

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 86

Representatives Smith, K., Craig

**Cosponsors: Representatives Leland, Sykes, Fedor, Sheehy, Boggs, Ashford,
West, Antonio, Kent, Strahorn**

A BILL

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 3
and ten cents per hour beginning January 1, 4
2019. 5

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

Section 1. That sections 4111.02, 4111.09, and 4111.14 of 6
the Revised Code be amended to read as follows: 7

Sec. 4111.02. ~~Every~~ (A) (1) Except as otherwise provided in 8
division (A) (2) of this section, beginning January 1, 2019, 9
every employer, as defined in Section 34a of Article II, Ohio 10
Constitution, shall pay each of the employer's employees at a 11
wage rate of not less than ~~the wage rate specified in Section~~ 12
~~34a of Article II, Ohio Constitution~~ ten dollars and ten cents 13
per hour. 14

(2) If an employer is able to demonstrate that an employee 15
receives tips that combined with the wages paid by the employer 16
are equal to or greater than the minimum wage rate for all hours 17

worked, the employer may pay the employee at a rate of less 18
than, but not less than half, the minimum wage rate required by 19
division (A) (1) of this section. 20

(B) The director of commerce annually shall adjust the 21
wage rate ~~as~~ specified in division (A) (1) of this section in 22
accordance with Section 34a of Article II, Ohio Constitution. 23

(C) No political subdivision shall establish a minimum 24
wage rate different from the wage rate required under this 25
section. 26

(D) As used in this section, "employee" has the same 27
meaning as in section 4111.14 of the Revised Code. 28

Sec. 4111.09. Every employer subject to sections 4111.01 29
to 4111.17 of the Revised Code, or to any rules issued 30
thereunder, shall keep a summary of the sections, approved by 31
the director of commerce, and copies of any applicable rules 32
issued thereunder, or a summary of the rules, posted in a 33
conspicuous and accessible place in or about the premises 34
wherein any person subject thereto is employed. The director of 35
commerce shall make the summary described in this section 36
available on the web site of the department of commerce. The 37
director shall update this summary as necessary, but not less 38
than annually, in order to reflect changes in the minimum wage 39
rate as required under Section 34a of Article II, Ohio 40
Constitution and section 4111.02 of the Revised Code. Employees 41
and employers shall be furnished copies of the summaries and 42
rules by the state, on request, without charge. 43

Sec. 4111.14. (A) Pursuant to the general assembly's 44
authority to establish a minimum wage under Section 34 of 45
Article II, Ohio Constitution, this section is in implementation 46

of Section 34a of Article II, Ohio Constitution. In implementing 47
Section 34a of Article II, Ohio Constitution, the general 48
assembly hereby finds that the purpose of Section 34a of Article 49
II, Ohio Constitution, is to: 50

(1) Ensure that Ohio employees, as defined in division (B) 51
(1) of this section, are paid the wage rate required by section 52
4111.02 of the Revised Code in accordance with Section 34a of 53
Article II, Ohio Constitution; 54

(2) Ensure that covered Ohio employers maintain certain 55
records that are directly related to the enforcement of the wage 56
rate requirements ~~in~~ of Section 34a of Article II, Ohio 57
Constitution and section 4111.02 of the Revised Code; 58

(3) Ensure that Ohio employees who are paid the wage rate 59
required by ~~Section 34a of Article II, Ohio Constitution~~ section 60
4111.02 of the Revised Code, may enforce their right to receive 61
that wage rate in the manner set forth in Section 34a of Article 62
II, Ohio Constitution; and 63

(4) Protect the privacy of Ohio employees' pay and 64
personal information specified in Section 34a of Article II, 65
Ohio Constitution, by restricting an employee's access, and 66
access by a person acting on behalf of that employee, to the 67
employee's own pay and personal information. 68

(B) In accordance with Section 34a of Article II, Ohio 69
Constitution, the terms "employer," "employee," "employ," 70
"person," and "independent contractor" have the same meanings as 71
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 72
U.S.C. 203, as amended. In construing the meaning of these 73
terms, due consideration and great weight shall be given to the 74
United States department of labor's and federal courts' 75

interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:

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

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

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

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

(a) "Casual basis" means employment that is irregular or 106
intermittent and that is not performed by an individual whose 107
vocation is to be employed in or about the property of the 108
employer or individual's residence. In construing who is 109
employed on a "casual basis," due consideration and great weight 110
shall be given to the United States department of labor's and 111
federal courts' interpretations of the term "casual basis" under 112
the Fair Labor Standards Act and its regulations. 113

(b) "An individual employed in or about the property of an 114
employer or individual's residence" means an individual employed 115
on a casual basis or an individual employed in or about a 116
residence on a casual basis, respectively. 117

(2) In accordance with Section 34a of Article II, Ohio 118
Constitution, employees of a solely family-owned and operated 119
business who are family members of an owner are not included 120
within the coverage of Section 34a of Article II, Ohio 121
Constitution. As used in division (D) (2) of this section, 122
"family member" means a parent, spouse, child, stepchild, 123
sibling, grandparent, grandchild, or other member of an owner's 124
immediate family. 125

(E) In accordance with Section 34a of Article II, Ohio 126
Constitution, an employer shall at the time of hire provide an 127
employee with the employer's name, address, telephone number, 128
and other contact information and update such information when 129
it changes. As used in division (E) of this section: 130

(1) "Other contact information" may include, where 131
applicable, the address of the employer's internet site on the 132
world wide web, the employer's electronic mail address, fax 133
number, or the name, address, and telephone number of the 134
employer's statutory agent. "Other contact information" does not 135

include the name, address, telephone number, fax number, 136
internet site address, or electronic mail address of any 137
employee, shareholder, officer, director, supervisor, manager, 138
or other individual employed by or associated with an employer. 139

(2) "When it changes" means that the employer shall 140
provide its employees with the change in its name, address, 141
telephone number, or other contact information within sixty 142
business days after the change occurs. The employer shall 143
provide the changed information by using any of its usual 144
methods of communicating with its employees, including, but not 145
limited to, listing the change on the employer's internet site 146
on the world wide web, internal computer network, or a bulletin 147
board where it commonly posts employee communications or by 148
insertion or inclusion with employees' paychecks or pay stubs. 149

(F) In accordance with Section 34a of Article II, Ohio 150
Constitution, an employer shall maintain a record of the name, 151
address, occupation, pay rate, hours worked for each day worked, 152
and each amount paid an employee for a period of not less than 153
three years following the last date the employee was employed by 154
that employer. As used in division (F) of this section: 155

(1) "Address" means an employee's home address as 156
maintained in the employer's personnel file or personnel 157
database for that employee. 158

(2) (a) With respect to employees who are not exempt from 159
the overtime pay requirements of the Fair Labor Standards Act or 160
this chapter, "pay rate" means an employee's base rate of pay. 161

(b) With respect to employees who are exempt from the 162
overtime pay requirements of the Fair Labor Standards Act or 163
this chapter, "pay rate" means an employee's annual base salary 164

or other rate of pay by which the particular employee qualifies 165
for that exemption under the Fair Labor Standards Act or this 166
chapter, but does not include bonuses, stock options, 167
incentives, deferred compensation, or any other similar form of 168
compensation. 169

(3) "Record" means the name, address, occupation, pay 170
rate, hours worked for each day worked, and each amount paid an 171
employee in one or more documents, databases, or other paper or 172
electronic forms of record-keeping maintained by an employer. No 173
one particular method or form of maintaining such a record or 174
records is required under this division. An employer is not 175
required to create or maintain a single record containing only 176
the employee's name, address, occupation, pay rate, hours worked 177
for each day worked, and each amount paid an employee. An 178
employer shall maintain a record or records from which the 179
employee or person acting on behalf of that employee could 180
reasonably review the information requested by the employee or 181
person. 182

An employer is not required to maintain the records 183
specified in division (F) (3) of this section for any period 184
before January 1, 2007. On and after January 1, 2007, the 185
employer shall maintain the records required by division (F) (3) 186
of this section for three years from the date the hours were 187
worked by the employee and for three years after the date the 188
employee's employment ends. 189

(4) (a) Except for individuals specified in division (F) (4) 190
(b) of this section, "hours worked for each day worked" means 191
the total amount of time worked by an employee in whatever 192
increments the employer uses for its payroll purposes during a 193
day worked by the employee. An employer is not required to keep 194

a record of the time of day an employee begins and ends work on 195
any given day. As used in division (F) (4) of this section, "day" 196
means a fixed period of twenty-four consecutive hours during 197
which an employee performs work for an employer. 198

(b) An employer is not required to keep records of "hours 199
worked for each day worked" for individuals for whom the 200
employer is not required to keep those records under the Fair 201
Labor Standards Act and its regulations or individuals who are 202
not subject to the overtime pay requirements specified in 203
section 4111.03 of the Revised Code. 204

(5) "Each amount paid an employee" means the total gross 205
wages paid to an employee for each pay period. As used in 206
division (F) (5) of this section, "pay period" means the period 207
of time designated by an employer to pay an employee the 208
employee's gross wages in accordance with the employer's payroll 209
practices under section 4113.15 of the Revised Code. 210

(G) In accordance with Section 34a of Article II, Ohio 211
Constitution, an employer must provide such information without 212
charge to an employee or person acting on behalf of an employee 213
upon request. As used in division (G) of this section: 214

(1) "Such information" means the name, address, 215
occupation, pay rate, hours worked for each day worked, and each 216
amount paid for the specific employee who has requested that 217
specific employee's own information and does not include the 218
name, address, occupation, pay rate, hours worked for each day 219
worked, or each amount paid of any other employee of the 220
employer. "Such information" does not include hours worked for 221
each day worked by individuals for whom an employer is not 222
required to keep that information under the Fair Labor Standards 223
Act and its regulations or individuals who are not subject to 224

the overtime pay requirements specified in section 4111.03 of 225
the Revised Code. 226

(2) "Acting on behalf of an employee" means a person 227
acting on behalf of an employee as any of the following: 228

(a) The certified or legally recognized collective 229
bargaining representative for that employee under the applicable 230
federal law or Chapter 4117. of the Revised Code; 231

(b) The employee's attorney; 232

(c) The employee's parent, guardian, or legal custodian. 233

A person "acting on behalf of an employee" must be 234
specifically authorized by an employee in order to make a 235
request for that employee's own name, address, occupation, pay 236
rate, hours worked for each day worked, and each amount paid to 237
that employee. 238

(3) "Provide" means that an employer shall provide the 239
requested information within thirty business days after the date 240
the employer receives the request, unless either of the 241
following occurs: 242

(a) The employer and the employee or person acting on 243
behalf of the employee agree to some alternative time period for 244
providing the information. 245

(b) The thirty-day period would cause a hardship on the 246
employer under the circumstances, in which case the employer 247
must provide the requested information as soon as practicable. 248

(4) A "request" made by an employee or a person acting on 249
behalf of an employee means a request by an employee or a person 250
acting on behalf of an employee for the employee's own 251
information. The employer may require that the employee provide 252

the employer with a written request that has been signed by the 253
employee and notarized and that reasonably specifies the 254
particular information being requested. The employer may require 255
that the person acting on behalf of an employee provide the 256
employer with a written request that has been signed by the 257
employee whose information is being requested and notarized and 258
that reasonably specifies the particular information being 259
requested. 260

(H) In accordance with Section 34a of Article II, Ohio 261
Constitution, an employee, person acting on behalf of one or 262
more employees, and any other interested party may file a 263
complaint with the state for a violation of any provision of 264
Section 34a of Article II, Ohio Constitution, or any law or 265
regulation implementing its provisions. Such complaint shall be 266
promptly investigated and resolved by the state. The employee's 267
name shall be kept confidential unless disclosure is necessary 268
to resolution of a complaint and the employee consents to 269
disclosure. As used in division (H) of this section: 270

(1) "Complaint" means a complaint of an alleged violation 271
pertaining to harm suffered by the employee filing the 272
complaint, by a person acting on behalf of one or more 273
employees, or by an interested party. 274

(2) "Acting on behalf of one or more employees" has the 275
same meaning as "acting on behalf of an employee" in division 276
(G) (2) of this section. Each employee must provide a separate 277
written and notarized authorization before the person acting on 278
that employee's or those employees' behalf may request the name, 279
address, occupation, pay rate, hours worked for each day worked, 280
and each amount paid for the particular employee. 281

(3) "Interested party" means a party who alleges to be 282

injured by the alleged violation and who has standing to file a 283
complaint under common law principles of standing. 284

(4) "Resolved by the state" means that the complaint has 285
been resolved to the satisfaction of the state. 286

(5) "Shall be kept confidential" means that the state 287
shall keep the name of the employee confidential as required by 288
division (H) of this section. 289

(I) In accordance with Section 34a of Article II, Ohio 290
Constitution, the state may on its own initiative investigate an 291
employer's compliance with Section 34a of Article II, Ohio 292
Constitution, and any law or regulation implementing Section 34a 293
of Article II, Ohio Constitution. The employer shall make 294
available to the state any records related to such investigation 295
and other information required for enforcement of Section 34a of 296
Article II, Ohio Constitution or any law or regulation 297
implementing Section 34a of Article II, Ohio Constitution. The 298
state shall investigate an employer's compliance with this 299
section in accordance with the procedures described in section 300
4111.04 of the Revised Code. All records and information related 301
to investigations by the state are confidential and are not a 302
public record subject to section 149.43 of the Revised Code. 303
This division does not prevent the state from releasing to or 304
exchanging with other state and federal wage and hour regulatory 305
authorities information related to investigations. 306

(J) In accordance with Section 34a of Article II, Ohio 307
Constitution, damages shall be calculated as an additional two 308
times the amount of the back wages and in the case of a 309
violation of an anti-retaliation provision an amount set by the 310
state or court sufficient to compensate the employee and deter 311
future violations, but not less than one hundred fifty dollars 312

for each day that the violation continued. The "not less than 313
one hundred fifty dollar" penalty specified in division (J) of 314
this section shall be imposed only for violations of the anti- 315
retaliation provision in Section 34a of Article II, Ohio 316
Constitution. 317

(K) In accordance with Section 34a of Article II, Ohio 318
Constitution, an action for equitable and monetary relief may be 319
brought against an employer by the attorney general and/or an 320
employee or person acting on behalf of an employee or all 321
similarly situated employees in any court of competent 322
jurisdiction, including the court of common pleas of an 323
employee's county of residence, for any violation of Section 34a 324
of Article II, Ohio Constitution, or any law or regulation 325
implementing its provisions within three years of the violation 326
or of when the violation ceased if it was of a continuing 327
nature, or within one year after notification to the employee of 328
final disposition by the state of a complaint for the same 329
violation, whichever is later. 330

(1) As used in division (K) of this section, 331
"notification" means the date on which the notice was sent to 332
the employee by the state. 333

(2) No employee shall join as a party plaintiff in any 334
civil action that is brought under division (K) of this section 335
by an employee, person acting on behalf of an employee, or 336
person acting on behalf of all similarly situated employees 337
unless that employee first gives written consent to become such 338
a party plaintiff and that consent is filed with the court in 339
which the action is brought. 340

(3) A civil action regarding an alleged violation of this 341
section shall be maintained only under division (K) of this 342

section. This division does not preclude the joinder in a single 343
civil action of an action under this division and an action 344
under section 4111.10 of the Revised Code. 345

(4) Any agreement between an employee and employer to work 346
for less than the wage rate specified in ~~Section 34a of Article~~ 347
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 348
defense to an action under this section. 349

(L) In accordance with Section 34a of Article II, Ohio 350
Constitution, there shall be no exhaustion requirement, no 351
procedural, pleading, or burden of proof requirements beyond 352
those that apply generally to civil suits in order to maintain 353
such action and no liability for costs or attorney's fees on an 354
employee except upon a finding that such action was frivolous in 355
accordance with the same standards that apply generally in civil 356
suits. Nothing in division (L) of this section affects the right 357
of an employer and employee to agree to submit a dispute under 358
this section to alternative dispute resolution, including, but 359
not limited to, arbitration, in lieu of maintaining the civil 360
suit specified in division (K) of this section. Nothing in this 361
division limits the state's ability to investigate or enforce 362
this section. 363

(M) An employer who provides such information specified in 364
Section 34a of Article II, Ohio Constitution, shall be immune 365
from any civil liability for injury, death, or loss to person or 366
property that otherwise might be incurred or imposed as a result 367
of providing that information to an employee or person acting on 368
behalf of an employee in response to a request by the employee 369
or person, and the employer shall not be subject to the 370
provisions of Chapters 1347. and 1349. of the Revised Code to 371
the extent that such provisions would otherwise apply. As used 372

in division (M) of this section, "such information," "acting on 373
behalf of an employee," and "request" have the same meanings as 374
in division (G) of this section. 375

(N) As used in this section, "the state" means the 376
director of commerce. 377

Section 2. That existing sections 4111.02, 4111.09, and 378
4111.14 and section 4111.07 of the Revised Code are hereby 379
repealed. 380