

As Introduced

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H. B. No. 731

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 1
sections 4111.031 and 4111.032 of the Revised 2
Code to raise the salary threshold above which 3
certain employees are exempt from the overtime 4
law. 5

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

Section 1. That sections 119.14 and 4111.03 be amended and 6
sections 4111.031 and 4111.032 of the Revised Code be enacted to 7
read as follows: 8

Sec. 119.14. (A) For any small business that engages in a 9
paperwork violation, the state agency or regulatory authority 10
that regulates the field of operation in which the business 11
operates shall waive any and all administrative fines or civil 12
penalties on that small business for the violation, if the 13
paperwork violation is a first-time offense. 14

(B) When an agency or regulatory authority waives an 15
administrative fine or civil penalty under this section, the 16
state agency or regulatory authority shall require the small 17

business to correct the violation within a reasonable period of 18
time. 19

(C) Notwithstanding this section, a state agency or 20
regulatory authority may impose administrative fines or civil 21
penalties on a small business for a paperwork violation that is 22
a first-time offense for any of the following reasons: 23

(1) The violation has the potential to cause serious harm 24
to the public interest as determined by a state agency or 25
regulatory authority director; 26

(2) The violation involves a small business knowingly or 27
willfully engaging in conduct that may result in a felony 28
conviction; 29

(3) Failure to impose an administrative fine or civil 30
penalty for the violation would impede or interfere with the 31
detection of criminal activity; 32

(4) The violation is of a law concerning the assessment or 33
collection of any tax, debt, revenue, or receipt; 34

(5) The violation presents a direct danger to the public 35
health or safety, results in a financial loss to an employee ~~as~~ 36
~~defined in section 4111.03 of the Revised Code~~, or presents the 37
risk of severe environmental harm, as determined by the head of 38
the agency or regulatory authority; 39

(6) The violation is a failure to comply with a federal 40
requirement for a program that has been delegated from the 41
federal government to a state agency or regulatory authority and 42
where the federal requirement includes a requirement to impose a 43
fine. 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</u>	75
<u>employer but does not include:</u>	76
<u>(a) Any individual employed by the United States;</u>	77
<u>(b) Any individual employed as a babysitter in the</u>	78
<u>employer's home, or a live-in companion to a sick, convalescing,</u>	79
<u>or elderly person whose principal duties do not include</u>	80
<u>housekeeping;</u>	81
<u>(c) Any individual engaged in the delivery of newspapers</u>	82
<u>to the consumer;</u>	83
<u>(d) Any individual employed as an outside salesperson</u>	84
<u>compensated by commissions or employed in a bona fide executive,</u>	85
<u>administrative, or professional capacity as such terms are</u>	86
<u>defined by the "Fair Labor Standards Act of 1938," 52 Stat.</u>	87
<u>1060, 29 U.S.C. 201, as amended;</u>	88
<u>(e) Any individual who works or provides personal services</u>	89
<u>of a charitable nature in a hospital or health institution for</u>	90
<u>which compensation is not sought or contemplated;</u>	91
<u>(f) A member of a police or fire protection agency or</u>	92
<u>student employed on a part-time or seasonal basis by a political</u>	93
<u>subdivision of this state;</u>	94
<u>(g) Any individual in the employ of a camp or recreational</u>	95
<u>area for children under eighteen years of age and owned and</u>	96
<u>operated by a nonprofit organization or group of organizations</u>	97
<u>described in section 501(c) (3) of the "Internal Revenue Code of</u>	98
<u>1954," and exempt from income tax under section 501(a) of that</u>	99
<u>code;</u>	100
<u>(h) Any individual employed directly by the house of</u>	101
<u>representatives or directly by the senate.</u>	102

Sec. 4111.03. (A) An employer shall pay an employee for 103
overtime at a wage rate of one and one-half times the employee's 104
wage rate for hours worked in excess of forty hours in one 105
workweek, in the manner and methods provided in and, except as 106
provided in this section and sections 4111.031 and 4111.032 of 107
the Revised Code, subject to the exemptions of section 7 and 108
section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 109
1060, 29 U.S.C.A. 207, 213, as amended. 110

Any employee employed in agriculture shall not be covered 111
by the overtime provision of this section. 112

(B) If a county employee elects to take compensatory time 113
off in lieu of overtime pay, for any overtime worked, 114
compensatory time may be granted by the employee's 115
administrative superior, on a time and one-half basis, at a time 116
mutually convenient to the employee and the administrative 117
superior within one hundred eighty days after the overtime is 118
worked. 119

(C) A county appointing authority with the exception of 120
the county department of job and family services may, by rule or 121
resolution as is appropriate, indicate the authority's intention 122
not to be bound by division (B) of this section, and to adopt a 123
different policy for the calculation and payment of overtime 124
than that established by that division. Upon adoption, the 125
alternative overtime policy prevails. Prior to the adoption of 126
an alternative overtime policy, a county appointing authority 127
with the exception of the county department of job and family 128
services shall give a written notice of the alternative policy 129
to each employee at least ten days prior to its effective date. 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	133
instrumentalities, and its political subdivisions and their	134
instrumentalities, any individual, partnership, association,	135
corporation, business trust, or any person or group of persons,	136
acting in the interest of an employer in relation to an	137
employee, but does not include either of the following:	138
(a) An employer whose annual gross volume of sales made	139
for business done is less than one hundred fifty thousand	140
dollars, exclusive of excise taxes at the retail level which are	141
separately stated;	142
(b) A franchisor with respect to the franchisor's	143
relationship with a franchisee or an employee of a franchisee,	144
unless the franchisor agrees to assume that role in writing or a	145
court of competent jurisdiction determines that the franchisor	146
exercises a type or degree of control over the franchisee or the	147
franchisee's employees that is not customarily exercised by a	148
franchisor for the purpose of protecting the franchisor's	149
trademark, brand, or both. For purposes of this division,	150
"franchisor" and "franchisee" have the same meanings as in 16	151
C.F.R. 436.1.	152
(3) "Employee" means any individual employed by an	153
employer but does not include:	154
(a) Any individual employed by the United States;	155
(b) Any individual employed as a baby-sitter in the	156
employer's home, or a live-in companion to a sick, convalescing,	157
or elderly person whose principal duties do not include	158
housekeeping;	159
(c) Any individual engaged in the delivery of newspapers	160

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

(2) The job performed by the individual is unique rather 189
than a series of tasks repeated an indefinite number of times. 190

(B) Except as provided in division (D) of this section, to 191
be considered as employed in a bona fide executive, 192
administrative, or professional capacity as described under 193
division (D) of section 4111.03 of the Revised Code, an 194
individual must be compensated on a salary basis at one of the 195
following rates, exclusive of board, lodging, and other 196
facilities: 197

(1) Beginning on the effective date of this section, and 198
ending on the first day of January immediately following the 199
date that is three years after the effective date of this 200
section, a rate per week of not less than nine hundred thirteen 201
dollars per week; 202

(2) Beginning on the first day of January immediately 203
following the date that is three years after the effective date 204
of this section, a rate per week determined by the director of 205
commerce pursuant to division (C) of this section. 206

(C) Beginning on the thirtieth day of September that is 207
immediately before the date described in division (B) (2) of this 208
section, and every three years thereafter, the director of 209
commerce shall adjust the rate of compensation required under 210
division (B) of this section to the fortieth percentile of 211
weekly earnings of full-time nonhourly workers in the lowest 212
wage census region in the second quarter of the year for which 213
data has been most recently published by the bureau of labor 214
statistics of the United States department of labor. 215

(D) Both of the following apply to the rate of 216
compensation required under division (B) of this section: 217

(1) The rate of compensation may be translated into 218
equivalent amounts for periods longer than one week, including 219
on a biweekly, semimonthly, or monthly basis; 220

(2) An individual employed in an administrative or 221
professional capacity who is paid on a fee basis, rather than a 222
salary basis, satisfies the rate of compensation required under 223
division (B) of this section if the hourly rate obtained by 224
dividing the amount paid to the individual by the number of 225
hours worked on the job multiplied by forty is equal to the 226
minimum salary per week required under division (B) of this 227
section. 228

Sec. 4111.032. (A) As used in this section: 229

(1) "Educational establishment" includes all of the 230
following: 231

(a) A public school operated by a school district, a 232
community school established under Chapter 3314. of the Revised 233
Code, a STEM school established under Chapter 3326. of the 234
Revised Code, and a college-preparatory boarding school 235
established under Chapter 3328. of the Revised Code; 236

(b) A chartered or nonchartered nonpublic school; 237

(c) A state institution of higher education as defined in 238
section 3345.011 of the Revised Code; 239

(d) A private, nonprofit institution that was issued a 240
certificate of authorization pursuant to Chapter 1713. of the 241
Revised Code; 242

(e) A career college in this state that holds a 243
certificate of registration from the state board of career 244
colleges and schools under Chapter 3332. of the Revised Code, 245

and a private institution exempt from regulation under Chapter 246
3332. of the Revised Code as prescribed in section 3333.046 of 247
the Revised Code. 248

(2) "Teacher" includes a teacher with a license under 249
section 3301.071 or sections 3319.22 to 3319.31 of the Revised 250
Code, a teacher employed pursuant to section 3302.151 of the 251
Revised Code, and a professor, faculty member, or instructor at 252
any public or private institution of higher education that is 253
considered an educational establishment. 254

(B) Sections 4111.03 and 4111.031 of the Revised Code do 255
not apply to any of the following individuals unless the 256
individual is paid on an hourly basis: 257

(1) An individual employed at an educational establishment 258
as a teacher; 259

(2) An individual who has been admitted to the bar by 260
order of the supreme court in compliance with its published 261
rules and who is engaged in the practice of law; 262

(3) A physician, as defined in section 4731.053 of the 263
Revised Code, who is engaged in the practice of medicine and 264
surgery, osteopathic medicine and surgery, or podiatric medicine 265
and surgery; 266

(4) An individual licensed under Chapter 4715. of the 267
Revised Code who is practicing dentistry as described in section 268
4715.01 of the Revised Code; 269

(5) An individual licensed under Chapter 4725. of the 270
Revised Code who is engaged in the practice of optometry as 271
defined in section 4725.01 of the Revised Code; 272

(6) An individual who holds the requisite academic degree 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