



S.B. 402

126th General Assembly
(As Introduced)

**Sens. Prentiss, Fedor, Roberts, Hagan, R. Miller, D. Miller, Fingerhut,
Kearney, Zurz**

BILL SUMMARY

Amount of the minimum wage

(R.C. 4111.02; Section 34a of Article II, Ohio Constitution; and 29 U.S.C. 201 et. seq.)

- Under Ohio's minimum wage law prior to the adoption of Section 34a of Article II, Ohio Constitution (hereafter "prior minimum wage law"), employers, including employers with less than \$150,000 gross annual sales, were required to pay their employees, except certain agricultural employees, at a wage rate of not less than the wage rate specified in the federal Fair Labor Standards Act (hereafter "FLSA"), which is \$5.15 per hour or \$2.58 per hour for tipped employees.
- Section 34a of Article II, Ohio Constitution (hereafter "Section 34a"), and the bill require every employer, except as specified below, to pay each of the employer's employees at one of the following wage rates: (1) beginning on January 1, 2007, \$6.85 per hour, and (2) on and after January 1, 2008, the adjusted wage rate explained below.
- Section 34a and the bill require that the wage rate be adjusted annually by the rate of inflation for the 12-month period preceding the September in which the wage is adjusted according to the Consumer Price Index for All Urban Wage Earners and Clerical Workers, or its successor index and that the adjusted increase become effective on January 1 every year.
 - The bill specifies that the Director of Commerce must make this adjustment.

- Section 34a and the bill require an employer to pay the wage rate specified in the FLSA, which is \$5.15 per hour, for the following employees:
 - Employees of employers with annual gross receipts equal to the following: (1) beginning on January 1, 2007, \$250,000 or less for the preceding calendar year, and (2) on and after January 1, 2008, an amount the Director adjusts by the rate of inflation according to the Consumer Price Index.
 - Employees under the age of 16.
- Section 34a and the bill require an employer whose employees are tipped to pay those employees one of the wage rates specified above, depending on the type of employer. This wage may be less than, but not less than half, the wage rate applicable to that employee if the employee's tips combined with the employee's wages are equal to or greater than the applicable wage rate.

Persons with disabilities

(R.C. 4111.06; Section 34a of Article II, Ohio Constitution)

- Existing law, Section 34a, and the bill permit the Director to adopt rules to permit employment in any occupation at wages lower than the wage rates specified in the minimum wage law of individuals whose earning capacity is impaired by physical or mental deficiencies or injuries. The bill changes "deficiencies or injuries" to "disabilities."

Definitions

(R.C. 4111.01; Section 34a of Article II, Ohio Constitution; and 29 U.S.C. §§ 203(e) and 213)

- Changes the definition of "employ" from "to suffer or to permit to work" to specify that it has the same meaning as in the FLSA, which also is what Section 34a specifies.
- Changes the definition of "employer."
 - Under prior minimum wage law, "employer" meant the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership, association,

corporation, business trust, or any person or group of persons, acting in the interest of an employer in relation to an employee, but did not include an employer whose annual gross volume of sales was less than \$150,000.

- Under Section 34a and the bill, "employer" has the same meaning as in the FLSA.
- Changes the definition of "employee."
 - Under prior minimum wage law, "employee" meant any individual employed by an employer but did not include various types of employees, such as babysitters; live-in companions to sick or elderly persons; individuals who delivered newspapers; outside salespersons compensated by commissions; individuals employed in bona fide executive, administrative, or professional capacities; certain agricultural laborers; members of police or fire protection agencies; and several others.
 - Under Section 34a and the bill, "employee" has the same meaning as in the FLSA, but does not include (1) an individual employed in or about the property of an employer or individual's residence on a casual basis or (2) employees of a solely family-owned and operated business who are family members of an owner of that business.
 - The bill defines "solely family-owned and operated business" to mean a business that is owned in its entirety and operated by an individual business owner or the business owner's family members.
 - The bill defines "family members" to mean the parents, siblings, children, or grandchildren of an individual business owner.
 - The bill specifies that, except for the two types of persons not included in the definition of employee explained above, "employee" includes an employee who is exempt from the minimum wage requirements of the FLSA.

Record-keeping requirements

(R.C. 4111.08; Section 34a of Article II, Ohio Constitution)

- Prior minimum wage law required every employer subject to the minimum wage law to make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee, and other information the Director prescribed by rule.
- Section 34a and the bill require every employer to, at the time of hire, provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes.
- Section 34a and the bill require an employer to maintain a record of the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee for a period of not less than three years following the last date the employee was employed.
- Section 34a and the bill require an employer to provide an employee or person acting on behalf of an employee a copy of the employee's above-described records upon request.
- The bill requires an employer to verify that a person acting on behalf of an employee, who is requesting records on that employee's behalf, is making the request with the employee's express written consent.

Actions for violations of the minimum wage and overtime laws

(R.C. 4111.10; Section 34a of Article II, Ohio Constitution)

- Under prior minimum wage law, any employer who paid any employee less than wages to which the employee was entitled under that law was liable to the employee affected for the full amount of the wage rate, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees as allowed by the court.
- Section 34a and the bill specify that if the Director, the Attorney General, or a court of competent jurisdiction finds that an employer paid less than the wages to which the employee is entitled under the minimum wage

and overtime law, the employer must pay, within 30 days of that finding, to the employee affected, the full amount of the wage rate, less any amount actually paid to the employee by the employer, plus an amount equal to two times the amount of back wages, and any associated costs and reasonable attorney's fees.

- Existing law specifies that any agreement between an employee and employer to work for less than the wage rate is no defense to an action.
 - The bill adds to this provision that any agreement between an employee and employer to waive any right, procedure, or remedy allowed under the minimum wage and overtime law as a condition of employment is no defense to an action.
 - The bill specifies that both types of the above agreements are considered involuntary, unconscionable, and against public policy.

Anti-retaliation provisions

(R.C. 4111.13; Section 34a of Article II, Ohio Constitution)

- Under existing law, an employer is prohibited from discharging or in any other manner discriminating against any employee for doing any of the following:
 - Making any complaint to the employee's employer, or to the Director, that the employee has not been paid wages in accordance with the minimum wage and overtime law.
 - Making any complaint or instituting any proceeding under or related to the minimum wage and overtime law.
 - Testifying in any proceeding.
- Section 34a and the bill prohibit an employer from discharging or in any other manner discriminating or retaliating against an employee for, or against any person assisting an employee in, exercising any right under that section or the bill.

- The bill specifies that the three actions described above in existing law are actions for which an employer cannot discriminate or retaliate against an employee or person assisting an employee.
- Section 34a and the bill specify that if an employer violates the above provision, the Director or court of competent jurisdiction must fine the employer in an amount sufficient to compensate the employee and deter future violations, but not less than \$150 for each day the violation continued.

Investigations by the Director of Commerce

(R.C. 4111.04; Section 34a of Article II, Ohio Constitution)

- Under existing law, the Director may investigate and ascertain the wages of persons employed in any occupation in the state. Section 34a and the bill specify that the Director, or the Director's designated representative, may investigate and ascertain wages not only upon the Director's own initiative, as under existing law, but also after receiving a complaint made by an employee, a person acting on behalf of an employee, or any other interested party.
- Under existing law the Director may enter and inspect the place of business or employment of any employer for the purpose of inspecting various items, such as the employer's books, registers, and payrolls. The bill specifies that the Director's designated representative also may perform these tasks.
- Existing law permits the Director to apply to any court of common pleas having jurisdiction of an employer or the place of employment that is under investigation for an order directing compliance with the Director's inspection.
 - The bill replaces the Director's authority to obtain compliance orders with the authority to issue subpoenas and compel attendance of witnesses and production of papers, books, accounts, payrolls, documents, records, and testimony relating and relevant to the Director's investigation.
- Section 34a and the bill require an employee's name to be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. The bill specifies that this

confidentiality requirement is placed on the Director or the Director's designated representative.

Director of Commerce's adoption of rules

(R.C. 4111.05; Section 34a of Article II, Ohio Constitution)

- Under existing law, the Director must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as the Director considers appropriate to carry out the purposes of the minimum wage and overtime law. These rules may be amended from time to time.
- The bill removes the provision specifying the following types of rules the Director may adopt: (1) rules defining and governing apprentices, (2) bonuses and special pay, (3) permitted deductions or charges to employees for board, lodging, apparel, or other facilities, (4) inclusion of ascertainable gratuity in wages, (5) allowances for unascertainable gratuities, and (6) the method of computation or the period of time over which wages may be averaged to determine whether the minimum wage or overtime rate has been paid.

Summary of minimum wage and overtime laws

(R.C. 4111.09)

- Existing law requires every employer to keep a summary of the minimum wage and overtime laws, including rules adopted pursuant to those laws, posted in a conspicuous and accessible place in or about the premises wherein any person subject to those laws is employed.
- The bill specifies that the above-described summary must be (1) available on the web site of the Department of Commerce, (2) updated annually, and (3) furnished without charge to employers, in addition to employees as under existing law.

Apprentices

(R.C. 4111.07)

- Existing law permits the Director to adopt rules and issue licenses permitting employment of apprentices at a wage rate of not less than 85% of the minimum wage rate specified in the minimum wage law.

- The bill repeals this provision and thus removes the Director's authority to permit payment of a lower wage to apprentices.

Overtime provisions

(R.C. 4111.01, 4111.03, 4111.04, 4111.05, 4111.08, 4111.09, 4111.10, and 4111.13)

- Applies the definitions, record-keeping provisions, and remedies in Section 34a and the bill to the overtime provisions in existing law as well as the minimum wage provisions.

Emergency clause

(Section 3)

- The bill contains an emergency clause that declares the bill to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety.
- The bill specifies that the reason for such necessity is to ensure timely and proper implementation of Section 34a.

HISTORY

ACTION	DATE
Introduced	12-06-06

s0402-i-126.doc/kl