

As Introduced

**130th General Assembly
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H. B. No. 502

Representatives Foley, Hagan, R.

**Cosponsors: Representatives Williams, Driehaus, Mallory, Ramos, Lundy,
Boyce, Antonio**

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A B I L L

To amend sections 4111.02, 4111.09, and 4111.14 and 1
to repeal section 4111.07 of the Revised Code to 2
increase the state minimum wage to ten dollars and 3
ten cents an hour beginning January 1, 2015. 4

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

Section 1. That sections 4111.02, 4111.09, and 4111.14 of the 5
Revised Code be amended to read as follows: 6

Sec. 4111.02. ~~Every (A)(1) Except as otherwise provided in 7~~
~~division (A)(2) of this section, beginning January 1, 2015, every 8~~
employer, as defined in Section 34a of Article II, Ohio 9
Constitution, shall pay each of the employer's employees at a wage 10
rate of not less than ~~the wage rate specified in Section 34a of 11~~
~~Article II, Ohio Constitution~~ ten dollars and ten cents per hour. 12

(2) If an employer is able to demonstrate that an employee 13
receives tips that combined with the wages paid by the employer 14
are equal to or greater than the minimum wage rate for all hours 15
worked, the employer may pay the employee at a rate of less than, 16
but not less than half, the minimum wage rate required by division 17
(A)(1) of this section. 18

(B) The director of commerce annually shall adjust the wage rate ~~as~~ specified in division (A)(1) of this section in accordance with Section 34a of Article II, Ohio Constitution.

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

Sec. 4111.09. Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. The director of commerce shall make the summary described in this section available on the web site of the department of commerce. The director shall update this summary as necessary, but not less than annually, in order to reflect changes in the minimum wage rate as required under Section 34a of Article II, Ohio Constitution and section 4111.02 of the Revised Code. Employees and employers shall be furnished copies of the summaries and rules by the state, on request, without charge.

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 4111.02 of the Revised Code in accordance with Section 34a of Article II, Ohio Constitution;

(2) Ensure that covered Ohio employers maintain certain 49
records that are directly related to the enforcement of the wage 50
rate requirements ~~in~~ of Section 34a of Article II, Ohio 51
Constitution and section 4111.02 of the Revised Code; 52

(3) Ensure that Ohio employees who are paid the wage rate 53
required by ~~Section 34a of Article II, Ohio Constitution~~ section 54
4111.02 of the Revised Code, may enforce their right to receive 55
that wage rate in the manner set forth in Section 34a of Article 56
II, Ohio Constitution; and 57

(4) Protect the privacy of Ohio employees' pay and personal 58
information specified in Section 34a of Article II, Ohio 59
Constitution, by restricting an employee's access, and access by a 60
person acting on behalf of that employee, to the employee's own 61
pay and personal information. 62

(B) In accordance with Section 34a of Article II, Ohio 63
Constitution, the terms "employer," "employee," "employ," 64
"person," and "independent contractor" have the same meanings as 65
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 66
U.S.C. 203, as amended. In construing the meaning of these terms, 67
due consideration and great weight shall be given to the United 68
States department of labor's and federal courts' interpretations 69
of those terms under the Fair Labor Standards Act and its 70
regulations. As used in division (B) of this section: 71

(1) "Employee" means individuals employed in Ohio, but does 72
not mean individuals who are excluded from the definition of 73
"employee" under 29 U.S.C. 203(e) or individuals who are exempted 74
from the minimum wage requirements in 29 U.S.C. 213 and from the 75
definition of "employee" in this chapter. 76

(2) "Employ" and "employee" do not include any person acting 77
as a volunteer. In construing who is a volunteer, "volunteer" 78
shall have the same meaning as in sections 553.101 to 553.106 of 79

Title 29 of the Code of Federal Regulations, as amended, and due 80
consideration and great weight shall be given to the United States 81
department of labor's and federal courts' interpretations of the 82
term "volunteer" under the Fair Labor Standards Act and its 83
regulations. 84

(C) In accordance with Section 34a of Article II, Ohio 85
Constitution, the state may issue licenses to employers 86
authorizing payment of a wage below that required by Section 34a 87
of Article II, Ohio Constitution, or section 4111.02 of the 88
Revised Code to individuals with mental or physical disabilities 89
that may otherwise adversely affect their opportunity for 90
employment. In issuing such licenses, the state shall abide by the 91
rules adopted pursuant to section 4111.06 of the Revised Code. 92

(D)(1) In accordance with Section 34a of Article II, Ohio 93
Constitution, individuals employed in or about the property of an 94
employer or an individual's residence on a casual basis are not 95
included within the coverage of Section 34a of Article II, Ohio 96
Constitution. As used in division (D) of this section: 97

(a) "Casual basis" means employment that is irregular or 98
intermittent and that is not performed by an individual whose 99
vocation is to be employed in or about the property of the 100
employer or individual's residence. In construing who is employed 101
on a "casual basis," due consideration and great weight shall be 102
given to the United States department of labor's and federal 103
courts' interpretations of the term "casual basis" under the Fair 104
Labor Standards Act and its regulations. 105

(b) "An individual employed in or about the property of an 106
employer or individual's residence" means an individual employed 107
on a casual basis or an individual employed in or about a 108
residence on a casual basis, respectively. 109

(2) In accordance with Section 34a of Article II, Ohio 110

Constitution, employees of a solely family-owned and operated 111
business who are family members of an owner are not included 112
within the coverage of Section 34a of Article II, Ohio 113
Constitution. As used in division (D)(2) of this section, "family 114
member" means a parent, spouse, child, stepchild, sibling, 115
grandparent, grandchild, or other member of an owner's immediate 116
family. 117

(E) In accordance with Section 34a of Article II, Ohio 118
Constitution, an employer shall at the time of hire provide an 119
employee with the employer's name, address, telephone number, and 120
other contact information and update such information when it 121
changes. As used in division (E) of this section: 122

(1) "Other contact information" may include, where 123
applicable, the address of the employer's internet site on the 124
world wide web, the employer's electronic mail address, fax 125
number, or the name, address, and telephone number of the 126
employer's statutory agent. "Other contact information" does not 127
include the name, address, telephone number, fax number, internet 128
site address, or electronic mail address of any employee, 129
shareholder, officer, director, supervisor, manager, or other 130
individual employed by or associated with an employer. 131

(2) "When it changes" means that the employer shall provide 132
its employees with the change in its name, address, telephone 133
number, or other contact information within sixty business days 134
after the change occurs. The employer shall provide the changed 135
information by using any of its usual methods of communicating 136
with its employees, including, but not limited to, listing the 137
change on the employer's internet site on the world wide web, 138
internal computer network, or a bulletin board where it commonly 139
posts employee communications or by insertion or inclusion with 140
employees' paychecks or pay stubs. 141

(F) In accordance with Section 34a of Article II, Ohio 142

Constitution, an employer shall maintain a record of the name, 143
address, occupation, pay rate, hours worked for each day worked, 144
and each amount paid an employee for a period of not less than 145
three years following the last date the employee was employed by 146
that employer. As used in division (F) of this section: 147

(1) "Address" means an employee's home address as maintained 148
in the employer's personnel file or personnel database for that 149
employee. 150

(2)(a) With respect to employees who are not exempt from the 151
overtime pay requirements of the Fair Labor Standards Act or this 152
chapter, "pay rate" means an employee's base rate of pay. 153

(b) With respect to employees who are exempt from the 154
overtime pay requirements of the Fair Labor Standards Act or this 155
chapter, "pay rate" means an employee's annual base salary or 156
other rate of pay by which the particular employee qualifies for 157
that exemption under the Fair Labor Standards Act or this chapter, 158
but does not include bonuses, stock options, incentives, deferred 159
compensation, or any other similar form of compensation. 160

(3) "Record" means the name, address, occupation, pay rate, 161
hours worked for each day worked, and each amount paid an employee 162
in one or more documents, databases, or other paper or electronic 163
forms of record-keeping maintained by an employer. No one 164
particular method or form of maintaining such a record or records 165
is required under this division. An employer is not required to 166
create or maintain a single record containing only the employee's 167
name, address, occupation, pay rate, hours worked for each day 168
worked, and each amount paid an employee. An employer shall 169
maintain a record or records from which the employee or person 170
acting on behalf of that employee could reasonably review the 171
information requested by the employee or person. 172

An employer is not required to maintain the records specified 173

in division (F)(3) of this section for any period before January 174
1, 2007. On and after January 1, 2007, the employer shall maintain 175
the records required by division (F)(3) of this section for three 176
years from the date the hours were worked by the employee and for 177
three years after the date the employee's employment ends. 178

(4)(a) Except for individuals specified in division (F)(4)(b) 179
of this section, "hours worked for each day worked" means the 180
total amount of time worked by an employee in whatever increments 181
the employer uses for its payroll purposes during a day worked by 182
the employee. An employer is not required to keep a record of the 183
time of day an employee begins and ends work on any given day. As 184
used in division (F)(4) of this section, "day" means a fixed 185
period of twenty-four consecutive hours during which an employee 186
performs work for an employer. 187

(b) An employer is not required to keep records of "hours 188
worked for each day worked" for individuals for whom the employer 189
is not required to keep those records under the Fair Labor 190
Standards Act and its regulations or individuals who are not 191
subject to the overtime pay requirements specified in section 192
4111.03 of the Revised Code. 193

(5) "Each amount paid an employee" means the total gross 194
wages paid to an employee for each pay period. As used in division 195
(F)(5) of this section, "pay period" means the period of time 196
designated by an employer to pay an employee the employee's gross 197
wages in accordance with the employer's payroll practices under 198
section 4113.15 of the Revised Code. 199

(G) In accordance with Section 34a of Article II, Ohio 200
Constitution, an employer must provide such information without 201
charge to an employee or person acting on behalf of an employee 202
upon request. As used in division (G) of this section: 203

(1) "Such information" means the name, address, occupation, 204

pay rate, hours worked for each day worked, and each amount paid 205
for the specific employee who has requested that specific 206
employee's own information and does not include the name, address, 207
occupation, pay rate, hours worked for each day worked, or each 208
amount paid of any other employee of the employer. "Such 209
information" does not include hours worked for each day worked by 210
individuals for whom an employer is not required to keep that 211
information under the Fair Labor Standards Act and its regulations 212
or individuals who are not subject to the overtime pay 213
requirements specified in section 4111.03 of the Revised Code. 214

(2) "Acting on behalf of an employee" means a person acting 215
on behalf of an employee as any of the following: 216

(a) The certified or legally recognized collective bargaining 217
representative for that employee under the applicable federal law 218
or Chapter 4117. of the Revised Code; 219

(b) The employee's attorney; 220

(c) The employee's parent, guardian, or legal custodian. 221

A person "acting on behalf of an employee" must be 222
specifically authorized by an employee in order to make a request 223
for that employee's own name, address, occupation, pay rate, hours 224
worked for each day worked, and each amount paid to that employee. 225

(3) "Provide" means that an employer shall provide the 226
requested information within thirty business days after the date 227
the employer receives the request, unless either of the following 228
occurs: 229

(a) The employer and the employee or person acting on behalf 230
of the employee agree to some alternative time period for 231
providing the information. 232

(b) The thirty-day period would cause a hardship on the 233
employer under the circumstances, in which case the employer must 234

provide the requested information as soon as practicable. 235

(4) A "request" made by an employee or a person acting on 236
behalf of an employee means a request by an employee or a person 237
acting on behalf of an employee for the employee's own 238
information. The employer may require that the employee provide 239
the employer with a written request that has been signed by the 240
employee and notarized and that reasonably specifies the 241
particular information being requested. The employer may require 242
that the person acting on behalf of an employee provide the 243
employer with a written request that has been signed by the 244
employee whose information is being requested and notarized and 245
that reasonably specifies the particular information being 246
requested. 247

(H) In accordance with Section 34a of Article II, Ohio 248
Constitution, an employee, person acting on behalf of one or more 249
employees, and any other interested party may file a complaint 250
with the state for a violation of any provision of Section 34a of 251
Article II, Ohio Constitution, or any law or regulation 252
implementing its provisions. Such complaint shall be promptly 253
investigated and resolved by the state. The employee's name shall 254
be kept confidential unless disclosure is necessary to resolution 255
of a complaint and the employee consents to disclosure. As used in 256
division (H) of this section: 257

(1) "Complaint" means a complaint of an alleged violation 258
pertaining to harm suffered by the employee filing the complaint, 259
by a person acting on behalf of one or more employees, or by an 260
interested party. 261

(2) "Acting on behalf of one or more employees" has the same 262
meaning as "acting on behalf of an employee" in division (G)(2) of 263
this section. Each employee must provide a separate written and 264
notarized authorization before the person acting on that 265
employee's or those employees' behalf may request the name, 266

address, occupation, pay rate, hours worked for each day worked, 267
and each amount paid for the particular employee. 268

(3) "Interested party" means a party who alleges to be 269
injured by the alleged violation and who has standing to file a 270
complaint under common law principles of standing. 271

(4) "Resolved by the state" means that the complaint has been 272
resolved to the satisfaction of the state. 273

(5) "Shall be kept confidential" means that the state shall 274
keep the name of the employee confidential as required by division 275
(H) of this section. 276

(I) In accordance with Section 34a of Article II, Ohio 277
Constitution, the state may on its own initiative investigate an 278
employer's compliance with Section 34a of Article II, Ohio 279
Constitution, and any law or regulation implementing Section 34a 280
of Article II, Ohio Constitution. The employer shall make 281
available to the state any records related to such investigation 282
and other information required for enforcement of Section 34a of 283
Article II, Ohio Constitution or any law or regulation 284
implementing Section 34a of Article II, Ohio Constitution. The 285
state shall investigate an employer's compliance with this section 286
in accordance with the procedures described in section 4111.04 of 287
the Revised Code. All records and information related to 288
investigations by the state are confidential and are not a public 289
record subject to section 149.43 of the Revised Code. This 290
division does not prevent the state from releasing to or 291
exchanging with other state and federal wage and hour regulatory 292
authorities information related to investigations. 293

(J) In accordance with Section 34a of Article II, Ohio 294
Constitution, damages shall be calculated as an additional two 295
times the amount of the back wages and in the case of a violation 296
of an anti-retaliation provision an amount set by the state or 297

court sufficient to compensate the employee and deter future 298
violations, but not less than one hundred fifty dollars for each 299
day that the violation continued. The "not less than one hundred 300
fifty dollar" penalty specified in division (J) of this section 301
shall be imposed only for violations of the anti-retaliation 302
provision in Section 34a of Article II, Ohio Constitution. 303

(K) In accordance with Section 34a of Article II, Ohio 304
Constitution, an action for equitable and monetary relief may be 305
brought against an employer by the attorney general and/or an 306
employee or person acting on behalf of an employee or all 307
similarly situated employees in any court of competent 308
jurisdiction, including the court of common pleas of an employee's 309
county of residence, for any violation of Section 34a of Article 310
II, Ohio Constitution, or any law or regulation implementing its 311
provisions within three years of the violation or of when the 312
violation ceased if it was of a continuing nature, or within one 313
year after notification to the employee of final disposition by 314
the state of a complaint for the same violation, whichever is 315
later. 316

(1) As used in division (K) of this section, "notification" 317
means the date on which the notice was sent to the employee by the 318
state. 319

(2) No employee shall join as a party plaintiff in any civil 320
action that is brought under division (K) of this section by an 321
employee, person acting on behalf of an employee, or person acting 322
on behalf of all similarly situated employees unless that employee 323
first gives written consent to become such a party plaintiff and 324
that consent is filed with the court in which the action is 325
brought. 326

(3) A civil action regarding an alleged violation of this 327
section shall be maintained only under division (K) of this 328
section. This division does not preclude the joinder in a single 329

civil action of an action under this division and an action under 330
section 4111.10 of the Revised Code. 331

(4) Any agreement between an employee and employer to work 332
for less than the wage rate specified in ~~Section 34a of Article~~ 333
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 334
defense to an action under this section. 335

(L) In accordance with Section 34a of Article II, Ohio 336
Constitution, there shall be no exhaustion requirement, no 337
procedural, pleading, or burden of proof requirements beyond those 338
that apply generally to civil suits in order to maintain such 339
action and no liability for costs or attorney's fees on an 340
employee except upon a finding that such action was frivolous in 341
accordance with the same standards that apply generally in civil 342
suits. Nothing in division (L) of this section affects the right 343
of an employer and employee to agree to submit a dispute under 344
this section to alternative dispute resolution, including, but not 345
limited to, arbitration, in lieu of maintaining the civil suit 346
specified in division (K) of this section. Nothing in this 347
division limits the state's ability to investigate or enforce this 348
section. 349

(M) An employer who provides such information specified in 350
Section 34a of Article II, Ohio Constitution, shall be immune from 351
any civil liability for injury, death, or loss to person or 352
property that otherwise might be incurred or imposed as a result 353
of providing that information to an employee or person acting on 354
behalf of an employee in response to a request by the employee or 355
person, and the employer shall not be subject to the provisions of 356
Chapters 1347. and 1349. of the Revised Code to the extent that 357
such provisions would otherwise apply. As used in division (M) of 358
this section, "such information," "acting on behalf of an 359
employee," and "request" have the same meanings as in division (G) 360
of this section. 361

(N) As used in this section, "the state" means the director 362
of commerce. 363

Section 2. That existing sections 4111.02, 4111.09, and 364
4111.14 and section 4111.07 of the Revised Code are hereby 365
repealed. 366