

As Introduced

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H. B. No. 391

Representatives Smith, K., Sobecki

**Cosponsors: Representatives West, Boggs, Lepore-Hagan, Ingram, Lightbody,
Galonski, Weinstein, Miller, A., Upchurch, Miranda, Crawley, Leland, Russo, Brent,
Liston**

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 fifty-five cents per hour beginning January 4
1, 2021. 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) Beginning January 1, 2021, every 8
employer, as defined in Section 34a of Article II, Ohio 9
Constitution, shall pay each of the employer's employees at a 10
wage rate of not less than ~~the wage rate specified in Section~~ 11
~~34a of Article II, Ohio Constitution~~ ten dollars and fifty-five 12
cents per hour. 13

(B) The director of commerce annually shall adjust the 14
wage rate ~~as~~ specified in division (A) of this section in 15
accordance with Section 34a of Article II, Ohio Constitution. 16

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

(D) 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;	47
(2) Ensure that covered Ohio employers maintain certain records that are directly related to the enforcement of the wage rate requirements in <u>of</u> Section 34a of Article II, Ohio Constitution <u>and section 4111.02 of the Revised Code</u> ;	48 49 50 51
(3) Ensure that Ohio employees who are paid the wage rate required by Section 34a of Article II, Ohio Constitution <u>section 4111.02 of the Revised Code</u> , may enforce their right to receive that wage rate in the manner set forth in Section 34a of Article II, Ohio Constitution; and	52 53 54 55 56
(4) Protect the privacy of Ohio employees' pay and personal information specified in Section 34a of Article II, Ohio Constitution, by restricting an employee's access, and access by a person acting on behalf of that employee, to the employee's own pay and personal information.	57 58 59 60 61
(B) In accordance with Section 34a of Article II, Ohio Constitution, the terms "employer," "employee," "employ," "person," and "independent contractor" have the same meanings as in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 203, as amended. In construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:	62 63 64 65 66 67 68 69 70 71
(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	72 73 74 75

from the definition of "employee" in this chapter. 76

(2) "Employ" and "employee" do not include any person 77
acting as a volunteer. In construing who is a volunteer, 78
"volunteer" shall have the same meaning as in sections 553.101 79
to 553.106 of Title 29 of the Code of Federal Regulations, as 80
amended, and due consideration and great weight shall be given 81
to the United States department of labor's and federal courts' 82
interpretations of the term "volunteer" under the Fair Labor 83
Standards Act and its regulations. 84

(3) "Employer" does not include a franchisor with respect 85
to the franchisor's relationship with a franchisee or an 86
employee of a franchisee, unless the franchisor agrees to assume 87
that role in writing or a court of competent jurisdiction 88
determines that the franchisor exercises a type or degree of 89
control over the franchisee or the franchisee's employees that 90
is not customarily exercised by a franchisor for the purpose of 91
protecting the franchisor's trademark, brand, or both. For 92
purposes of this division, "franchisor" and "franchisee" have 93
the same meanings as in 16 C.F.R. 436.1. 94

(4) Subject to division (B)(5) of this section, "employee" 95
does not include an individual who operates a vehicle or vessel 96
in the performance of services for or on behalf of a motor 97
carrier transporting property and to whom all of the following 98
factors apply: 99

(a) The individual owns the vehicle or vessel that is used 100
in performing the services for or on behalf of the carrier, or 101
the individual leases the vehicle or vessel under a bona fide 102
lease agreement that is not a temporary replacement lease 103
agreement. For purposes of this division, a bona fide lease 104
agreement does not include an agreement between the individual 105

and the motor carrier transporting property for which, or on 106
whose behalf, the individual provides services. 107

(b) The individual is responsible for supplying the 108
necessary personal services to operate the vehicle or vessel 109
used to provide the service. 110

(c) The compensation paid to the individual is based on 111
factors related to work performed, including on a mileage-based 112
rate or a percentage of any schedule of rates, and not solely on 113
the basis of the hours or time expended. 114

(d) The individual substantially controls the means and 115
manner of performing the services, in conformance with 116
regulatory requirements and specifications of the shipper. 117

(e) The individual enters into a written contract with the 118
carrier for whom the individual is performing the services that 119
describes the relationship between the individual and the 120
carrier to be that of an independent contractor and not that of 121
an employee. 122

(f) The individual is responsible for substantially all of 123
the principal operating costs of the vehicle or vessel and 124
equipment used to provide the services, including maintenance, 125
fuel, repairs, supplies, vehicle or vessel insurance, and 126
personal expenses, except that the individual may be paid by the 127
carrier the carrier's fuel surcharge and incidental costs, 128
including tolls, permits, and lumper fees. 129

(g) The individual is responsible for any economic loss or 130
economic gain from the arrangement with the carrier. 131

(5) A motor carrier may elect to consider an individual 132
described in division (B) (4) of this section as an employee for 133
purposes of this section. 134

(6) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.	135 136
(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, <u>or section 4111.02 of the Revised Code</u> 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.	137 138 139 140 141 142 143 144 145
(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:	146 147 148 149 150
(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 on a "casual basis," due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of the term "casual basis" under the Fair Labor Standards Act and its regulations.	151 152 153 154 155 156 157 158
(b) "An individual employed in or about the property of an employer or individual's residence" means an individual employed on a casual basis or an individual employed in or about a residence on a casual basis, respectively.	159 160 161 162
(2) In accordance with Section 34a of Article II, Ohio	163

Constitution, employees of a solely family-owned and operated 164
business who are family members of an owner are not included 165
within the coverage of Section 34a of Article II, Ohio 166
Constitution. As used in division (D) (2) of this section, 167
"family member" means a parent, spouse, child, stepchild, 168
sibling, grandparent, grandchild, or other member of an owner's 169
immediate family. 170

(E) In accordance with Section 34a of Article II, Ohio 171
Constitution, an employer shall at the time of hire provide an 172
employee with the employer's name, address, telephone number, 173
and other contact information and update such information when 174
it changes. As used in division (E) of this section: 175

(1) "Other contact information" may include, where 176
applicable, the address of the employer's internet site on the 177
world wide web, the employer's electronic mail address, fax 178
number, or the name, address, and telephone number of the 179
employer's statutory agent. "Other contact information" does not 180
include the name, address, telephone number, fax number, 181
internet site address, or electronic mail address of any 182
employee, shareholder, officer, director, supervisor, manager, 183
or other individual employed by or associated with an employer. 184

(2) "When it changes" means that the employer shall 185
provide its employees with the change in its name, address, 186
telephone number, or other contact information within sixty 187
business days after the change occurs. The employer shall 188
provide the changed information by using any of its usual 189
methods of communicating with its employees, including, but not 190
limited to, listing the change on the employer's internet site 191
on the world wide web, internal computer network, or a bulletin 192
board where it commonly posts employee communications or by 193

insertion or inclusion with employees' paychecks or pay stubs.	194
(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:	195 196 197 198 199 200
(1) "Address" means an employee's home address as maintained in the employer's personnel file or personnel database for that employee.	201 202 203
(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.	204 205 206
(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.	207 208 209 210 211 212 213 214
(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 forms of record-keeping maintained by an employer. No one particular method or form of maintaining such a record or records is required under this division. An employer is not required to create or maintain a single record containing only the employee's name, address, occupation, pay rate, hours worked	215 216 217 218 219 220 221 222

for each day worked, and each amount paid an employee. An 223
employer shall maintain a record or records from which the 224
employee or person acting on behalf of that employee could 225
reasonably review the information requested by the employee or 226
person. 227

An employer is not required to maintain the records 228
specified in division (F) (3) of this section for any period 229
before January 1, 2007. On and after January 1, 2007, the 230
employer shall maintain the records required by division (F) (3) 231
of this section for three years from the date the hours were 232
worked by the employee and for three years after the date the 233
employee's employment ends. 234

(4) (a) Except for individuals specified in division (F) (4) 235
(b) of this section, "hours worked for each day worked" means 236
the total amount of time worked by an employee in whatever 237
increments the employer uses for its payroll purposes during a 238
day worked by the employee. An employer is not required to keep 239
a record of the time of day an employee begins and ends work on 240
any given day. As used in division (F) (4) of this section, "day" 241
means a fixed period of twenty-four consecutive hours during 242
which an employee performs work for an employer. 243

(b) An employer is not required to keep records of "hours 244
worked for each day worked" for individuals for whom the 245
employer is not required to keep those records under the Fair 246
Labor Standards Act and its regulations or individuals who are 247
not subject to the overtime pay requirements specified in 248
section 4111.03 of the Revised Code. 249

(5) "Each amount paid an employee" means the total gross 250
wages paid to an employee for each pay period. As used in 251
division (F) (5) of this section, "pay period" means the period 252

of time designated by an employer to pay an employee the 253
employee's gross wages in accordance with the employer's payroll 254
practices under section 4113.15 of the Revised Code. 255

(G) In accordance with Section 34a of Article II, Ohio 256
Constitution, an employer must provide such information without 257
charge to an employee or person acting on behalf of an employee 258
upon request. As used in division (G) of this section: 259

(1) "Such information" means the name, address, 260
occupation, pay rate, hours worked for each day worked, and each 261
amount paid for the specific employee who has requested that 262
specific employee's own information and does not include the 263
name, address, occupation, pay rate, hours worked for each day 264
worked, or each amount paid of any other employee of the 265
employer. "Such information" does not include hours worked for 266
each day worked by individuals for whom an employer is not 267
required to keep that information under the Fair Labor Standards 268
Act and its regulations or individuals who are not subject to 269
the overtime pay requirements specified in section 4111.03 of 270
the Revised Code. 271

(2) "Acting on behalf of an employee" means a person 272
acting on behalf of an employee as any of the following: 273

(a) The certified or legally recognized collective 274
bargaining representative for that employee under the applicable 275
federal law or Chapter 4117. of the Revised Code; 276

(b) The employee's attorney; 277

(c) The employee's parent, guardian, or legal custodian. 278

A person "acting on behalf of an employee" must be 279
specifically authorized by an employee in order to make a 280
request for that employee's own name, address, occupation, pay 281

rate, hours worked for each day worked, and each amount paid to	282
that employee.	283
(3) "Provide" means that an employer shall provide the	284
requested information within thirty business days after the date	285
the employer receives the request, unless either of the	286
following occurs:	287
(a) The employer and the employee or person acting on	288
behalf of the employee agree to some alternative time period for	289
providing the information.	290
(b) The thirty-day period would cause a hardship on the	291
employer under the circumstances, in which case the employer	292
must provide the requested information as soon as practicable.	293
(4) A "request" made by an employee or a person acting on	294
behalf of an employee means a request by an employee or a person	295
acting on behalf of an employee for the employee's own	296
information. The employer may require that the employee provide	297
the employer with a written request that has been signed by the	298
employee and notarized and that reasonably specifies the	299
particular information being requested. The employer may require	300
that the person acting on behalf of an employee provide the	301
employer with a written request that has been signed by the	302
employee whose information is being requested and notarized and	303
that reasonably specifies the particular information being	304
requested.	305
(H) In accordance with Section 34a of Article II, Ohio	306
Constitution, an employee, person acting on behalf of one or	307
more employees, and any other interested party may file a	308
complaint with the state for a violation of any provision of	309
Section 34a of Article II, Ohio Constitution, or any law or	310

regulation implementing its provisions. Such complaint shall be 311
promptly investigated and resolved by the state. The employee's 312
name shall be kept confidential unless disclosure is necessary 313
to resolution of a complaint and the employee consents to 314
disclosure. As used in division (H) of this section: 315

(1) "Complaint" means a complaint of an alleged violation 316
pertaining to harm suffered by the employee filing the 317
complaint, by a person acting on behalf of one or more 318
employees, or by an interested party. 319

(2) "Acting on behalf of one or more employees" has the 320
same meaning as "acting on behalf of an employee" in division 321
(G) (2) of this section. Each employee must provide a separate 322
written and notarized authorization before the person acting on 323
that employee's or those employees' behalf may request the name, 324
address, occupation, pay rate, hours worked for each day worked, 325
and each amount paid for the particular employee. 326

(3) "Interested party" means a party who alleges to be 327
injured by the alleged violation and who has standing to file a 328
complaint under common law principles of standing. 329

(4) "Resolved by the state" means that the complaint has 330
been resolved to the satisfaction of the state. 331

(5) "Shall be kept confidential" means that the state 332
shall keep the name of the employee confidential as required by 333
division (H) of this section. 334

(I) In accordance with Section 34a of Article II, Ohio 335
Constitution, the state may on its own initiative investigate an 336
employer's compliance with Section 34a of Article II, Ohio 337
Constitution, and any law or regulation implementing Section 34a 338
of Article II, Ohio Constitution. The employer shall make 339

available to the state any records related to such investigation 340
and other information required for enforcement of Section 34a of 341
Article II, Ohio Constitution or any law or regulation 342
implementing Section 34a of Article II, Ohio Constitution. The 343
state shall investigate an employer's compliance with this 344
section in accordance with the procedures described in section 345
4111.04 of the Revised Code. All records and information related 346
to investigations by the state are confidential and are not a 347
public record subject to section 149.43 of the Revised Code. 348
This division does not prevent the state from releasing to or 349
exchanging with other state and federal wage and hour regulatory 350
authorities information related to investigations. 351

(J) In accordance with Section 34a of Article II, Ohio 352
Constitution, damages shall be calculated as an additional two 353
times the amount of the back wages and in the case of a 354
violation of an anti-retaliation provision an amount set by the 355
state or court sufficient to compensate the employee and deter 356
future violations, but not less than one hundred fifty dollars 357
for each day that the violation continued. The "not less than 358
one hundred fifty dollar" penalty specified in division (J) of 359
this section shall be imposed only for violations of the anti- 360
retaliation provision in Section 34a of Article II, Ohio 361
Constitution. 362

(K) In accordance with Section 34a of Article II, Ohio 363
Constitution, an action for equitable and monetary relief may be 364
brought against an employer by the attorney general and/or an 365
employee or person acting on behalf of an employee or all 366
similarly situated employees in any court of competent 367
jurisdiction, including the court of common pleas of an 368
employee's county of residence, for any violation of Section 34a 369
of Article II, Ohio Constitution, or any law or regulation 370

implementing its provisions within three years of the violation 371
or of when the violation ceased if it was of a continuing 372
nature, or within one year after notification to the employee of 373
final disposition by the state of a complaint for the same 374
violation, whichever is later. 375

(1) As used in division (K) of this section, 376
"notification" means the date on which the notice was sent to 377
the employee by the state. 378

(2) No employee shall join as a party plaintiff in any 379
civil action that is brought under division (K) of this section 380
by an employee, person acting on behalf of an employee, or 381
person acting on behalf of all similarly situated employees 382
unless that employee first gives written consent to become such 383
a party plaintiff and that consent is filed with the court in 384
which the action is brought. 385

(3) A civil action regarding an alleged violation of this 386
section shall be maintained only under division (K) of this 387
section. This division does not preclude the joinder in a single 388
civil action of an action under this division and an action 389
under section 4111.10 of the Revised Code. 390

(4) Any agreement between an employee and employer to work 391
for less than the wage rate specified in ~~Section 34a of Article~~ 392
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 393
defense to an action under this section. 394

(L) In accordance with Section 34a of Article II, Ohio 395
Constitution, there shall be no exhaustion requirement, no 396
procedural, pleading, or burden of proof requirements beyond 397
those that apply generally to civil suits in order to maintain 398
such action and no liability for costs or attorney's fees on an 399

employee except upon a finding that such action was frivolous in 400
accordance with the same standards that apply generally in civil 401
suits. Nothing in division (L) of this section affects the right 402
of an employer and employee to agree to submit a dispute under 403
this section to alternative dispute resolution, including, but 404
not limited to, arbitration, in lieu of maintaining the civil 405
suit specified in division (K) of this section. Nothing in this 406
division limits the state's ability to investigate or enforce 407
this section. 408

(M) An employer who provides such information specified in 409
Section 34a of Article II, Ohio Constitution, shall be immune 410
from any civil liability for injury, death, or loss to person or 411
property that otherwise might be incurred or imposed as a result 412
of providing that information to an employee or person acting on 413
behalf of an employee in response to a request by the employee 414
or person, and the employer shall not be subject to the 415
provisions of Chapters 1347. and 1349. of the Revised Code to 416
the extent that such provisions would otherwise apply. As used 417
in division (M) of this section, "such information," "acting on 418
behalf of an employee," and "request" have the same meanings as 419
in division (G) of this section. 420

(N) As used in this section, "the state" means the 421
director of commerce. 422

Section 2. That existing sections 4111.02, 4111.09, and 423
4111.14 of the Revised Code are hereby repealed. 424

Section 3. That section 4111.07 of the Revised Code is 425
hereby repealed. 426