

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 86**

**Representatives Smith, K., Craig**

**Cosponsors: Representatives Leland, Sykes, Fedor, Sheehy, Boggs, Ashford,  
West, Antonio, Kent, Strahorn**

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**A BILL**

To amend sections 4111.02, 4111.09, and 4111.14 and 1  
to repeal section 4111.07 of the Revised Code to 2  
increase the state minimum wage to ten dollars 3  
and ten cents per hour beginning January 1, 4  
2019. 5

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

**Section 1.** That sections 4111.02, 4111.09, and 4111.14 of 6  
the Revised Code be amended to read as follows: 7

**Sec. 4111.02.** ~~Every~~ (A) (1) Except as otherwise provided in 8  
division (A) (2) of this section, beginning January 1, 2019, 9  
every employer, as defined in Section 34a of Article II, Ohio 10  
Constitution, shall pay each of the employer's employees at a 11  
wage rate of not less than ~~the wage rate specified in Section~~ 12  
~~34a of Article II, Ohio Constitution~~ ten dollars and ten cents 13  
per hour. 14

(2) If an employer is able to demonstrate that an employee 15  
receives tips that combined with the wages paid by the employer 16  
are equal to or greater than the minimum wage rate for all hours 17

worked, the employer may pay the employee at a rate of less 18  
than, but not less than half, the minimum wage rate required by 19  
division (A) (1) of this section. 20

(B) The director of commerce annually shall adjust the 21  
wage rate ~~as~~ specified in division (A) (1) of this section in 22  
accordance with Section 34a of Article II, Ohio Constitution. 23

(C) No political subdivision shall establish a minimum 24  
wage rate different from the wage rate required under this 25  
section. 26

(D) As used in this section, "employee" has the same 27  
meaning as in section 4111.14 of the Revised Code. 28

**Sec. 4111.09.** Every employer subject to sections 4111.01 29  
to 4111.17 of the Revised Code, or to any rules issued 30  
thereunder, shall keep a summary of the sections, approved by 31  
the director of commerce, and copies of any applicable rules 32  
issued thereunder, or a summary of the rules, posted in a 33  
conspicuous and accessible place in or about the premises 34  
wherein any person subject thereto is employed. The director of 35  
commerce shall make the summary described in this section 36  
available on the web site of the department of commerce. The 37  
director shall update this summary as necessary, but not less 38  
than annually, in order to reflect changes in the minimum wage 39  
rate as required under Section 34a of Article II, Ohio 40  
Constitution and section 4111.02 of the Revised Code. Employees 41  
and employers shall be furnished copies of the summaries and 42  
rules by the state, on request, without charge. 43

**Sec. 4111.14.** (A) Pursuant to the general assembly's 44  
authority to establish a minimum wage under Section 34 of 45  
Article II, Ohio Constitution, this section is in implementation 46

of Section 34a of Article II, Ohio Constitution. In implementing 47  
Section 34a of Article II, Ohio Constitution, the general 48  
assembly hereby finds that the purpose of Section 34a of Article 49  
II, Ohio Constitution, is to: 50

(1) Ensure that Ohio employees, as defined in division (B) 51  
(1) of this section, are paid the wage rate required by section 52  
4111.02 of the Revised Code in accordance with Section 34a of 53  
Article II, Ohio Constitution; 54

(2) Ensure that covered Ohio employers maintain certain 55  
records that are directly related to the enforcement of the wage 56  
rate requirements ~~in~~ of Section 34a of Article II, Ohio 57  
Constitution and section 4111.02 of the Revised Code; 58

(3) Ensure that Ohio employees who are paid the wage rate 59  
required by ~~Section 34a of Article II, Ohio Constitution~~ section 60  
4111.02 of the Revised Code, may enforce their right to receive 61  
that wage rate in the manner set forth in Section 34a of Article 62  
II, Ohio Constitution; and 63

(4) Protect the privacy of Ohio employees' pay and 64  
personal information specified in Section 34a of Article II, 65  
Ohio Constitution, by restricting an employee's access, and 66  
access by a person acting on behalf of that employee, to the 67  
employee's own pay and personal information. 68

(B) In accordance with Section 34a of Article II, Ohio 69  
Constitution, the terms "employer," "employee," "employ," 70  
"person," and "independent contractor" have the same meanings as 71  
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 72  
U.S.C. 203, as amended. In construing the meaning of these 73  
terms, due consideration and great weight shall be given to the 74  
United States department of labor's and federal courts' 75

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.

(C) In accordance with Section 34a of Article II, Ohio Constitution, the state may issue licenses to employers authorizing payment of a wage below that required by Section 34a of Article II, Ohio Constitution, or section 4111.02 of the Revised Code to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment. In issuing such licenses, the state shall abide by the rules adopted pursuant to section 4111.06 of the Revised Code.

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

(a) "Casual basis" means employment that is irregular or 106  
intermittent and that is not performed by an individual whose 107  
vocation is to be employed in or about the property of the 108  
employer or individual's residence. In construing who is 109  
employed on a "casual basis," due consideration and great weight 110  
shall be given to the United States department of labor's and 111  
federal courts' interpretations of the term "casual basis" under 112  
the Fair Labor Standards Act and its regulations. 113

(b) "An individual employed in or about the property of an 114  
employer or individual's residence" means an individual employed 115  
on a casual basis or an individual employed in or about a 116  
residence on a casual basis, respectively. 117

(2) In accordance with Section 34a of Article II, Ohio 118  
Constitution, employees of a solely family-owned and operated 119  
business who are family members of an owner are not included 120  
within the coverage of Section 34a of Article II, Ohio 121  
Constitution. As used in division (D) (2) of this section, 122  
"family member" means a parent, spouse, child, stepchild, 123  
sibling, grandparent, grandchild, or other member of an owner's 124  
immediate family. 125

(E) In accordance with Section 34a of Article II, Ohio 126  
Constitution, an employer shall at the time of hire provide an 127  
employee with the employer's name, address, telephone number, 128  
and other contact information and update such information when 129  
it changes. As used in division (E) of this section: 130

(1) "Other contact information" may include, where 131  
applicable, the address of the employer's internet site on the 132  
world wide web, the employer's electronic mail address, fax 133  
number, or the name, address, and telephone number of the 134  
employer's statutory agent. "Other contact information" does not 135

include the name, address, telephone number, fax number, 136  
internet site address, or electronic mail address of any 137  
employee, shareholder, officer, director, supervisor, manager, 138  
or other individual employed by or associated with an employer. 139

(2) "When it changes" means that the employer shall 140  
provide its employees with the change in its name, address, 141  
telephone number, or other contact information within sixty 142  
business days after the change occurs. The employer shall 143  
provide the changed information by using any of its usual 144  
methods of communicating with its employees, including, but not 145  
limited to, listing the change on the employer's internet site 146  
on the world wide web, internal computer network, or a bulletin 147  
board where it commonly posts employee communications or by 148  
insertion or inclusion with employees' paychecks or pay stubs. 149

(F) In accordance with Section 34a of Article II, Ohio 150  
Constitution, an employer shall maintain a record of the name, 151  
address, occupation, pay rate, hours worked for each day worked, 152  
and each amount paid an employee for a period of not less than 153  
three years following the last date the employee was employed by 154  
that employer. As used in division (F) of this section: 155

(1) "Address" means an employee's home address as 156  
maintained in the employer's personnel file or personnel 157  
database for that employee. 158

(2) (a) With respect to employees who are not exempt from 159  
the overtime pay requirements of the Fair Labor Standards Act or 160  
this chapter, "pay rate" means an employee's base rate of pay. 161

(b) With respect to employees who are exempt from the 162  
overtime pay requirements of the Fair Labor Standards Act or 163  
this chapter, "pay rate" means an employee's annual base salary 164

or other rate of pay by which the particular employee qualifies 165  
for that exemption under the Fair Labor Standards Act or this 166  
chapter, but does not include bonuses, stock options, 167  
incentives, deferred compensation, or any other similar form of 168  
compensation. 169

(3) "Record" means the name, address, occupation, pay 170  
rate, hours worked for each day worked, and each amount paid an 171  
employee in one or more documents, databases, or other paper or 172  
electronic forms of record-keeping maintained by an employer. No 173  
one particular method or form of maintaining such a record or 174  
records is required under this division. An employer is not 175  
required to create or maintain a single record containing only 176  
the employee's name, address, occupation, pay rate, hours worked 177  
for each day worked, and each amount paid an employee. An 178  
employer shall maintain a record or records from which the 179  
employee or person acting on behalf of that employee could 180  
reasonably review the information requested by the employee or 181  
person. 182

An employer is not required to maintain the records 183  
specified in division (F) (3) of this section for any period 184  
before January 1, 2007. On and after January 1, 2007, the 185  
employer shall maintain the records required by division (F) (3) 186  
of this section for three years from the date the hours were 187  
worked by the employee and for three years after the date the 188  
employee's employment ends. 189

(4) (a) Except for individuals specified in division (F) (4) 190  
(b) of this section, "hours worked for each day worked" means 191  
the total amount of time worked by an employee in whatever 192  
increments the employer uses for its payroll purposes during a 193  
day worked by the employee. An employer is not required to keep 194

a record of the time of day an employee begins and ends work on 195  
any given day. As used in division (F) (4) of this section, "day" 196  
means a fixed period of twenty-four consecutive hours during 197  
which an employee performs work for an employer. 198

(b) An employer is not required to keep records of "hours 199  
worked for each day worked" for individuals for whom the 200  
employer is not required to keep those records under the Fair 201  
Labor Standards Act and its regulations or individuals who are 202  
not subject to the overtime pay requirements specified in 203  
section 4111.03 of the Revised Code. 204

(5) "Each amount paid an employee" means the total gross 205  
wages paid to an employee for each pay period. As used in 206  
division (F) (5) of this section, "pay period" means the period 207  
of time designated by an employer to pay an employee the 208  
employee's gross wages in accordance with the employer's payroll 209  
practices under section 4113.15 of the Revised Code. 210

(G) In accordance with Section 34a of Article II, Ohio 211  
Constitution, an employer must provide such information without 212  
charge to an employee or person acting on behalf of an employee 213  
upon request. As used in division (G) of this section: 214

(1) "Such information" means the name, address, 215  
occupation, pay rate, hours worked for each day worked, and each 216  
amount paid for the specific employee who has requested that 217  
specific employee's own information and does not include the 218  
name, address, occupation, pay rate, hours worked for each day 219  
worked, or each amount paid of any other employee of the 220  
employer. "Such information" does not include hours worked for 221  
each day worked by individuals for whom an employer is not 222  
required to keep that information under the Fair Labor Standards 223  
Act and its regulations or individuals who are not subject to 224



the overtime pay requirements specified in section 4111.03 of 225  
the Revised Code. 226

(2) "Acting on behalf of an employee" means a person 227  
acting on behalf of an employee as any of the following: 228

(a) The certified or legally recognized collective 229  
bargaining representative for that employee under the applicable 230  
federal law or Chapter 4117. of the Revised Code; 231

(b) The employee's attorney; 232

(c) The employee's parent, guardian, or legal custodian. 233

A person "acting on behalf of an employee" must be 234  
specifically authorized by an employee in order to make a 235  
request for that employee's own name, address, occupation, pay 236  
rate, hours worked for each day worked, and each amount paid to 237  
that employee. 238

(3) "Provide" means that an employer shall provide the 239  
requested information within thirty business days after the date 240  
the employer receives the request, unless either of the 241  
following occurs: 242

(a) The employer and the employee or person acting on 243  
behalf of the employee agree to some alternative time period for 244  
providing the information. 245

(b) The thirty-day period would cause a hardship on the 246  
employer under the circumstances, in which case the employer 247  
must provide the requested information as soon as practicable. 248

(4) A "request" made by an employee or a person acting on 249  
behalf of an employee means a request by an employee or a person 250  
acting on behalf of an employee for the employee's own 251  
information. The employer may require that the employee provide 252

the employer with a written request that has been signed by the 253  
employee and notarized and that reasonably specifies the 254  
particular information being requested. The employer may require 255  
that the person acting on behalf of an employee provide the 256  
employer with a written request that has been signed by the 257  
employee whose information is being requested and notarized and 258  
that reasonably specifies the particular information being 259  
requested. 260

(H) In accordance with Section 34a of Article II, Ohio 261  
Constitution, an employee, person acting on behalf of one or 262  
more employees, and any other interested party may file a 263  
complaint with the state for a violation of any provision of 264  
Section 34a of Article II, Ohio Constitution, or any law or 265  
regulation implementing its provisions. Such complaint shall be 266  
promptly investigated and resolved by the state. The employee's 267  
name shall be kept confidential unless disclosure is necessary 268  
to resolution of a complaint and the employee consents to 269  
disclosure. As used in division (H) of this section: 270

(1) "Complaint" means a complaint of an alleged violation 271  
pertaining to harm suffered by the employee filing the 272  
complaint, by a person acting on behalf of one or more 273  
employees, or by an interested party. 274

(2) "Acting on behalf of one or more employees" has the 275  
same meaning as "acting on behalf of an employee" in division 276  
(G) (2) of this section. Each employee must provide a separate 277  
written and notarized authorization before the person acting on 278  
that employee's or those employees' behalf may request the name, 279  
address, occupation, pay rate, hours worked for each day worked, 280  
and each amount paid for the particular employee. 281

(3) "Interested party" means a party who alleges to be 282

injured by the alleged violation and who has standing to file a 283  
complaint under common law principles of standing. 284

(4) "Resolved by the state" means that the complaint has 285  
been resolved to the satisfaction of the state. 286

(5) "Shall be kept confidential" means that the state 287  
shall keep the name of the employee confidential as required by 288  
division (H) of this section. 289

(I) In accordance with Section 34a of Article II, Ohio 290  
Constitution, the state may on its own initiative investigate an 291  
employer's compliance with Section 34a of Article II, Ohio 292  
Constitution, and any law or regulation implementing Section 34a 293  
of Article II, Ohio Constitution. The employer shall make 294  
available to the state any records related to such investigation 295  
and other information required for enforcement of Section 34a of 296  
Article II, Ohio Constitution or any law or regulation 297  
implementing Section 34a of Article II, Ohio Constitution. The 298  
state shall investigate an employer's compliance with this 299  
section in accordance with the procedures described in section 300  
4111.04 of the Revised Code. All records and information related 301  
to investigations by the state are confidential and are not a 302  
public record subject to section 149.43 of the Revised Code. 303  
This division does not prevent the state from releasing to or 304  
exchanging with other state and federal wage and hour regulatory 305  
authorities information related to investigations. 306

(J) In accordance with Section 34a of Article II, Ohio 307  
Constitution, damages shall be calculated as an additional two 308  
times the amount of the back wages and in the case of a 309  
violation of an anti-retaliation provision an amount set by the 310  
state or court sufficient to compensate the employee and deter 311  
future violations, but not less than one hundred fifty dollars 312

for each day that the violation continued. The "not less than 313  
one hundred fifty dollar" penalty specified in division (J) of 314  
this section shall be imposed only for violations of the anti- 315  
retaliation provision in Section 34a of Article II, Ohio 316  
Constitution. 317

(K) In accordance with Section 34a of Article II, Ohio 318  
Constitution, an action for equitable and monetary relief may be 319  
brought against an employer by the attorney general and/or an 320  
employee or person acting on behalf of an employee or all 321  
similarly situated employees in any court of competent 322  
jurisdiction, including the court of common pleas of an 323  
employee's county of residence, for any violation of Section 34a 324  
of Article II, Ohio Constitution, or any law or regulation 325  
implementing its provisions within three years of the violation 326  
or of when the violation ceased if it was of a continuing 327  
nature, or within one year after notification to the employee of 328  
final disposition by the state of a complaint for the same 329  
violation, whichever is later. 330

(1) As used in division (K) of this section, 331  
"notification" means the date on which the notice was sent to 332  
the employee by the state. 333

(2) No employee shall join as a party plaintiff in any 334  
civil action that is brought under division (K) of this section 335  
by an employee, person acting on behalf of an employee, or 336  
person acting on behalf of all similarly situated employees 337  
unless that employee first gives written consent to become such 338  
a party plaintiff and that consent is filed with the court in 339  
which the action is brought. 340

(3) A civil action regarding an alleged violation of this 341  
section shall be maintained only under division (K) of this 342

section. This division does not preclude the joinder in a single 343  
civil action of an action under this division and an action 344  
under section 4111.10 of the Revised Code. 345

(4) Any agreement between an employee and employer to work 346  
for less than the wage rate specified in ~~Section 34a of Article~~ 347  
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 348  
defense to an action under this section. 349

(L) In accordance with Section 34a of Article II, Ohio 350  
Constitution, there shall be no exhaustion requirement, no 351  
procedural, pleading, or burden of proof requirements beyond 352  
those that apply generally to civil suits in order to maintain 353  
such action and no liability for costs or attorney's fees on an 354  
employee except upon a finding that such action was frivolous in 355  
accordance with the same standards that apply generally in civil 356  
suits. Nothing in division (L) of this section affects the right 357  
of an employer and employee to agree to submit a dispute under 358  
this section to alternative dispute resolution, including, but 359  
not limited to, arbitration, in lieu of maintaining the civil 360  
suit specified in division (K) of this section. Nothing in this 361  
division limits the state's ability to investigate or enforce 362  
this section. 363

(M) An employer who provides such information specified in 364  
Section 34a of Article II, Ohio Constitution, shall be immune 365  
from any civil liability for injury, death, or loss to person or 366  
property that otherwise might be incurred or imposed as a result 367  
of providing that information to an employee or person acting on 368  
behalf of an employee in response to a request by the employee 369  
or person, and the employer shall not be subject to the 370  
provisions of Chapters 1347. and 1349. of the Revised Code to 371  
the extent that such provisions would otherwise apply. As used 372

in division (M) of this section, "such information," "acting on 373  
behalf of an employee," and "request" have the same meanings as 374  
in division (G) of this section. 375

(N) As used in this section, "the state" means the 376  
director of commerce. 377

**Section 2.** That existing sections 4111.02, 4111.09, and 378  
4111.14 and section 4111.07 of the Revised Code are hereby 379  
repealed. 380