

As Passed by the House

134th General Assembly

Regular Session

2021-2022

Sub. S. B. No. 47

Senators Brenner, Peterson

**Cosponsors: Senators Cirino, Dolan, Hackett, Hoagland, Johnson, Lang,
McColley, Reineke, Romanchuk, Schaffer Representatives Carruthers, Merrin,
Seitz, Stein**

A BILL

To amend sections 4111.03 and 4111.10 and to enact 1
section 4111.031 of the Revised Code to except 2
traveling to and from a worksite and performing 3
certain routine tasks from the overtime pay 4
requirement and to prohibit opt-out class 5
actions for overtime violations. 6

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

Section 1. That sections 4111.03 and 4111.10 be amended 7
and section 4111.031 of the Revised Code be enacted to read as 8
follows: 9

Sec. 4111.03. (A) ~~An~~ Except as provided in section 10
4111.031 of the Revised Code, an employer shall pay an employee 11
for overtime at a wage rate of one and one-half times the 12
employee's wage rate for hours worked in excess of forty hours 13
in one workweek, in the manner and methods provided in and 14
subject to the exemptions of section 7 and section 13 of the 15
"Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 16
207, 213, as amended, and, effective beginning on the effective 17

date of this amendment, sections 2 and 4 of the "Portal to 18
Portal Act of 1947," 29 U.S.C. 252 and 254. 19

Any employee employed in agriculture shall not be covered 20
by the overtime provision of this section. 21

A motor carrier may elect to apply the overtime provision 22
of this section to an individual who is excluded from the 23
provision under division (D)(3)(i) of this section. 24

(B) If a county employee or township employee elects to 25
take compensatory time off in lieu of overtime pay, for any 26
overtime worked, compensatory time may be granted by the 27
employee's administrative superior, on a time and one-half 28
basis, at a time mutually convenient to the employee and the 29
administrative superior within one hundred eighty days after the 30
overtime is worked. 31

(C) A township appointing authority or a county appointing 32
authority with the exception of the county department of job and 33
family services may, by rule or resolution as is appropriate, 34
indicate the authority's intention not to be bound by division 35
(B) of this section, and to adopt a different policy for the 36
calculation and payment of overtime than that established by 37
that division. Upon adoption, the alternative overtime policy 38
prevails. Prior to the adoption of an alternative overtime 39
policy, a township appointing authority or a county appointing 40
authority with the exception of the county department of job and 41
family services shall give a written notice of the alternative 42
policy to each employee at least ten days prior to its effective 43
date. 44

(D) As used in this section and section 4111.031 of the 45
Revised Code: 46

- (1) "Employ" means to suffer or to permit to work. 47
- (2) "Employer" means the state of Ohio, its 48
instrumentalities, and its political subdivisions and their 49
instrumentalities, any individual, partnership, association, 50
corporation, business trust, or any person or group of persons, 51
acting in the interest of an employer in relation to an 52
employee, but does not include either of the following: 53
- (a) An employer whose annual gross volume of sales made 54
for business done is less than one hundred fifty thousand 55
dollars, exclusive of excise taxes at the retail level which are 56
separately stated; 57
- (b) A franchisor with respect to the franchisor's 58
relationship with a franchisee or an employee of a franchisee, 59
unless the franchisor agrees to assume that role in writing or a 60
court of competent jurisdiction determines that the franchisor 61
exercises a type or degree of control over the franchisee or the 62
franchisee's employees that is not customarily exercised by a 63
franchisor for the purpose of protecting the franchisor's 64
trademark, brand, or both. For purposes of this division, 65
"franchisor" and "franchisee" have the same meanings as in 16 66
C.F.R. 436.1. 67
- (3) "Employee" means any individual employed by an 68
employer but does not include: 69
- (a) Any individual employed by the United States; 70
- (b) Any individual employed as a baby-sitter in the 71
employer's home, or a live-in companion to a sick, convalescing, 72
or elderly person whose principal duties do not include 73
housekeeping; 74
- (c) Any individual engaged in the delivery of newspapers 75

to the consumer;	76
(d) Any individual employed as an outside salesperson	77
compensated by commissions or employed in a bona fide executive,	78
administrative, or professional capacity as such terms are	79
defined by the "Fair Labor Standards Act of 1938," 52 Stat.	80
1060, 29 U.S.C.A. 201, as amended;	81
(e) Any individual who works or provides personal services	82
of a charitable nature in a hospital or health institution for	83
which compensation is not sought or contemplated;	84
(f) A member of a police or fire protection agency or	85
student employed on a part-time or seasonal basis by a political	86
subdivision of this state;	87
(g) Any individual in the employ of a camp or recreational	88
area for children under eighteen years of age and owned and	89
operated by a nonprofit organization or group of organizations	90
described in Section 501(c)(3) of the "Internal Revenue Code of	91
1954," and exempt from income tax under Section 501(a) of that	92
code;	93
(h) Any individual employed directly by the house of	94
representatives or directly by the senate;	95
(i) An individual who operates a vehicle or vessel in the	96
performance of services for or on behalf of a motor carrier	97
transporting property and to whom all of the following factors	98
apply:	99
(i) The individual owns the vehicle or vessel that is used	100
in performing the services for or on behalf of the carrier, or	101
the individual leases the vehicle or vessel under a bona fide	102
lease agreement that is not a temporary replacement lease	103
agreement. For purposes of this division, a bona fide lease	104

agreement does not include an agreement between the individual 105
and the motor carrier transporting property for which, or on 106
whose behalf, the individual provides services. 107

(ii) The individual is responsible for supplying the 108
necessary personal services to operate the vehicle or vessel 109
used to provide the service. 110

(iii) The compensation paid to the individual is based on 111
factors related to work performed, including on a mileage-based 112
rate or a percentage of any schedule of rates, and not solely on 113
the basis of the hours or time expended. 114

(iv) The individual substantially controls the means and 115
manner of performing the services, in conformance with 116
regulatory requirements and specifications of the shipper. 117

(v) The individual enters into a written contract with the 118
carrier for whom the individual is performing the services that 119
describes the relationship between the individual and the 120
carrier to be that of an independent contractor and not that of 121
an employee. 122

(vi) The individual is responsible for substantially all 123
of the principal operating costs of the vehicle or vessel and 124
equipment used to provide the services, including maintenance, 125
fuel, repairs, supplies, vehicle or vessel insurance, and 126
personal expenses, except that the individual may be paid by the 127
carrier the carrier's fuel surcharge and incidental costs, 128
including tolls, permits, and lumper fees. 129

(vii) The individual is responsible for any economic loss 130
or economic gain from the arrangement with the carrier. 131

(4) "Motor carrier" has the same meaning as in section 132
4923.01 of the Revised Code. 133

Sec. 4111.031. (A) (1) Except as provided in divisions (B) and (C) of this section, an employer is not required to pay the overtime wage rate under section 4111.03 of the Revised Code to an employee for any time that the employee spends performing any of the following activities: 134
135
136
137
138

(a) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform; 139
140
141

(b) Activities that are preliminary to or postliminary to the principal activity or activities; 142
143

(c) Activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours. 144
145

(2) Division (A) (1) of this section applies to an activity described in that division that occurs either prior to the time on any particular workday at which the employee commences, or subsequent to the time on any particular workday at which the employee ceases, such principal activity or activities. 146
147
148
149
150

(B) Division (A) of this section does not apply if an employee engages in an activity described in division (A) (1) (b) of this section under either of the following circumstances: 151
152
153

(1) The employee performs the activity during the regular work day or during prescribed hours. 154
155

(2) The employee performs the activity at the specific direction of the employer. 156
157

(C) Division (A) of this section does not apply if an employee engages in an activity described in that division under either of the following circumstances: 158
159
160

(1) The employee performs the activity pursuant to an 161

express provision of a written or unwritten contract in effect, 162
at the time of performance, between the employee or the 163
employee's agent or collective bargaining representative and the 164
employee's employer. 165

(2) The employee performs the activity pursuant to a 166
custom or practice applicable to the activity, in effect at the 167
time of performance, at the establishment or other place where 168
the employee is employed, and the custom or practice is not 169
inconsistent with a contract described in division (C) (1) of 170
this section. 171

Sec. 4111.10. (A) Any employer who pays any employee less 172
than wages to which the employee is entitled under section 173
4111.03 of the Revised Code, is liable to the employee affected 174
for the full amount of the overtime wage rate, less any amount 175
actually paid to the employee by the employer, and for costs and 176
reasonable attorney's fees as may be allowed by the court. Any 177
agreement between the employee and the employer to work for less 178
than the overtime wage rate is no defense to an action. 179

(B) At the written request of any employee paid less than 180
the wages to which the employee is entitled under section 181
4111.03 of the Revised Code, the director of commerce may take 182
an assignment of a wage claim in trust for the assigning 183
employee and may bring any legal action necessary to collect the 184
claim. The employer shall pay the costs and reasonable 185
attorney's fees allowed by the court. 186

(C) No employee shall join as a party plaintiff in any 187
civil action that is brought under this section by an employee, 188
person acting on behalf of an employee, or person acting on 189
behalf of all similarly situated employees unless that employee 190
first gives written consent to become such a party plaintiff and 191

<u>that consent is filed with the court in which the action is</u>	192
<u>brought.</u>	193
Section 2. That existing sections 4111.03 and 4111.10 of	194
the Revised Code are hereby repealed.	195