

**As Reported by the House Commerce and Labor Committee**

**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**

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**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  
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(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  
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(b) Activities that are preliminary to or postliminary to the principal activity or activities; 142  
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(c) Activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours. 144  
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(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  
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(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  
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(1) The employee performs the activity during the regular work day or during prescribed hours. 154  
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(2) The employee performs the activity at the specific direction of the employer. 156  
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(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  
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(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
<b>Section 2.</b> That existing sections 4111.03 and 4111.10 of	194
the Revised Code are hereby repealed.	195