sections of law contained in this act are composed, and their 660
applications, are independent and severable. 661

Section 8. The amendment by this act of the section of law 662
listed in this section is subject to the referendum. Therefore, 663
under Ohio Constitution, Article II, Section 1c and section 1.471 664
of the Revised Code, the amendment, and the items of law of which 665
the amendment is composed, take effect as specified in this 666
section. If, however, a referendum petition is filed against any 667
such amendment, or against any item of law of which any such 668
amendment is composed, the amendment, unless rejected at the 669
referendum, goes into effect at the earliest time permitted by law 670
that is on or after the effective date specified in this section. 671

Section 4111.08 of the Revised Code, as amended in Sections 3 672
and 4 of this act, takes effect January 1, 2010. 673