

As Reported by the Senate Ways and Means Committee

134th General Assembly

Regular Session

2021-2022

S. B. No. 47

Senators Brenner, Peterson

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) 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 of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;	79 80 81
(f) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state;	82 83 84
(g) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in Section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under Section 501(a) of that code;	85 86 87 88 89 90
(h) Any individual employed directly by the house of representatives or directly by the senate;	91 92
(i) 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:	93 94 95 96
(i) The individual owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the individual leases the vehicle or vessel under a bona fide lease agreement that is not a temporary replacement lease agreement. For purposes of this division, a bona fide lease agreement does not include an agreement between the individual and the motor carrier transporting property for which, or on whose behalf, the individual provides services.	97 98 99 100 101 102 103 104
(ii) The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel	105 106

used to provide the service.	107
(iii) The compensation paid to the individual is based on	108
factors related to work performed, including on a mileage-based	109
rate or a percentage of any schedule of rates, and not solely on	110
the basis of the hours or time expended.	111
(iv) The individual substantially controls the means and	112
manner of performing the services, in conformance with	113
regulatory requirements and specifications of the shipper.	114
(v) The individual enters into a written contract with the	115
carrier for whom the individual is performing the services that	116
describes the relationship between the individual and the	117
carrier to be that of an independent contractor and not that of	118
an employee.	119
(vi) The individual is responsible for substantially all	120
of the principal operating costs of the vehicle or vessel and	121
equipment used to provide the services, including maintenance,	122
fuel, repairs, supplies, vehicle or vessel insurance, and	123
personal expenses, except that the individual may be paid by the	124
carrier the carrier's fuel surcharge and incidental costs,	125
including tolls, permits, and lumper fees.	126
(vii) The individual is responsible for any economic loss	127
or economic gain from the arrangement with the carrier.	128
(4) "Motor carrier" has the same meaning as in section	129
4923.01 of the Revised Code.	130
<u>Sec. 4111.031. (A) (1) Except as provided in division (B)</u>	131
<u>of this section, an employer is not required to pay the overtime</u>	132
<u>wage rate under section 4111.03 of the Revised Code to an</u>	133
<u>employee for any time that the employee spends performing any of</u>	134
<u>the following activities:</u>	135

(a) Walking, riding, or traveling to and from the actual 136
place of performance of the principal activity or activities 137
that the employee is employed to perform; 138

(b) Activities that are preliminary to or postliminary to 139
the principal activity or activities; 140

(c) Activities requiring insubstantial or insignificant 141
periods of time beyond the employee's scheduled working hours. 142

(2) Division (A)(1) of this section applies to an activity 143
described in that division that occurs either prior to the time 144
on any particular workday at which the employee commences, or 145
subsequent to the time on any particular workday at which the 146
employee ceases, such principal activity or activities. 147

(B) Division (A) of this section does not apply if an 148
employee engages in an activity described in division (A)(1)(b) 149
of this section under either of the following circumstances: 150

(1) The employee performs the activity during the regular 151
work day or during prescribed hours. 152

(2) The employee performs the activity at the specific 153
direction of the employer. 154

Section 2. That existing section 4111.03 of the Revised 155
Code is hereby repealed. 156