

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 62**

**Senator Beagle**

**Cosponsors: Senators Cates, Jones, Faber, Widener, Seitz**

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**A B I L L**

To amend sections 4111.03, 4111.05, 4111.10, 4111.13, 1  
and 4111.99 and to enact section 4111.031 of the 2  
Revised Code to give private sector employers the 3  
option to offer and employees the option to accrue 4  
and use compensatory time off in lieu of monetary 5  
overtime compensation. 6

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

**Section 1.** That sections 4111.03, 4111.05, 4111.10, 4111.13, 7  
and 4111.99 be amended and section 4111.031 of the Revised Code be 8  
enacted to read as follows: 9

**Sec. 4111.03.** (A) ~~An~~ Except as otherwise provided in section 10  
4111.031 of the Revised Code, an employer shall pay an employee 11  
for overtime at a wage rate of one and one-half times the 12  
employee's wage rate for hours worked in excess of forty hours in 13  
one ~~workweek~~ work week, in the manner and methods provided in and 14  
subject to the exemptions of section 7 and section 13 of the "Fair 15  
Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, 16  
as amended. 17

Any employee employed in agriculture shall not be covered by 18  
the overtime provision of this section. 19

(B) If a county employee elects to take compensatory time off in lieu of overtime pay, for any overtime worked, compensatory time off 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.

(C) 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) of this section, and to adopt a different policy for the calculation and payment of overtime than that established by that division. Upon adoption, the alternative overtime policy prevails. Prior to the adoption of an alternative overtime policy, a 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 its effective date.

(D) As used in this section and section 4111.031 of the Revised Code:

(1) "Compensatory time off" means hours during which an employee is not working that are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employer compensates the employee at the employee's regular rate of pay.

(2) "Collective bargaining agreement" means an agreement entered into between the representative of an employer and the exclusive representative of employees in an appropriate unit regarding the conditions of employment affecting the employees.

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

~~(2)~~(4) "Employer" means the state of Ohio, its instrumentalities, and its political subdivisions and their

instrumentalities, any individual, partnership, association, 51  
corporation, business trust, or any person or group of persons, 52  
acting in the interest of an employer in relation to an employee, 53  
but does not include an employer whose annual gross volume of 54  
sales made for business done is less than one hundred fifty 55  
thousand dollars, exclusive of excise taxes at the retail level 56  
which are separately stated. 57

~~(3)~~(5) "Employee" means any individual employed by an 58  
employer but does not include: 59

(a) Any individual employed by the United States; 60

(b) Any individual employed as a baby-sitter in the 61  
employer's home, or a live-in companion to a sick, convalescing, 62  
or elderly person whose principal duties do not include 63  
housekeeping; 64

(c) Any individual engaged in the delivery of newspapers to 65  
the consumer; 66

(d) Any individual employed as an outside salesperson 67  
compensated by commissions or employed in a bona fide executive, 68  
administrative, or professional capacity as such terms are defined 69  
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 70  
U.S.C.A. 201, as amended; 71

(e) Any individual who works or provides personal services of 72  
a charitable nature in a hospital or health institution for which 73  
compensation is not sought or contemplated; 74

(f) A member of a police or fire protection agency or student 75  
employed on a part-time or seasonal basis by a political 76  
subdivision of this state; 77

(g) Any individual in the employ of a camp or recreational 78  
area for children under eighteen years of age and owned and 79  
operated by a nonprofit organization or group of organizations 80

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.

(6) "Exclusive representative" means any labor or employee organization that is certified as the exclusive representative of employees under the "National Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C. 151, as amended, or Chapter 4117. of the Revised Code, or that is recognized by an employer, immediately before the effective date of this amendment and for any time that recognition continues thereafter, as the exclusive representative of employees in an appropriate unit.

(7) "Regular rate" includes all remuneration for employment paid to, or on behalf of, an employee except:

(a) Sums paid as gifts, or payments in the nature of gifts made on the occasion of a holiday or other special occasion as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(b) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, reasonable payment for traveling expenses or other expenses incurred by an employee in the furtherance of the employer's interests and properly reimbursable by the employer, and other similar payments to an employee that are not made as compensation for hours of employment;

(c) Sums paid in recognition of services performed during a given period if any of the following applies:

(i) The decision to make payment and the amount of the payment is determined at the sole discretion of the employer at or

near the end of the period, and not pursuant to any prior 112  
contract, agreement, or promise causing the employee to expect the 113  
payments regularly. 114

(ii) The payments are made pursuant to a bona fide 115  
profit-sharing plan or trust or bona fide thrift or savings plan. 116

(iii) The payments are talent fees paid to performers, 117  
including announcers, on radio and television programs. 118

(d) Contributions irrevocably made by an employer to a 119  
trustee or third person pursuant to a bona fide plan for providing 120  
old-age, retirement, life, accident, or health insurance or 121  
similar benefits for employees; 122

(e) Extra compensation provided by a premium rate paid for 123  
certain hours worked by the employee in a day or work week because 124  
the hours are worked in excess of eight in a day or in excess of 125  
the maximum work week applicable to the employee under division 126  
(A) of this section or, if the extra compensation and premium rate 127  
is not paid under an employment contract or collective bargaining 128  
agreement as provided under division (D)(7)(g) of this section, in 129  
excess of the employee's normal or regular working hours; 130

(f) Extra compensation provided by a premium rate paid for 131  
work by the employee on Saturdays, Sundays, holidays, or regular 132  
days of rest, or on the sixth or seventh day of the work week 133  
where the premium rate is not less than one and one-half times the 134  
rate established in good faith for like work performed during 135  
nonovertime hours on other days; 136

(g) Extra compensation provided by a premium rate paid to an 137  
employee under an applicable employment contract or collective 138  
bargaining agreement, for work outside of the hours established in 139  
good faith by the contract or agreement and outside of the basic, 140  
normal, or regular workday that does not exceed eight hours, or of 141  
the work week that does not exceed the maximum work week 142

applicable to the employee under division (A) of this section, 143  
where the premium rate is not less than one and one-half times the 144  
rate established in good faith by the contract or agreement for 145  
like work performed during the workday or work week. 146

**Sec. 4111.031.** (A) An employee other than an employee 147  
described in division (J) of this section may receive, in 148  
accordance with this section and in lieu of monetary overtime 149  
compensation, compensatory time off at a rate of not less than one 150  
and one-half hours for each hour of employment for which monetary 151  
overtime compensation otherwise is required under division (A) of 152  
section 4111.03 of the Revised Code. 153

(B) An employer may provide compensatory time off to an 154  
employee under this section only in accordance with the following 155  
provisions and conditions: 156

(1) The applicable provisions of a collective bargaining 157  
agreement between the employer and the employees' exclusive 158  
representative that is designated or selected under section 9(a) 159  
of the "National Labor Relations Act," 49 Stat. 449 (1935), 29 160  
U.S.C. 159(a), as amended; 161

(2) In the case of employees who are not represented by a 162  
labor organization as provided in section 9(a) of the "National 163  
Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C. 159(a), as 164  
amended, an agreement or understanding arrived at between the 165  
employer and employee before the performance of the work involved, 166  
if the agreement or understanding is entered into knowingly and 167  
voluntarily by and at the initiation and request of the employee, 168  
and is not a condition of employment; 169

(3) The employee has affirmed in a written or otherwise 170  
verifiable statement that the employee has initiated a request to 171  
receive compensatory time off in lieu of monetary overtime 172  
compensation and the employer keeps a record of that statement 173

with the employee's employment records that the employer is 174  
required to make and keep under section 4111.08 of the Revised 175  
Code; 176

(4) The employee has not already accrued two hundred forty 177  
hours of compensatory time off. 178

(C)(1) Not later than the thirty-first day of January of each 180  
calendar year, an employer shall provide monetary overtime 181  
compensation at the rate prescribed by division (G) of this 182  
section for any unused compensatory time off that the employee 183  
accrued during the preceding calendar year. An employer may 184  
designate and communicate to its employees an alternative 185  
twelve-month period other than the calendar year, in which case 186  
the monetary overtime compensation payment required by this 187  
division shall be paid not later than thirty-one days after the 188  
end of the alternative twelve-month period. 189

(2) At any time during the calendar year or alternative 190  
twelve-month period, an employer may provide monetary overtime 191  
compensation at the rate required by division (G) of this section 192  
for an employee's unused compensatory time off in excess of eighty 193  
hours. The employer shall give the employee written notice of the 194  
employer's intent to provide that compensation at least thirty 195  
days before doing so. 196

(D) An employer that provides compensatory time off to an 197  
employee under this section may cease doing so upon giving the 198  
employee written notice of the employer's intent at least thirty 199  
days before discontinuing the practice. 200

(E) An employee may withdraw an agreement or understanding 201  
described in division (B)(2) of this section at any time and may 202  
request in writing that monetary overtime compensation be provided 203  
for all of the employee's unused compensatory time off. Within 204

thirty days after receipt of the written request, the employer shall pay to the employee the monetary overtime compensation due in accordance with division (G) of this section. 205  
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(F) An employer shall pay monetary overtime compensation, in accordance with division (G) of this section, to an employee for any unused compensatory time off that the employee has accrued under this section, upon the voluntary or involuntary termination of employment. 208  
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(G) If an employer pays monetary overtime compensation to an employee for unused compensatory time off, the employer shall make payment based on the regular rate of pay received by the employee when the compensatory time off was earned. For purposes of this division, compensatory time off shall be deemed used in the same order it is earned. 213  
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(H) Any payment owed to an employee under this section for unused compensatory time off shall be considered unpaid monetary overtime compensation. 219  
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(I) An employer shall permit an employee who has accrued compensatory time off authorized under this section the use of that time within a reasonable period after the employee makes a request for such use, if the requested use does not unduly disrupt the operations of the employer. 222  
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(J) This section does not apply to any of the following employees: 227  
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(1) An employee of the state, its instrumentalities, or its political subdivisions or their instrumentalities; 229  
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(2) An individual employed by a contractor or subcontractor to perform labor or provide services to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of a structure or improvement. 231  
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| <u>(K) As used in this section:</u>  | 235   |
| <u>(1) "Contractor" has the same meaning as in section 4113.61 of the Revised Code.</u>  | 236<br>237  |
| <u>(2) "Monetary overtime compensation" means pay for overtime as required under division (A) of section 4111.03 of the Revised Code.</u>  | 238<br>239<br>240   |
| <u>(3) "Subcontractor" has the same meaning as in section 1311.01 of the Revised Code.</u>   | 241<br>242  |
| <b>Sec. 4111.05.</b> The director of commerce shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers appropriate to carry out the purposes of sections 4111.01 to 4111.17 of the Revised Code. The rules may be amended from time to time and may include, but are not limited to, rules defining and governing apprentices, their number, proportion, and length of service; bonuses and special pay for special or extra work; permitted deductions or charges to employees for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees; inclusion of ascertainable gratuities in wages paid; allowances for unascertainable gratuities or for other special conditions or circumstances which may be usual in particular employer-employee relationships; <u>compensatory time off for employees under section 4111.031 of the Revised Code;</u> and the method of computation or the period of time over which wages may be averaged to determine whether the minimum wage or overtime rate has been paid. | 243<br>244<br>245<br>246<br>247<br>248<br>249<br>250<br>251<br>252<br>253<br>254<br>255<br>256<br>257<br>258<br>259 |
| <b>Sec. 4111.10.</b> (A) Any employer who pays any employee less than wages to which the employee is entitled under 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   | 260<br>261<br>262<br>263<br>264   |

attorney's fees as may be allowed by the court. Any agreement 265  
between the employee and the employer to work for less than the 266  
overtime wage rate is no defense to an action. 267

(B)(1) Any employer who violates division (D) of section 268  
4111.13 of the Revised Code is liable to the employee affected in 269  
a dollar amount equal to the sum of the following: 270

(a) The number of unused compensatory time off hours involved 271  
in the violation, multiplied by the regular rate of pay received 272  
by the employee when that compensatory time off was earned; 273

(b) As liquidated damages, the total number of the employee's 274  
compensatory time off hours involved in the violation, multiplied 275  
by the regular rate of pay received by the employee when that 276  
compensatory time off was earned; 277

(c) Costs and reasonable attorney's fees as may be allowed by 278  
the court. 279

(2) For purposes of this division, compensatory time off 280  
shall be deemed used in the same order it is earned. 281

(3) The liability imposed under this division is in addition 282  
to any other civil or criminal liability imposed under sections 283  
4111.01 to 4111.17 of the Revised Code. 284

(4) As used in this division, "compensatory time off" has the 285  
same meaning as in section 4111.03 of the Revised Code. 286

(C) At the written request of any employee paid less than the 287  
wages to which the employee is entitled under section 4111.03 of 288  
the Revised Code, the director of commerce may take an assignment 289  
of a wage claim in trust for the assigning employee and may bring 290  
any legal action necessary to collect the claim. The employer 291  
shall pay the costs and reasonable attorney's fees allowed by the 292  
court. 293

**Sec. 4111.13.** (A) No employer shall hinder or delay the 294

director of commerce in the performance of the director's duties 295  
in the enforcement of sections 4111.01 to 4111.17 of the Revised 296  
Code, or refuse to admit the director to any place of employment, 297  
or fail to make, keep, and preserve any records as required under 298  
those sections, or falsify any of those records, or refuse to make 299  
them accessible to the director upon demand, or refuse to furnish 300  
them or any other information required for the proper enforcement 301  
of those sections to the director upon demand, or fail to post a 302  
summary of those sections or a copy of any applicable rules as 303  
required by section 4111.09 of the Revised Code. Each day of 304  
violation constitutes a separate offense. 305

(B) No employer shall discharge or in any other manner 306  
discriminate against any employee because the employee has made 307  
any complaint to the employee's employer, or to the director, that 308  
the employee has not been paid wages in accordance with sections 309  
4111.01 to 4111.17 of the Revised Code, or because the employee 310  
has made any complaint or is about to cause to be instituted any 311  
proceeding under or related to those sections, or because the 312  
employee has testified or is about to testify in any proceeding. 313

(C) No employer shall pay or agree to pay wages at a rate 314  
less than the rate applicable under sections 4111.01 to 4111.17 of 315  
the Revised Code. Each week or portion thereof for which the 316  
employer pays any employee less than the rate applicable under 317  
those sections constitutes a separate offense as to each employer. 318

(D)(1) No employer that provides compensatory time off to an 319  
employee under section 4111.031 of the Revised Code shall, 320  
directly or indirectly, intimidate, threaten, or coerce, or 321  
attempt to intimidate, threaten, or coerce, or terminate or 322  
attempt to terminate the employment of, that employee for the 323  
purposes of: 324

(a) Interfering with the employee's rights to request or not 325  
request compensatory time off in lieu of monetary overtime 326

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| <u>compensation;</u>  | 327 |
| <u>(b) Requiring the employee to use compensatory time off.</u>                 | 328 |
| <u>(2) As used in this division:</u>  | 329 |
| <u>(a) "Compensatory time off" has the same meaning as in</u>                   | 330 |
| <u>section 4111.03 of the Revised Code.</u>                                     | 331 |
| <u>(b) "Intimidate, threaten, or coerce" includes promising to</u>              | 332 |
| <u>confer or conferring any benefit including appointment, promotion,</u>       | 333 |
| <u>or compensation, or effecting or threatening to effect any</u>               | 334 |
| <u>reprisal, including deprivation of appointment, promotion, or</u>            | 335 |
| <u>compensation.</u>  | 336 |
| <u>(c) "Monetary overtime compensation" has the same meaning as</u>             | 337 |
| <u>in section 4111.031 of the Revised Code.</u>                                 | 338 |
| <u>(E) No employer shall otherwise violate sections 4111.01 to</u>              | 339 |
| <u>4111.17 of the Revised Code, or any rule adopted thereunder. Each</u>        | 340 |
| <u>day of violation constitutes a separate offense.</u>                         | 341 |
| <b>Sec. 4111.99.</b> (A) Whoever violates division (A) or <del>(D)</del> (E) of | 342 |
| section 4111.13 of the Revised Code is guilty of a misdemeanor of               | 343 |
| the fourth degree.  | 344 |
| (B) Whoever violates division (B) <del>or</del> , (C), <u>or (D)</u> of section | 345 |
| 4111.13 of the Revised Code is guilty of a misdemeanor of the                   | 346 |
| third degree.   | 347 |
| (C) Whoever violates section 4111.17 of the Revised Code is                     | 348 |
| guilty of a minor misdemeanor.  | 349 |
| <b>Section 2.</b> That existing sections 4111.03, 4111.05, 4111.10,             | 350 |
| 4111.13, and 4111.99 of the Revised Code are hereby repealed.                   | 351 |
| <b>Section 3.</b> Not later than thirty days after the effective                | 352 |
| date of this section, the Director of Commerce shall revise the                 | 353 |
| printed materials that the Director makes available to employers                | 354 |

and employees for the purpose of explaining the requirements of 355  
sections 4111.01 to 4111.17 of the Revised Code to reflect the 356  
amendments made to those sections by this act. 357

**Section 4.** Section 4111.03 of the Revised Code is presented 358  
in this act as a composite of the section as amended by both Sub. 359  
H.B. 187 and Am. Sub. H.B. 690 of the 126th General Assembly. The 360  
General Assembly, applying the principle stated in division (B) of 361  
section 1.52 of the Revised Code that amendments are to be 362  
harmonized if reasonably capable of simultaneous operation, finds 363  
that the composite is the resulting version of the section in 364  
effect prior to the effective date of the section as presented in 365  
this act. 366