As Introduced

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H. B. No. 731

Representatives Smith, K., Kelly

Cosponsors: Representatives Lepore-Hagan, Brown, Galonski, Patterson, Skindell, Lightbody, Miller, J., Crawley, Sobecki, Ingram, Crossman, West

A BILL

To amend sections 119.14 and 4111.03 and to enact sections 4111.031 and 4111.032 of the Revised Code to raise the salary threshold above which certain employees are exempt from the overtime law.

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

Section 1. That sections 119.14 and 4111.03 be amended and sections 4111.031 and 4111.032 of the Revised Code be enacted to read as follows:

Sec. 119.14. (A) For any small business that engages in a paperwork violation, the state agency or regulatory authority that regulates the field of operation in which the business operates shall waive any and all administrative fines or civil penalties on that small business for the violation, if the paperwork violation is a first-time offense.

(B) When an agency or regulatory authority waives an administrative fine or civil penalty under this section, the state agency or regulatory authority shall require the small business to correct the violation within a reasonable period of time.

(C) Notwithstanding this section, a state agency or regulatory authority may impose administrative fines or civil penalties on a small business for a paperwork violation that is a first-time offense for any of the following reasons:

(1) The violation has the potential to cause serious harm to the public interest as determined by a state agency or regulatory authority director;

(2) The violation involves a small business knowingly or willfully engaging in conduct that may result in a felony conviction;

(3) Failure to impose an administrative fine or civil penalty for the violation would impede or interfere with the detection of criminal activity;

(4) The violation is of a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

(5) The violation presents a direct danger to the public health or safety, results in a financial loss to an employee ~~as defined in section 4111.03 of the Revised Code~~, or presents the risk of severe environmental harm, as determined by the head of the agency or regulatory authority;

(6) The violation is a failure to comply with a federal requirement for a program that has been delegated from the federal government to a state agency or regulatory authority and where the federal requirement includes a requirement to impose a fine.

(D)(1) Nothing in this section shall prohibit a state agency or regulatory authority from waiving administrative fines or civil penalties incurred by a small business for a paperwork violation that is not a first-time offense.

(2) Any administrative fine or civil penalty that is waived under this section~~,~~ may be reinstated and imposed in addition to any additional fines or penalties associated with a subsequent violation for noncompliance with the same paperwork requirement.

(E) This section shall not apply to any violation by a small business of a statutory or regulatory requirement mandating the collection of information by a state agency or regulatory body if that small business previously violated any such requirement mandating the collection of information.

(F) Nothing in this section shall be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.

(G) As used in this section:

(1) "Small business" has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121.

(2) "Paperwork violation" means the violation of any statutory or regulatory requirement in the Revised Code mandating the collection of information by a state agency or regulatory body.

(3) "First-time offense" means the first instance of a violation of the particular statutory or regulatory requirement mandating the collection of information by a state agency or regulatory body.

(4) "Employee" means any individual employed by an employer but does not include:

(a) Any individual employed by the United States;

(b) Any individual employed as a babysitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;

(c) Any individual engaged in the delivery of newspapers to the consumer;

(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended;

(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;

(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;

(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;

(h) Any individual employed directly by the house of representatives or directly by the senate.

Sec. 4111.03. (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and, except as provided in this section and sections 4111.031 and 4111.032 of the Revised Code, subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended.

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

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

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

(D) As used in this section:

(1) "Employ" means to suffer or to permit to work.

(2) "Employer" means 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 does not include either of the following:

(a) An employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated;

(b) A franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

(3) "Employee" means any individual employed by an employer but does not include:

(a) Any individual employed by the United States;

(b) Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;

(c) Any individual engaged in the delivery of newspapers to the consumer;

(d) Any individual employed as an outside salesperson compensated by commissions ~~or~~ ;

(e) Any individual who is employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended, and who is compensated on a salary basis as described in section 4111.031 of the Revised Code;

~~(e)~~ (f) 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;

~~(f)~~ (g) 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;

~~(g)~~ (h) 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;

~~(h)~~ (i) Any individual employed directly by the house of representatives or directly by the senate.

Sec. 4111.031. (A) As used in this section, "paid on a fee basis" means that both of the following apply:

(1) An individual is paid an agreed sum for a single job regardless of the time required for its completion;

(2) The job performed by the individual is unique rather than a series of tasks repeated an indefinite number of times.

(B) Except as provided in division (D) of this section, to be considered as employed in a bona fide executive, administrative, or professional capacity as described under division (D) of section 4111.03 of the Revised Code, an individual must be compensated on a salary basis at one of the following rates, exclusive of board, lodging, and other facilities:

(1) Beginning on the effective date of this section, and ending on the first day of January immediately following the date that is three years after the effective date of this section, a rate per week of not less than nine hundred thirteen dollars per week;

(2) Beginning on the first day of January immediately following the date that is three years after the effective date of this section, a rate per week determined by the director of commerce pursuant to division (C) of this section.

(C) Beginning on the thirtieth day of September that is immediately before the date described in division (B)(2) of this section, and every three years thereafter, the director of commerce shall adjust the rate of compensation required under division (B) of this section to the fortieth percentile of weekly earnings of full-time nonhourly workers in the lowest wage census region in the second quarter of the year for which data has been most recently published by the bureau of labor statistics of the United States department of labor.

(D) Both of the following apply to the rate of compensation required under division (B) of this section:

(1) The rate of compensation may be translated into equivalent amounts for periods longer than one week, including on a biweekly, semimonthly, or monthly basis;

(2) An individual employed in an administrative or professional capacity who is paid on a fee basis, rather than a salary basis, satisfies the rate of compensation required under division (B) of this section if the hourly rate obtained by dividing the amount paid to the individual by the number of hours worked on the job multiplied by forty is equal to the minimum salary per week required under division (B) of this section.

Sec. 4111.032. (A) As used in this section:

(1) "Educational establishment" includes all of the following:

(a) A public school operated by a school district, a community school established under Chapter 3314. of the Revised Code, a STEM school established under Chapter 3326. of the Revised Code, and a college-preparatory boarding school established under Chapter 3328. of the Revised Code;

(b) A chartered or nonchartered nonpublic school;

(c) A state institution of higher education as defined in section 3345.011 of the Revised Code;

(d) A private, nonprofit institution that was issued a certificate of authorization pursuant to Chapter 1713. of the Revised Code;

(e) A career college in this state that holds a certificate of registration from the state board of career colleges and schools under Chapter 3332. of the Revised Code, and a private institution exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code.

(2) "Teacher" includes a teacher with a license under section 3301.071 or sections 3319.22 to 3319.31 of the Revised Code, a teacher employed pursuant to section 3302.151 of the Revised Code, and a professor, faculty member, or instructor at any public or private institution of higher education that is considered an educational establishment.

(B) Sections 4111.03 and 4111.031 of the Revised Code do not apply to any of the following individuals unless the individual is paid on an hourly basis:

(1) An individual employed at an educational establishment as a teacher;

(2) An individual who has been admitted to the bar by order of the supreme court in compliance with its published rules and who is engaged in the practice of law;

(3) A physician, as defined in section 4731.053 of the Revised Code, who is engaged in the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(4) An individual licensed under Chapter 4715. of the Revised Code who is practicing dentistry as described in section 4715.01 of the Revised Code;

(5) An individual licensed under Chapter 4725. of the Revised Code who is engaged in the practice of optometry as defined in section 4725.01 of the Revised Code;

(6) An individual who holds the requisite academic degree

required for the professions listed in divisions (B)(3) to (5) of this section and who is engaged in an internship or resident program pursuant to the practice of the profession.

Section 2. That existing sections 119.14 and 4111.03 of the Revised Code are hereby repealed.