

As Introduced

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H. B. No. 716

Representatives Kelly, Jarrells

Cosponsors: Representatives Galonski, Davis, Addison, Blackshear, Miranda,
Ingram, Denson, Upchurch, Russo, Miller, A., Sobecki

A BILL

To amend sections 4111.14, 5122.28, and 5123.87; to 1
enact new section 4111.06; and to repeal section 2
4111.06 of the Revised Code to eliminate 3
subminimum wage for persons with physical or 4
mental disabilities. 5

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

Section 1. That sections 4111.14, 5122.28, and 5123.87 be 6
amended and new section 4111.06 of the Revised Code be enacted 7
to read as follows: 8

Sec. 4111.06. (A) The director of commerce shall not 9
permit an employer to pay any of the employer's employees with 10
physical or mental disabilities or injuries at a wage rate lower 11
than the wage rates applicable under sections 4111.01 to 4111.17 12
of the Revised Code. 13

(B) As used in this section, "employee" and "employer" 14
have the same meanings as in section 4111.02 of the Revised 15
Code. 16

Sec. 4111.14. (A) Pursuant to the general assembly's 17

authority to establish a minimum wage under Section 34 of Article II, Ohio Constitution, this section is in implementation of Section 34a of Article II, Ohio Constitution. In implementing Section 34a of Article II, Ohio Constitution, the general assembly hereby finds that the purpose of Section 34a of Article II, Ohio Constitution, is to:

(1) Ensure that Ohio employees, as defined in division (B) (1) of this section, are paid the wage rate required by Section 34a of Article II, Ohio Constitution;

(2) Ensure that covered Ohio employers maintain certain records that are directly related to the enforcement of the wage rate requirements in Section 34a of Article II, Ohio Constitution;

(3) Ensure that Ohio employees who are paid the wage rate required by Section 34a of Article II, Ohio Constitution, may enforce their right to receive that wage rate in the manner set forth in Section 34a of Article II, Ohio Constitution; and

(4) Protect the privacy of Ohio employees' pay and personal information specified in Section 34a of Article II, Ohio Constitution, by restricting an employee's access, and access by a person acting on behalf of that employee, to the employee's own pay and personal information.

(B) In accordance with Section 34a of Article II, Ohio Constitution, the terms "employer," "employee," "employ," "person," and "independent contractor" have the same meanings as in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 203, as amended. In construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor's and federal courts'

interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:

(1) "Employee" means individuals employed in Ohio, but does not mean individuals who are excluded from the definition of "employee" under 29 U.S.C. 203(e) or individuals who are exempted from the minimum wage requirements in 29 U.S.C. 213 and from the definition of "employee" in this chapter.

(2) "Employ" and "employee" do not include any person acting as a volunteer. In construing who is a volunteer, "volunteer" shall have the same meaning as in sections 553.101 to 553.106 of Title 29 of the Code of Federal Regulations, as amended, and due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of the term "volunteer" under the Fair Labor Standards Act and its regulations.

(3) "Employer" does not include 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.

(4) Subject to division (B) (5) of this section, "employee" does not include an individual who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property and to whom all of the following

factors apply:	77
(a) The individual owns the vehicle or vessel that is used	78
in performing the services for or on behalf of the carrier, or	79
the individual leases the vehicle or vessel under a bona fide	80
lease agreement that is not a temporary replacement lease	81
agreement. For purposes of this division, a bona fide lease	82
agreement does not include an agreement between the individual	83
and the motor carrier transporting property for which, or on	84
whose behalf, the individual provides services.	85
(b) The individual is responsible for supplying the	86
necessary personal services to operate the vehicle or vessel	87
used to provide the service.	88
(c) The compensation paid to the individual is based on	89
factors related to work performed, including on a mileage-based	90
rate or a percentage of any schedule of rates, and not solely on	91
the basis of the hours or time expended.	92
(d) The individual substantially controls the means and	93
manner of performing the services, in conformance with	94
regulatory requirements and specifications of the shipper.	95
(e) The individual enters into a written contract with the	96
carrier for whom the individual is performing the services that	97
describes the relationship between the individual and the	98
carrier to be that of an independent contractor and not that of	99
an employee.	100
(f) The individual is responsible for substantially all of	101
the principal operating costs of the vehicle or vessel and	102
equipment used to provide the services, including maintenance,	103
fuel, repairs, supplies, vehicle or vessel insurance, and	104
personal expenses, except that the individual may be paid by the	105

carrier the carrier's fuel surcharge and incidental costs, 106
including tolls, permits, and lumper fees. 107

(g) The individual is responsible for any economic loss or 108
economic gain from the arrangement with the carrier. 109

(5) A motor carrier may elect to consider an individual 110
described in division (B) (4) of this section as an employee for 111
purposes of this section. 112

(6) "Motor carrier" has the same meaning as in section 113
4923.01 of the Revised Code. 114

~~(C) In accordance with Section 34a of Article II, Ohio 115
Constitution, the state may issue licenses to employers 116
authorizing payment of a wage below that required by Section 34a 117
of Article II, Ohio Constitution, to individuals with mental or 118
physical disabilities that may otherwise adversely affect their 119
opportunity for employment. In issuing such licenses, the state 120
shall abide by the rules adopted pursuant to section 4111.06 of 121
the Revised Code. 122~~

~~(D) (1) (C) (1)~~ In accordance with Section 34a of Article 123
II, Ohio Constitution, individuals employed in or about the 124
property of an employer or an individual's residence on a casual 125
basis are not included within the coverage of Section 34a of 126
Article II, Ohio Constitution. As used in division ~~(D)~~ (C) of 127
this section: 128

(a) "Casual basis" means employment that is irregular or 129
intermittent and that is not performed by an individual whose 130
vocation is to be employed in or about the property of the 131
employer or individual's residence. In construing who is 132
employed on a "casual basis," due consideration and great weight 133
shall be given to the United States department of labor's and 134

federal courts' interpretations of the term "casual basis" under 135
the Fair Labor Standards Act and its regulations. 136

(b) "An individual employed in or about the property of an 137
employer or individual's residence" means an individual employed 138
on a casual basis or an individual employed in or about a 139
residence on a casual basis, respectively. 140

(2) In accordance with Section 34a of Article II, Ohio 141
Constitution, employees of a solely family-owned and operated 142
business who are family members of an owner are not included 143
within the coverage of Section 34a of Article II, Ohio 144
Constitution. As used in division ~~(D)~~~~(2)~~(C)(2) of this section, 145
"family member" means a parent, spouse, child, stepchild, 146
sibling, grandparent, grandchild, or other member of an owner's 147
immediate family. 148

~~(E)~~(D) In accordance with Section 34a of Article II, Ohio 149
Constitution, an employer shall at the time of hire provide an 150
employee with the employer's name, address, telephone number, 151
and other contact information and update such information when 152
it changes. As used in division ~~(E)~~(D) of this section: 153

(1) "Other contact information" may include, where 154
applicable, the address of the employer's internet site on the 155
world wide web, the employer's electronic mail address, fax 156
number, or the name, address, and telephone number of the 157
employer's statutory agent. "Other contact information" does not 158
include the name, address, telephone number, fax number, 159
internet site address, or electronic mail address of any 160
employee, shareholder, officer, director, supervisor, manager, 161
or other individual employed by or associated with an employer. 162

(2) "When it changes" means that the employer shall 163

provide its employees with the change in its name, address, 164
telephone number, or other contact information within sixty 165
business days after the change occurs. The employer shall 166
provide the changed information by using any of its usual 167
methods of communicating with its employees, including, but not 168
limited to, listing the change on the employer's internet site 169
on the world wide web, internal computer network, or a bulletin 170
board where it commonly posts employee communications or by 171
insertion or inclusion with employees' paychecks or pay stubs. 172

~~(F)~~(E) In accordance with Section 34a of Article II, Ohio 173
Constitution, an employer shall maintain a record of the name, 174
address, occupation, pay rate, hours worked for each day worked, 175
and each amount paid an employee for a period of not less than 176
three years following the last date the employee was employed by 177
that employer. As used in division ~~(F)~~(E) of this section: 178

(1) "Address" means an employee's home address as 179
maintained in the employer's personnel file or personnel 180
database for that employee. 181

(2) (a) With respect to employees who are not exempt from 182
the overtime pay requirements of the Fair Labor Standards Act or 183
this chapter, "pay rate" means an employee's base rate of pay. 184

(b) With respect to employees who are exempt from the 185
overtime pay requirements of the Fair Labor Standards Act or 186
this chapter, "pay rate" means an employee's annual base salary 187
or other rate of pay by which the particular employee qualifies 188
for that exemption under the Fair Labor Standards Act or this 189
chapter, but does not include bonuses, stock options, 190
incentives, deferred compensation, or any other similar form of 191
compensation. 192

(3) "Record" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee in one or more documents, databases, or other paper or electronic forms of record-keeping maintained by an employer. No one particular method or form of maintaining such a record or records is required under this division. An employer is not required to create or maintain a single record containing only the employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee. An employer shall maintain a record or records from which the employee or person acting on behalf of that employee could reasonably review the information requested by the employee or person.

An employer is not required to maintain the records specified in division ~~(F) (3)~~ (E) (3) of this section for any period before January 1, 2007. On and after January 1, 2007, the employer shall maintain the records required by division ~~(F) (3)~~ (E) (3) of this section for three years from the date the hours were worked by the employee and for three years after the date the employee's employment ends.

(4) (a) Except for individuals specified in division ~~(F) (4)~~ (E) (4) (b) of this section, "hours worked for each day worked" means the total amount of time worked by an employee in whatever increments the employer uses for its payroll purposes during a day worked by the employee. An employer is not required to keep a record of the time of day an employee begins and ends work on any given day. As used in division ~~(F) (4)~~ (E) (4) of this section, "day" means a fixed period of twenty-four consecutive hours during which an employee performs work for an employer.

(b) An employer is not required to keep records of "hours

worked for each day worked" for individuals for whom the 223
employer is not required to keep those records under the Fair 224
Labor Standards Act and its regulations or individuals who are 225
not subject to the overtime pay requirements specified in 226
section 4111.03 of the Revised Code. 227

(5) "Each amount paid an employee" means the total gross 228
wages paid to an employee for each pay period. As used in 229
division ~~(F) (5)~~ (E) (5) of this section, "pay period" means the 230
period of time designated by an employer to pay an employee the 231
employee's gross wages in accordance with the employer's payroll 232
practices under section 4113.15 of the Revised Code. 233

~~(G)~~ (F) In accordance with Section 34a of Article II, Ohio 234
Constitution, an employer must provide such information without 235
charge to an employee or person acting on behalf of an employee 236
upon request. As used in division ~~(G)~~ (F) of this section: 237

(1) "Such information" means the name, address, 238
occupation, pay rate, hours worked for each day worked, and each 239
amount paid for the specific employee who has requested that 240
specific employee's own information and does not include the 241
name, address, occupation, pay rate, hours worked for each day 242
worked, or each amount paid of any other employee of the 243
employer. "Such information" does not include hours worked for 244
each day worked by individuals for whom an employer is not 245
required to keep that information under the Fair Labor Standards 246
Act and its regulations or individuals who are not subject to 247
the overtime pay requirements specified in section 4111.03 of 248
the Revised Code. 249

(2) "Acting on behalf of an employee" means a person 250
acting on behalf of an employee as any of the following: 251

(a) The certified or legally recognized collective bargaining representative for that employee under the applicable federal law or Chapter 4117. of the Revised Code;

(b) The employee's attorney;

(c) The employee's parent, guardian, or legal custodian.

A person "acting on behalf of an employee" must be specifically authorized by an employee in order to make a request for that employee's own name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to that employee.

(3) "Provide" means that an employer shall provide the requested information within thirty business days after the date the employer receives the request, unless either of the following occurs:

(a) The employer and the employee or person acting on behalf of the employee agree to some alternative time period for providing the information.

(b) The thirty-day period would cause a hardship on the employer under the circumstances, in which case the employer must provide the requested information as soon as practicable.

(4) A "request" made by an employee or a person acting on behalf of an employee means a request by an employee or a person acting on behalf of an employee for the employee's own information. The employer may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested. The employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the

employee whose information is being requested and notarized and 281
that reasonably specifies the particular information being 282
requested. 283

~~(H)~~ (G) In accordance with Section 34a of Article II, Ohio 284
Constitution, an employee, person acting on behalf of one or 285
more employees, and any other interested party may file a 286
complaint with the state for a violation of any provision of 287
Section 34a of Article II, Ohio Constitution, or any law or 288
regulation implementing its provisions. Such complaint shall be 289
promptly investigated and resolved by the state. The employee's 290
name shall be kept confidential unless disclosure is necessary 291
to resolution of a complaint and the employee consents to 292
disclosure. As used in division ~~(H)~~ (G) of this section: 293

(1) "Complaint" means a complaint of an alleged violation 294
pertaining to harm suffered by the employee filing the 295
complaint, by a person acting on behalf of one or more 296
employees, or by an interested party. 297

(2) "Acting on behalf of one or more employees" has the 298
same meaning as "acting on behalf of an employee" in division 299
~~(G) (2)~~ (F) (2) of this section. Each employee must provide a 300
separate written and notarized authorization before the person 301
acting on that employee's or those employees' behalf may request 302
the name, address, occupation, pay rate, hours worked for each 303
day worked, and each amount paid for the particular employee. 304

(3) "Interested party" means a party who alleges to be 305
injured by the alleged violation and who has standing to file a 306
complaint under common law principles of standing. 307

(4) "Resolved by the state" means that the complaint has 308
been resolved to the satisfaction of the state. 309

(5) "Shall be kept confidential" means that the state 310
shall keep the name of the employee confidential as required by 311
division ~~(H)~~(G) of this section. 312

~~(I)~~(H) In accordance with Section 34a of Article II, Ohio 313
Constitution, the state may on its own initiative investigate an 314
employer's compliance with Section 34a of Article II, Ohio 315
Constitution, and any law or regulation implementing Section 34a 316
of Article II, Ohio Constitution. The employer shall make 317
available to the state any records related to such investigation 318
and other information required for enforcement of Section 34a of 319
Article II, Ohio Constitution or any law or regulation 320
implementing Section 34a of Article II, Ohio Constitution. The 321
state shall investigate an employer's compliance with this 322
section in accordance with the procedures described in section 323
4111.04 of the Revised Code. All records and information related 324
to investigations by the state are confidential and are not a 325
public record subject to section 149.43 of the Revised Code. 326
This division does not prevent the state from releasing to or 327
exchanging with other state and federal wage and hour regulatory 328
authorities information related to investigations. 329

~~(J)~~(I) In accordance with Section 34a of Article II, Ohio 330
Constitution, damages shall be calculated as an additional two 331
times the amount of the back wages and in the case of a 332
violation of an anti-retaliation provision an amount set by the 333
state or court sufficient to compensate the employee and deter 334
future violations, but not less than one hundred fifty dollars 335
for each day that the violation continued. The "not less than 336
one hundred fifty dollar" penalty specified in division ~~(J)~~(I) 337
of this section shall be imposed only for violations of the 338
anti-retaliation provision in Section 34a of Article II, Ohio 339
Constitution. 340

~~(K)~~-(J) In accordance with Section 34a of Article II, Ohio 341
Constitution, an action for equitable and monetary relief may be 342
brought against an employer by the attorney general and/or an 343
employee or person acting on behalf of an employee or all 344
similarly situated employees in any court of competent 345
jurisdiction, including the court of common pleas of an 346
employee's county of residence, for any violation of Section 34a 347
of Article II, Ohio Constitution, or any law or regulation 348
implementing its provisions within three years of the violation 349
or of when the violation ceased if it was of a continuing 350
nature, or within one year after notification to the employee of 351
final disposition by the state of a complaint for the same 352
violation, whichever is later. 353

(1) As used in division ~~(K)~~-(J) of this section, 354
"notification" means the date on which the notice was sent to 355
the employee by the state. 356

(2) No employee shall join as a party plaintiff in any 357
civil action that is brought under division ~~(K)~~-(J) of this 358
section by an employee, person acting on behalf of an employee, 359
or person acting on behalf of all similarly situated employees 360
unless that employee first gives written consent to become such 361
a party plaintiff and that consent is filed with the court in 362
which the action is brought. 363

(3) A civil action regarding an alleged violation of this 364
section shall be maintained only under division ~~(K)~~-(J) of this 365
section. This division does not preclude the joinder in a single 366
civil action of an action under this division and an action 367
under section 4111.10 of the Revised Code. 368

(4) Any agreement between an employee and employer to work 369
for less than the wage rate specified in Section 34a of Article 370

II, Ohio Constitution, is no defense to an action under this 371
section. 372

~~(L)~~(K) In accordance with Section 34a of Article II, Ohio 373
Constitution, there shall be no exhaustion requirement, no 374
procedural, pleading, or burden of proof requirements beyond 375
those that apply generally to civil suits in order to maintain 376
such action and no liability for costs or attorney's fees on an 377
employee except upon a finding that such action was frivolous in 378
accordance with the same standards that apply generally in civil 379
suits. Nothing in division ~~(L)~~(K) of this section affects the 380
right of an employer and employee to agree to submit a dispute 381
under this section to alternative dispute resolution, including, 382
but not limited to, arbitration, in lieu of maintaining the 383
civil suit specified in division ~~(K)~~(J) of this section. 384
Nothing in this division limits the state's ability to 385
investigate or enforce this section. 386

~~(M)~~(L) An employer who provides such information 387
specified in Section 34a of Article II, Ohio Constitution, shall 388
be immune from any civil liability for injury, death, or loss to 389
person or property that otherwise might be incurred or imposed 390
as a result of providing that information to an employee or 391
person acting on behalf of an employee in response to a request 392
by the employee or person, and the employer shall not be subject 393
to the provisions of Chapters 1347. and 1349. of the Revised 394
Code to the extent that such provisions would otherwise apply. 395
As used in division ~~(M)~~(L) of this section, "such information," 396
"acting on behalf of an employee," and "request" have the same 397
meanings as in division ~~(G)~~(F) of this section. 398

~~(N)~~(M) As used in this section, "the state" means the 399
director of commerce. 400

Sec. 5122.28. No patient of a hospital for ~~the mentally-~~ 401
~~ill persons with mental illnesses~~ shall be compelled to perform 402
labor which involves the operation, support, or maintenance of 403
the hospital or for which the hospital is under contract with an 404
outside organization. Privileges or release from the hospital 405
shall not be conditional upon the performance of such labor. 406
Patients who volunteer to perform such labor shall be 407
compensated at a rate derived from the value of work performed, 408
having reference to the prevailing wage rate for comparable work 409
~~or wage rates established under section 4111.06 of the Revised-~~ 410
~~Code.~~ 411

A patient may be required to perform therapeutic tasks 412
which do not involve the operation, support, or maintenance of 413
the hospital if those tasks are an integrated part of the 414
patient's treatment plan and supervised by a person qualified to 415
oversee the therapeutic aspects of the activity. 416

A patient may be required to perform tasks of a personal 417
housekeeping nature. 418

Sec. 5123.87. (A) No resident of an institution for 419
persons with intellectual disabilities shall be compelled to 420
perform labor that involves the operation, support, or 421
maintenance of the institution or for which the institution is 422
under contract with an outside organization. Privileges or 423
release from the institution shall not be conditional upon the 424
performance of such labor. Residents who volunteer to perform 425
such labor shall be compensated at a rate derived from the value 426
of the work performed, having reference to the prevailing wage 427
rate for comparable work ~~or wage rates established under section-~~ 428
~~4111.06 of the Revised Code.~~ 429

(B) A resident may be required to perform habilitative 430

tasks that do not involve the operation, support, or maintenance 431
of the institution if those tasks are an integrated part of the 432
resident's habilitation plan and supervised by a member of the 433
institution's professional staff who is designated by the chief 434
program director. 435

(C) A resident may be required to perform tasks of a 436
personal housekeeping nature. 437

Section 2. That existing sections 4111.14, 5122.28, and 438
5123.87 of the Revised Code are hereby repealed. 439

Section 3. That section 4111.06 of the Revised Code is 440
hereby repealed. 441

Section 4. Notwithstanding the amendment of sections in 442
Chapter 4111. of the Revised Code in this act, any license 443
issued pursuant to section 4111.06 or division (C) of section 444
4111.14 of the Revised Code, as they existed before the 445
effective date of this section, held by a person on or after the 446
effective date of this section, is valid until the date that is 447
eighteen months after the effective date of this section. 448

The Director of Commerce shall provide notice to any 449
person who holds any license issued pursuant to section 4111.06 450
or division (C) of section 4111.14 of the Revised Code, as they 451
existed before the effective date of this section, that the 452
person's license is terminated on the date that is eighteen 453
months after the effective date of this section, and that the 454
Director will not renew the license. 455