

As Passed by the Senate

134th General Assembly

Regular Session

2021-2022

S. B. No. 47

Senators Brenner, Peterson

**Cosponsors: Senators Cirino, Dolan, Hackett, Hoagland, Johnson, Lang,
McColley, Reineke, Romanchuk, Schaffer**

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, and, effective beginning on the effective 14
date of this amendment, sections 2 and 4 of the "Portal to 15
Portal Act of 1947," 29 U.S.C. 252 and 254. 16

Any employee employed in agriculture shall not be covered 17

by the overtime provision of this section. 18

A motor carrier may elect to apply the overtime provision 19
of this section to an individual who is excluded from the 20
provision under division (D) (3) (i) of this section. 21

(B) If a county employee or township employee elects to 22
take compensatory time off in lieu of overtime pay, for any 23
overtime worked, compensatory time may be granted by the 24
employee's administrative superior, on a time and one-half 25
basis, at a time mutually convenient to the employee and the 26
administrative superior within one hundred eighty days after the 27
overtime is worked. 28

(C) A township appointing authority or a county appointing 29
authority with the exception of the county department of job and 30
family services may, by rule or resolution as is appropriate, 31
indicate the authority's intention not to be bound by division 32
(B) of this section, and to adopt a different policy for the 33
calculation and payment of overtime than that established by 34
that division. Upon adoption, the alternative overtime policy 35
prevails. Prior to the adoption of an alternative overtime 36
policy, a township appointing authority or a county appointing 37
authority with the exception of the county department of job and 38
family services shall give a written notice of the alternative 39
policy to each employee at least ten days prior to its effective 40
date. 41

(D) As used in this section and section 4111.031 of the 42
Revised Code: 43

(1) "Employ" means to suffer or to permit to work. 44

(2) "Employer" means the state of Ohio, its 45
instrumentalities, and its political subdivisions and their 46

instrumentalities, any individual, partnership, association, 47
corporation, business trust, or any person or group of persons, 48
acting in the interest of an employer in relation to an 49
employee, but does not include either of the following: 50

(a) An employer whose annual gross volume of sales made 51
for business done is less than one hundred fifty thousand 52
dollars, exclusive of excise taxes at the retail level which are 53
separately stated; 54

(b) A franchisor with respect to the franchisor's 55
relationship with a franchisee or an employee of a franchisee, 56
unless the franchisor agrees to assume that role in writing or a 57
court of competent jurisdiction determines that the franchisor 58
exercises a type or degree of control over the franchisee or the 59
franchisee's employees that is not customarily exercised by a 60
franchisor for the purpose of protecting the franchisor's 61
trademark, brand, or both. For purposes of this division, 62
"franchisor" and "franchisee" have the same meanings as in 16 63
C.F.R. 436.1. 64

(3) "Employee" means any individual employed by an 65
employer but does not include: 66

(a) Any individual employed by the United States; 67

(b) Any individual employed as a baby-sitter in the 68
employer's home, or a live-in companion to a sick, convalescing, 69
or elderly person whose principal duties do not include 70
housekeeping; 71

(c) Any individual engaged in the delivery of newspapers 72
to the consumer; 73

(d) Any individual employed as an outside salesperson 74
compensated by commissions or employed in a bona fide executive, 75

administrative, or professional capacity as such terms are 76
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 77
1060, 29 U.S.C.A. 201, as amended; 78

(e) Any individual who works or provides personal services 79
of a charitable nature in a hospital or health institution for 80
which compensation is not sought or contemplated; 81

(f) A member of a police or fire protection agency or 82
student employed on a part-time or seasonal basis by a political 83
subdivision of this state; 84

(g) Any individual in the employ of a camp or recreational 85
area for children under eighteen years of age and owned and 86
operated by a nonprofit organization or group of organizations 87
described in Section 501(c)(3) of the "Internal Revenue Code of 88
1954," and exempt from income tax under Section 501(a) of that 89
code; 90

(h) Any individual employed directly by the house of 91
representatives or directly by the senate; 92

(i) An individual who operates a vehicle or vessel in the 93
performance of services for or on behalf of a motor carrier 94
transporting property and to whom all of the following factors 95
apply: 96

(i) The individual owns the vehicle or vessel that is used 97
in performing the services for or on behalf of the carrier, or 98
the individual leases the vehicle or vessel under a bona fide 99
lease agreement that is not a temporary replacement lease 100
agreement. For purposes of this division, a bona fide lease 101
agreement does not include an agreement between the individual 102
and the motor carrier transporting property for which, or on 103
whose behalf, the individual provides services. 104

(ii) The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel used to provide the service.

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

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

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

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

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

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

Sec. 4111.031. (A) (1) Except as provided in division (B) of this section, an employer is not required to pay the overtime wage rate under section 4111.03 of the Revised Code to an

<u>employee for any time that the employee spends performing any of</u>	134
<u>the following activities:</u>	135
<u>(a) Walking, riding, or traveling to and from the actual</u>	136
<u>place of performance of the principal activity or activities</u>	137
<u>that the employee is employed to perform;</u>	138
<u>(b) Activities that are preliminary to or postliminary to</u>	139
<u>the principal activity or activities;</u>	140
<u>(c) Activities requiring insubstantial or insignificant</u>	141
<u>periods of time beyond the employee's scheduled working hours.</u>	142
<u>(2) Division (A) (1) of this section applies to an activity</u>	143
<u>described in that division that occurs either prior to the time</u>	144
<u>on any particular workday at which the employee commences, or</u>	145
<u>subsequent to the time on any particular workday at which the</u>	146
<u>employee ceases, such principal activity or activities.</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
Section 2. That existing section 4111.03 of the Revised	155
Code is hereby repealed.	156