

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**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**

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**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 <del>in</del> <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 <del>Section 34a of Article II, Ohio Constitution</del> <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 135  
4923.01 of the Revised Code. 136

(C) In accordance with Section 34a of Article II, Ohio 137  
Constitution, the state may issue licenses to employers 138  
authorizing payment of a wage below that required by Section 34a 139  
of Article II, Ohio Constitution, or section 4111.02 of the 140  
Revised Code to individuals with mental or physical disabilities 141  
that may otherwise adversely affect their opportunity for 142  
employment. In issuing such licenses, the state shall abide by 143  
the rules adopted pursuant to section 4111.06 of the Revised 144  
Code. 145

(D) (1) In accordance with Section 34a of Article II, Ohio 146  
Constitution, individuals employed in or about the property of 147  
an employer or an individual's residence on a casual basis are 148  
not included within the coverage of Section 34a of Article II, 149  
Ohio Constitution. As used in division (D) of this section: 150

(a) "Casual basis" means employment that is irregular or 151  
intermittent and that is not performed by an individual whose 152  
vocation is to be employed in or about the property of the 153  
employer or individual's residence. In construing who is 154  
employed on a "casual basis," due consideration and great weight 155  
shall be given to the United States department of labor's and 156  
federal courts' interpretations of the term "casual basis" under 157  
the Fair Labor Standards Act and its regulations. 158

(b) "An individual employed in or about the property of an 159  
employer or individual's residence" means an individual employed 160  
on a casual basis or an individual employed in or about a 161  
residence on a casual basis, respectively. 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
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(1) "Address" means an employee's home address as maintained in the employer's personnel file or personnel database for that employee.	201
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(2) (a) With respect to employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's base rate of pay.	204
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(b) With respect to employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's annual base salary or other rate of pay by which the particular employee qualifies for that exemption under the Fair Labor Standards Act or this chapter, but does not include bonuses, stock options, incentives, deferred compensation, or any other similar form of compensation.	207
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(3) "Record" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee in one or more documents, databases, or other paper or electronic 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
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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