

Sub. H.B. 110
L-134-0001-3

_____ moved to amend as follows:

In line 68 of the title, after "4104.37," insert "4111.02,
4111.13," 1
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In line 134 of the title, after "4104.35," insert "4111.021,
4113.87, 4113.88, 4113.89, 4113.90, 4113.91, 4113.92, 4113.93," 3
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In line 151 of the title, after "3746.07," insert "4113.81," 5

In line 238, after "4104.37," insert "4111.02, 4111.13," 6

In line 288, after "4104.35," insert "4111.021, 4113.87,
4113.88, 4113.89, 4113.90, 4113.91, 4113.92, 4113.93," 7
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After line 42636, insert: 9

"**Sec. 4111.02.** ~~Every~~ Except as provided in section 4111.021 10
of the Revised Code, every employer, as defined in Section 34a of 11
Article II, Ohio Constitution, shall pay each of the employer's 12
employees at a wage rate of not less than the wage rate specified 13
in Section 34a of Article II, Ohio Constitution. 14

The director of commerce annually shall adjust the wage rate 15
as specified in Section 34a of Article II, Ohio Constitution. 16

No political subdivision shall establish a minimum wage rate 17
different from the wage rate required under this section. 18

As used in this section, "employee" has the same meaning as 19

in section 4111.14 of the Revised Code.

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Sec. 4111.021. (A) As used in this section:

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(1) "Direct services employee" means an employee who is employed in a position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals and any of the following apply:

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(a) The employee is employed by a medicaid provider to furnish medicaid services to medicaid recipients.

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(b) The employee is employed in a direct services position as that term is defined in section 5123.081 of the Revised Code.

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(c) The employee is employed by a state agency for the purpose of providing health care.

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(2) "Medicaid provider" and "medicaid services" have the same meanings as in section 5164.01 of the Revised Code.

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(B) Every employer shall pay each of the employer's direct services employees at a wage rate that is not less than the higher of the following:

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(1) The highest wage rate calculated by the director of commerce in accordance with Section 34a of Article II, Ohio Constitution, and section 4111.02 of the Revised Code;

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(2) The hourly basic minimum wage specified in section 206(a)(1) of the "Fair Labor Standards Act of 1938," 29 U.S.C. 206(a)(1), as amended;

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(3) Thirteen dollars per hour.

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Sec. 4111.13. (A) No employer shall hinder or delay the director of commerce in the performance of the director's duties in the enforcement of sections 4111.01 to 4111.17 of the Revised

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Code, or refuse to admit the director to any place of employment, 47
 or fail to make, keep, and preserve any records as required under 48
 those sections, or falsify any of those records, or refuse to make 49
 them accessible to the director upon demand, or refuse to furnish 50
 them or any other information required for the proper enforcement 51
 of those sections to the director upon demand, or fail to post a 52
 summary of those sections or a copy of any applicable rules as 53
 required by section 4111.09 of the Revised Code. Each day of 54
 violation constitutes a separate offense. 55

(B) No employer shall discharge or in any other manner 56
 discriminate against any employee because the employee has made 57
 any complaint to the employee's employer, or to the director, that 58
 the employee has not been paid wages in accordance with sections 59
 4111.01 to 4111.17 of the Revised Code, or because the employee 60
 has made any complaint or is about to cause to be instituted any 61
 proceeding under or related to those sections, or because the 62
 employee has testified or is about to testify in any proceeding. 63

(C) No employer shall pay or agree to pay wages at a rate 64
 less than the rate applicable under sections 4111.01 to 4111.17 of 65
 the Revised Code. Each week or portion thereof for which the 66
 employer pays any employee less than the rate applicable under 67
 those sections constitutes a separate offense as to each employer. 68

(D) No employer shall otherwise violate sections 4111.01 to 69
 4111.17 of the Revised Code, or any rule adopted thereunder. Each 70
 day of violation constitutes a separate offense. 71

(E) The culpability sufficient to commit a violation of this 72
section is reckless if the violation is related to section 73
4111.021 of the Revised Code. 74

Sec. 4113.87. As used in this section and sections 4113.88 to 75

4113.93 of the Revised Code: 76

(A) "Appropriate unit" means independent child care providers 77
or independent home care providers, whichever is the subject of 78
the bargaining activity. 79

(B) "Independent child care provider" means any of the 80
following persons: 81

(1) A person who is licensed as a type A home who does not 82
meet the definition of "employee" under section 2 of the "National 83
Labor Relations Act," 29 U.S.C. 152; 84

(2) A person who is a licensed type B home; 85

(3) A person who is an in-home aide who is not a county or 86
state employee. 87

(C) "Independent home care provider" means any person who has 88
a medicaid provider agreement to provide either of the following 89
on a self-employed basis and without employing, directly or 90
through contract, another person: 91

(1) State plan home and community-based services covered by 92
the medicaid program pursuant to section 5164.16 of the Revised 93
Code; 94

(2) Home and community-based services available under a 95
medicaid waiver component as defined in section 5166.01 of the 96
Revised Code. 97

(D) "Provider" means an independent child care provider or an 98
independent home care provider. 99

(E) "Recipient" means any person receiving the services of an 100
independent child care provider or an independent home care 101
provider, or that person's parent or legal guardian. 102

(F) "Representative organization" means any employee 103

organization as defined in section 4117.01 of the Revised Code or 104
any labor or bona fide organization in which providers participate 105
and that exists for the purpose, in whole or in part, of dealing 106
with the state concerning grievances, wages, hours, terms, and 107
other conditions of employment of providers that are within the 108
control of the state. 109

(G) "Type A home," "licensed type B home," and "in-home aide" 110
have the same meanings as in section 5104.01 of the Revised Code. 111

Sec. 4113.88. Providers may do all of the following: 112

(A) Form, join, assist, or participate in, or refrain from 113
forming, joining, assisting, or participating in, any 114
representative organization of their own choosing; 115

(B) Engage in concerted activities, other than those 116
described in division (A) of this section, for the purpose of 117
collective bargaining or other mutual aid and protection; 118

(C) Be represented by a representative organization; 119

(D) Bargain collectively with the state to determine wages, 120
hours, and terms and conditions of employment that are within the 121
control of the state and the continuation, modification, or 122
deletion of an existing provision of a collective bargaining 123
agreement, and enter into a collective bargaining agreement; 124

(E) Present grievances and have them adjusted, without the 125
intervention of the representative organization, so long as the 126
adjustment is not inconsistent with the terms of any collective 127
bargaining agreement then in effect and the representative 128
organization has the opportunity to be present at the adjustment. 129

Sec. 4113.89. (A) A representative organization shall become 130

the exclusive representative of all the providers in an 131
appropriate unit for the purpose of collective bargaining by 132
filing a request with the state for recognition as an exclusive 133
representative, as described in division (B) of this section, a 134
copy of which shall be sent to the state employment relations 135
board. 136

(B)(1) In the request for recognition, the representative 137
organization shall do all of the following: 138

(a) Describe the bargaining unit; 139

(b) Allege that a majority of the providers in the bargaining 140
unit wish to be represented by the representative organization; 141

(c) Support the request with substantial evidence based on, 142
and in accordance with, rules prescribed by the state employment 143
relations board demonstrating that a majority of the providers in 144
the bargaining unit wish to be represented by the representative 145
organization. 146

(2) Immediately on receipt of the request described in this 147
section, the state shall request an election in accordance with 148
the same requirements as provided in division (A)(2) of section 149
4117.07 of the Revised Code. 150

(C) Nothing in this section shall be construed to permit the 151
state to recognize, or the state employment relations board to 152
certify, a representative organization as an exclusive 153
representative if there is in effect a lawful written agreement, 154
contract, or memorandum of understanding between the state and 155
another representative organization that, on the effective date of 156
this section, has been recognized by the state as the exclusive 157
representative of the providers in an appropriate unit or that by 158
tradition, custom, practice, election, or negotiation has been the 159

only representative organization representing all providers in the 160
unit. This division does not apply to any agreement that has been 161
in effect in excess of three years. For purposes of this section, 162
extensions of an agreement do not affect the expiration of the 163
original agreement. 164

Sec. 4113.90. (A) All matters pertaining to wages, hours, and 165
terms and conditions of employment that are within the control of 166
the state and the continuation, modification, or deletion of an 167
existing provision of a collective bargaining agreement, are 168
subject to collective bargaining between the state and the 169
exclusive representative as described in section 4113.89 of the 170
Revised Code, except as otherwise specified in this section. 171

(B) This section does not alter the unique relations between 172
providers and recipients of care. The recipient retains the 173
absolute right to choose providers and to control the hiring, 174
termination, and supervision of providers. 175

(C) This section does not affect the ability of the state to 176
take appropriate action when a provider is no longer eligible to 177
provide care under state or federal law, or any rules or 178
regulations adopted thereunder. 179

Sec. 4113.91. The parties to any collective bargaining 180
agreement entered into pursuant to sections 4113.87 to 4113.90 of 181
the Revised Code shall record that agreement in writing, which is 182
to be executed by all of the parties to the agreement. The 183
agreement shall contain the same provisions as described in 184
division (B) of section 4117.09 of the Revised Code, as 185
applicable. These provisions apply to the state, its agents or 186
representatives, any representative organization, its agents or 187
representatives, and to providers in the same manner as the same 188

provisions apply to public employers, public employees, and 189
employee organizations as described in Chapter 4117. of the 190
Revised Code. 191

Sec. 4113.92. The state employment relations board has the 192
same authority as described in sections 4117.12 and 4117.13 of the 193
Revised Code to investigate, hold hearings, make determinations, 194
and issue complaints regarding unfair labor practices, insofar as 195
that authority does not conflict with sections 4113.87 to 4113.93 196
of the Revised Code. For purposes of this section, "unfair labor 197
practice" has the same meaning as in section 4117.11 of the 198
Revised Code, except any provisions applying to public employers 199
shall apply to the state, any provisions applying to employee 200
organizations shall apply to representative organizations, and any 201
provisions applying to public employees shall apply to providers. 202

Sec. 4113.93. A provider is not an employee of the state or 203
in the service of the state." 204

In line 60849, after "4104.37," insert "4111.02, 4111.13," 205

In line 60881, after "3746.07," insert "4113.81," 206

The motion was _____ agreed to.

SYNOPSIS

Minimum wage for direct services employees 207

R.C. 4111.02, 4111.021, and 4111.13 208

Requires an employer to pay the employer's direct services 209
employees at the higher of the following wage rates: the state 210

minimum wage, the federal minimum wage, or \$13 per hour. 211

Specifies that the culpability sufficient to commit a 212
 continuing law criminal prohibition under Ohio's Minimum Fair Wage 213
 Standard Law (MFWSL) is reckless if the violation is related to 214
 the bill's provision (reckless is the culpability applicable to 215
 violations of the MFWL by default under current law and continuing 216
 law requires that all newly enacted criminal offenses specify the 217
 degree of mental culpability required to commit the offense). 218

**Collective bargaining for independent providers and 219
 independent child care providers 220**

**R.C. 4113.81 (repealed), 4113.87, 4113.88, 4113.89, 4113.90, 221
 4113.91, 4113.92, and 4113.93 222**

Allows independent home care providers and independent child 223
 care providers to do all of the following: 224

- Form, join, assist, or participate in, or refrain from 225
 forming, joining, assisting, or participating in, except as 226
 otherwise specified, any representative organization (essentially, 227
 a union) of their own choosing; 228
- Engage in concerted activities, other than those described 229
 above, for the purpose of collective bargaining or other mutual 230
 aid and protection; 231
- Be represented by a representative organization; 232
- Bargain collectively with the state to determine wages, 233
 hours, and terms and conditions of employment that are within the 234
 control of the state and the continuation, modification, or 235
 deletion of an existing provision of a collective bargaining 236
 agreement, and enter into a collective bargaining agreement; 237
- Present grievances and have them adjusted, without the 238

intervention of the representative organization, so long as the 239
 adjustment is not inconsistent with the terms of any collective 240
 bargaining agreement then in effect and the representative 241
 organization has the opportunity to be present at the adjustment. 242

Defines "independent home care provider" generally as any 243
 person who, on a self-employed basis, either provides home or 244
 community-based services under a Medicaid waiver component or 245
 through a state Medicaid plan amendment. 246

Defines "independent child care provider" as a person who is 247
 a licensed Type A home who does not meet the definition of 248
 employee under the National Labor Relations Act, a licensed Type B 249
 home, or an in-home aide who is not a county or state employee. 250

Specifies the processes by which a representative 251
 organization may become the exclusive representative of all of the 252
 providers in an appropriate bargaining unit. 253

Makes all matters pertaining to wages, hours, and terms and 254
 conditions of employment that are within the control of the state 255
 and the continuation, modification, or deletion of an existing 256
 provision of a collective bargaining agreement subject to 257
 collective bargaining between the state and the exclusive 258
 representative. 259

Prohibits the collective bargaining rights provided in the 260
 amendment from altering the unique relations between providers and 261
 recipients of care. Maintains the recipient's right to choose 262
 providers and to control the hiring, termination, and supervision 263
 of providers. Maintains the state's ability to take appropriate 264
 action when a provider is no longer eligible to provide care under 265
 state or federal law, or any state or federal rules or 266
 regulations. 267

Requires the parties to a collective bargaining agreement	268
entered into under this amendment to record the agreement in	269
writing, which must be executed by all of the parties to the	270
agreement. Requires the agreement to contain the same provisions	271
concerning grievance procedures and deductions of dues and fees	272
from paychecks as are required by the Public Employees' Collective	273
Bargaining Law.	274
Grants the State Employment Relations Board the same	275
authority as that provided in the Public Employees' Collective	276
Bargaining Law to investigate, hold hearings, make determinations,	277
and issue complaints regarding unfair labor practices.	278
Provides that such a provider is not considered to be a state	279
employee or in state service.	280
Repeals a prohibition against the state collectively	281
bargaining with individuals who are excluded from coverage under	282
the Public Employees' Collective Bargaining Law and the federal	283
National Labor Relations Act.	284