

**As Reported by the Senate Transportation, Commerce and Workforce  
Committee**

**133rd General Assembly**

**Regular Session  
2019-2020**

**S. B. No. 243**

**Senators Brenner, Peterson**

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**A BILL**

To amend section 4111.03 and to enact section 1  
4111.031 of the Revised Code to except traveling 2  
to and from a worksite and performing certain 3  
routine tasks from the overtime pay requirement. 4

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

**Section 1.** That section 4111.03 be amended and section 5  
4111.031 of the Revised Code be enacted to read as follows: 6

**Sec. 4111.03.** (A) An—Except as provided in section 7  
4111.031 of the Revised Code, an employer shall pay an employee 8  
for overtime at a wage rate of one and one-half times the 9  
employee's wage rate for hours worked in excess of forty hours 10  
in one workweek, in the manner and methods provided in and 11  
subject to the exemptions of section 7 and section 13 of the 12  
"Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 13  
207, 213, as amended. 14

Any employee employed in agriculture shall not be covered 15  
by the overtime provision of this section. 16

A motor carrier may elect to apply the overtime provision 17  
of this section to an individual who is excluded from the 18

provision under division (D) (3) (i) of this section. 19

(B) If a county employee or township employee elects to 20  
take compensatory time off in lieu of overtime pay, for any 21  
overtime worked, compensatory time may be granted by the 22  
employee's administrative superior, on a time and one-half 23  
basis, at a time mutually convenient to the employee and the 24  
administrative superior within one hundred eighty days after the 25  
overtime is worked. 26

(C) A township appointing authority or a county appointing 27  
authority with the exception of the county department of job and 28  
family services may, by rule or resolution as is appropriate, 29  
indicate the authority's intention not to be bound by division 30  
(B) of this section, and to adopt a different policy for the 31  
calculation and payment of overtime than that established by 32  
that division. Upon adoption, the alternative overtime policy 33  
prevails. Prior to the adoption of an alternative overtime 34  
policy, a township appointing authority or a county appointing 35  
authority with the exception of the county department of job and 36  
family services shall give a written notice of the alternative 37  
policy to each employee at least ten days prior to its effective 38  
date. 39

(D) As used in this section and section 4111.031 of the 40  
Revised Code: 41

(1) "Employ" means to suffer or to permit to work. 42

(2) "Employer" means the state of Ohio, its 43  
instrumentalities, and its political subdivisions and their 44  
instrumentalities, any individual, partnership, association, 45  
corporation, business trust, or any person or group of persons, 46  
acting in the interest of an employer in relation to an 47

employee, but does not include either of the following: 48

(a) An employer whose annual gross volume of sales made 49  
for business done is less than one hundred fifty thousand 50  
dollars, exclusive of excise taxes at the retail level which are 51  
separately stated; 52

(b) A franchisor with respect to the franchisor's 53  
relationship with a franchisee or an employee of a franchisee, 54  
unless the franchisor agrees to assume that role in writing or a 55  
court of competent jurisdiction determines that the franchisor 56  
exercises a type or degree of control over the franchisee or the 57  
franchisee's employees that is not customarily exercised by a 58  
franchisor for the purpose of protecting the franchisor's 59  
trademark, brand, or both. For purposes of this division, 60  
"franchisor" and "franchisee" have the same meanings as in 16 61  
C.F.R. 436.1. 62

(3) "Employee" means any individual employed by an 63  
employer but does not include: 64

(a) Any individual employed by the United States; 65

(b) Any individual employed as a baby-sitter in the 66  
employer's home, or a live-in companion to a sick, convalescing, 67  
or elderly person whose principal duties do not include 68  
housekeeping; 69

(c) Any individual engaged in the delivery of newspapers 70  
to the consumer; 71

(d) Any individual employed as an outside salesperson 72  
compensated by commissions or employed in a bona fide executive, 73  
administrative, or professional capacity as such terms are 74  
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 75  
1060, 29 U.S.C.A. 201, as amended; 76

(e) Any individual who works or provides personal services	77
of a charitable nature in a hospital or health institution for	78
which compensation is not sought or contemplated;	79
(f) A member of a police or fire protection agency or	80
student employed on a part-time or seasonal basis by a political	81
subdivision of this state;	82
(g) Any individual in the employ of a camp or recreational	83
area for children under eighteen years of age and owned and	84
operated by a nonprofit organization or group of organizations	85
described in Section 501(c)(3) of the "Internal Revenue Code of	86
1954," and exempt from income tax under Section 501(a) of that	87
code;	88
(h) Any individual employed directly by the house of	89
representatives or directly by the senate;	90
(i) An individual who operates a vehicle or vessel in the	91
performance of services for or on behalf of a motor carrier	92
transporting property and to whom all of the following factors	93
apply:	94
(i) The individual owns the vehicle or vessel that is used	95
in performing the services for or on behalf of the carrier, or	96
the individual leases the vehicle or vessel under a bona fide	97
lease agreement that is not a temporary replacement lease	98
agreement. For purposes of this division, a bona fide lease	99
agreement does not include an agreement between the individual	100
and the motor carrier transporting property for which, or on	101
whose behalf, the individual provides services.	102
(ii) The individual is responsible for supplying the	103
necessary personal services to operate the vehicle or vessel	104
used to provide the service.	105

(iii) The compensation paid to the individual is based on 106  
factors related to work performed, including on a mileage-based 107  
rate or a percentage of any schedule of rates, and not solely on 108  
the basis of the hours or time expended. 109

(iv) The individual substantially controls the means and 110  
manner of performing the services, in conformance with 111  
regulatory requirements and specifications of the shipper. 112

(v) The individual enters into a written contract with the 113  
carrier for whom the individual is performing the services that 114  
describes the relationship between the individual and the 115  
carrier to be that of an independent contractor and not that of 116  
an employee. 117

(vi) The individual is responsible for substantially all 118  
of the principal operating costs of the vehicle or vessel and 119  
equipment used to provide the services, including maintenance, 120  
fuel, repairs, supplies, vehicle or vessel insurance, and 121  
personal expenses, except that the individual may be paid by the 122  
carrier the carrier's fuel surcharge and incidental costs, 123  
including tolls, permits, and lumper fees. 124

(vii) The individual is responsible for any economic loss 125  
or economic gain from the arrangement with the carrier. 126

(4) "Motor carrier" has the same meaning as in section 127  
4923.01 of the Revised Code. 128

**Sec. 4111.031.** (A) (1) Except as provided in division (B) 129  
of this section, an employer is not required to pay the overtime 130  
wage rate under section 4111.03 of the Revised Code to an 131  
employee for any time that the employee spends performing either 132  
of the following activities: 133

(a) Traveling to or from the location where the employee 134

<u>performs the principal activity the employee is employed to</u>	135
<u>perform for the employer;</u>	136
<u>(b) Performing tasks that are preliminary or postliminary</u>	137
<u>to the principal activity that the employee is employed to</u>	138
<u>perform, including de minimis time spent checking scheduled</u>	139
<u>assignments, work locations, electronic mail messages, voice</u>	140
<u>messages, or calendars.</u>	141
<u>(2) Division (A) (1) of this section applies to an activity</u>	142
<u>described in that division, regardless of whether the activity</u>	143
<u>is performed customarily, regularly, infrequently, or</u>	144
<u>sporadically and whether the employee performs the activity</u>	145
<u>before the time the employee begins the work day or after the</u>	146
<u>time the employee ends the work day.</u>	147
<u>(B) Division (A) of this section does not apply if an</u>	148
<u>employee engages in an activity described in division (A) (1) (b)</u>	149
<u>of this section under either of the following circumstances:</u>	150
<u>(1) The employee performs the activity during the regular</u>	151
<u>work day or during prescribed hours.</u>	152
<u>(2) The employee performs the activity at the specific</u>	153
<u>direction of the employer.</u>	154
<b>Section 2.</b> That existing section 4111.03 of the Revised	155
Code is hereby repealed.	156