

As Introduced

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Representatives Smith, K., Kelly

Cosponsors: Representatives Lepore-Hagan, Brown, Galonski, Patterson, Skindell, Lightbody, Miller, J., Crawley, Sobecki, Ingram, Crossman, West

A BILL

To amend sections 119.14 and 4111.03 and to enact
sections 4111.031 and 4111.032 of the Revised
Code to raise the salary threshold above which
certain employees are exempt from the overtime
law.

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

Section 1. That sections 119.14 and 4111.03 be amended and
sections 4111.031 and 4111.032 of the Revised Code be enacted to
read as follows:

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Sec. 119.14. (A) For any small business that engages in a
paperwork violation, the state agency or regulatory authority
that regulates the field of operation in which the business
operates shall waive any and all administrative fines or civil
penalties on that small business for the violation, if the
paperwork violation is a first-time offense.

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(B) When an agency or regulatory authority waives an
administrative fine or civil penalty under this section, the
state agency or regulatory authority shall require the small

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business to correct the violation within a reasonable period of time.	18 19
(C) Notwithstanding this section, a state agency or regulatory authority may impose administrative fines or civil penalties on a small business for a paperwork violation that is a first-time offense for any of the following reasons:	20 21 22 23
(1) The violation has the potential to cause serious harm to the public interest as determined by a state agency or regulatory authority director;	24 25 26
(2) The violation involves a small business knowingly or willfully engaging in conduct that may result in a felony conviction;	27 28 29
(3) Failure to impose an administrative fine or civil penalty for the violation would impede or interfere with the detection of criminal activity;	30 31 32
(4) The violation is of a law concerning the assessment or collection of any tax, debt, revenue, or receipt;	33 34
(5) The violation presents a direct danger to the public health or safety, results in a financial loss to an employee as defined in section 4111.03 of the Revised Code, or presents the risk of severe environmental harm, as determined by the head of the agency or regulatory authority;	35 36 37 38 39
(6) The violation is a failure to comply with a federal requirement for a program that has been delegated from the federal government to a state agency or regulatory authority and where the federal requirement includes a requirement to impose a fine.	40 41 42 43 44
(D) (1) Nothing in this section shall prohibit a state	45

agency or regulatory authority from waiving administrative fines	46
or civil penalties incurred by a small business for a paperwork	47
violation that is not a first-time offense.	48
(2) Any administrative fine or civil penalty that is	49
waived under this section, may be reinstated and imposed in	50
addition to any additional fines or penalties associated with a	51
subsequent violation for noncompliance with the same paperwork	52
requirement.	53
(E) This section shall not apply to any violation by a	54
small business of a statutory or regulatory requirement	55
mandating the collection of information by a state agency or	56
regulatory body if that small business previously violated any	57
such requirement mandating the collection of information.	58
(F) Nothing in this section shall be construed to diminish	59
the responsibility for any citizen or business to apply for and	60
obtain a permit, license, or authorizing document that is	61
required to engage in a regulated activity, or otherwise comply	62
with state or federal law.	63
(G) As used in this section:	64
(1) "Small business" has the same meaning as defined by	65
the Code of Federal Regulations, Title 13, Chapter 1, Part 121.	66
(2) "Paperwork violation" means the violation of any	67
statutory or regulatory requirement in the Revised Code	68
mandating the collection of information by a state agency or	69
regulatory body.	70
(3) "First-time offense" means the first instance of a	71
violation of the particular statutory or regulatory requirement	72
mandating the collection of information by a state agency or	73
regulatory body.	74

<u>(4) "Employee" means any individual employed by an employer but does not include:</u>	75 76
<u>(a) Any individual employed by the United States;</u>	77
<u>(b) Any individual employed as a babysitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;</u>	78 79 80 81
<u>(c) Any individual engaged in the delivery of newspapers to the consumer;</u>	82 83
<u>(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended;</u>	84 85 86 87 88
<u>(e) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;</u>	89 90 91
<u>(f) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state;</u>	92 93 94
<u>(g) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under section 501(a) of that code;</u>	95 96 97 98 99 100
<u>(h) Any individual employed directly by the house of representatives or directly by the senate.</u>	101 102

Sec. 4111.03. (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and, <u>except as provided in this section and sections 4111.031 and 4111.032 of the Revised Code,</u> subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended.	103 104 105 106 107 108 109 110
Any employee employed in agriculture shall not be covered by the overtime provision of this section.	111 112
(B) If a county employee elects to take compensatory time off in lieu of overtime pay, for any overtime worked, compensatory time may be granted by the employee's administrative superior, on a time and one-half basis, at a time mutually convenient to the employee and the administrative superior within one hundred eighty days after the overtime is worked.	113 114 115 116 117 118 119
(C) A county appointing authority with the exception of the county department of job and family services may, by rule or resolution as is appropriate, indicate the authority's intention not to be bound by division (B) of this section, and to adopt a different policy for the calculation and payment of overtime than that established by that division. Upon adoption, the alternative overtime policy prevails. Prior to the adoption of an alternative overtime policy, a county appointing authority with the exception of the county department of job and family services shall give a written notice of the alternative policy to each employee at least ten days prior to its effective date.	120 121 122 123 124 125 126 127 128 129 130
(D) As used in this section:	131

(1) "Employ" means to suffer or to permit to work.	132
(2) "Employer" means the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership, association, corporation, business trust, or any person or group of persons, acting in the interest of an employer in relation to an employee, but does not include either of the following:	133 134 135 136 137 138
(a) An employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated;	139 140 141 142
(b) A franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.	143 144 145 146 147 148 149 150 151 152
(3) "Employee" means any individual employed by an employer but does not include:	153 154
(a) Any individual employed by the United States;	155
(b) Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;	156 157 158 159
(c) Any individual engaged in the delivery of newspapers	160

to the consumer;	161
(d) Any individual employed as an outside salesperson compensated by commissions— <u>or</u> ;	162 163
(e) Any individual who is employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended, <u>and who is compensated</u> <u>on a salary basis as described in section 4111.031 of the</u> <u>Revised Code;</u>	164 165 166 167 168 169
(f) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;	170 171 172 173
(g) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state;	174 175 176
(h) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in Section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under Section 501(a) of that code;	177 178 179 180 181 182
(i) Any individual employed directly by the house of representatives or directly by the senate.	183 184
<u>Sec. 4111.031. (A) As used in this section, "paid on a fee</u> <u>basis" means that both of the following apply:</u>	185 186
(1) An individual is paid an agreed sum for a single job regardless of the time required for its completion;	187 188

<u>(2) The job performed by the individual is unique rather than a series of tasks repeated an indefinite number of times.</u>	189 190
<u>(B) Except as provided in division (D) of this section, to be considered as employed in a bona fide executive, administrative, or professional capacity as described under division (D) of section 4111.03 of the Revised Code, an individual must be compensated on a salary basis at one of the following rates, exclusive of board, lodging, and other facilities:</u>	191 192 193 194 195 196 197
<u>(1) Beginning on the effective date of this section, and ending on the first day of January immediately following the date that is three years after the effective date of this section, a rate per week of not less than nine hundred thirteen dollars per week;</u>	198 199 200 201 202
<u>(2) Beginning on the first day of January immediately following the date that is three years after the effective date of this section, a rate per week determined by the director of commerce pursuant to division (C) of this section.</u>	203 204 205 206
<u>(C) Beginning on the thirtieth day of September that is immediately before the date described in division (B) (2) of this section, and every three years thereafter, the director of commerce shall adjust the rate of compensation required under division (B) of this section to the fortieth percentile of weekly earnings of full-time nonhourly workers in the lowest wage census region in the second quarter of the year for which data has been most recently published by the bureau of labor statistics of the United States department of labor.</u>	207 208 209 210 211 212 213 214 215
<u>(D) Both of the following apply to the rate of compensation required under division (B) of this section:</u>	216 217

<u>(1) The rate of compensation may be translated into equivalent amounts for periods longer than one week, including on a biweekly, semimonthly, or monthly basis;</u>	218 219 220
<u>(2) An individual employed in an administrative or professional capacity who is paid on a fee basis, rather than a salary basis, satisfies the rate of compensation required under division (B) of this section if the hourly rate obtained by dividing the amount paid to the individual by the number of hours worked on the job multiplied by forty is equal to the minimum salary per week required under division (B) of this section.</u>	221 222 223 224 225 226 227 228
<u>Sec. 4111.032. (A) As used in this section:</u>	229
<u>(1) "Educational establishment" includes all of the following:</u>	230 231
<u>(a) A public school operated by a school district, a community school established under Chapter 3314. of the Revised Code, a STEM school established under Chapter 3326. of the Revised Code, and a college-preparatory boarding school established under Chapter 3328. of the Revised Code;</u>	232 233 234 235 236
<u>(b) A chartered or nonchartered nonpublic school;</u>	237
<u>(c) A state institution of higher education as defined in section 3345.011 of the Revised Code;</u>	238 239
<u>(d) A private, nonprofit institution that was issued a certificate of authorization pursuant to Chapter 1713. of the Revised Code;</u>	240 241 242
<u>(e) A career college in this state that holds a certificate of registration from the state board of career colleges and schools under Chapter 3332. of the Revised Code,</u>	243 244 245

<u>and a private institution exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code.</u>	246 247 248
<u>(2) "Teacher" includes a teacher with a license under section 3301.071 or sections 3319.22 to 3319.31 of the Revised Code, a teacher employed pursuant to section 3302.151 of the Revised Code, and a professor, faculty member, or instructor at any public or private institution of higher education that is considered an educational establishment.</u>	249 250 251 252 253 254
<u>(B) Sections 4111.03 and 4111.031 of the Revised Code do not apply to any of the following individuals unless the individual is paid on an hourly basis:</u>	255 256 257
<u>(1) An individual employed at an educational establishment as a teacher;</u>	258 259
<u>(2) An individual who has been admitted to the bar by order of the supreme court in compliance with its published rules and who is engaged in the practice of law;</u>	260 261 262
<u>(3) A physician, as defined in section 4731.053 of the Revised Code, who is engaged in the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;</u>	263 264 265 266
<u>(4) An individual licensed under Chapter 4715. of the Revised Code who is practicing dentistry as described in section 4715.01 of the Revised Code;</u>	267 268 269
<u>(5) An individual licensed under Chapter 4725. of the Revised Code who is engaged in the practice of optometry as defined in section 4725.01 of the Revised Code;</u>	270 271 272
<u>(6) An individual who holds the requisite academic degree</u>	273

required for the professions listed in divisions (B) (3) to (5) 274
of this section and who is engaged in an internship or resident 275
program pursuant to the practice of the profession. 276

Section 2. That existing sections 119.14 and 4111.03 of 277
the Revised Code are hereby repealed. 278