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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 391  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. K. Smith and Sobecki

Paul Luzzi, Attorney

### SUMMARY

- Increases the basic state minimum wage to \$10.55 per hour beginning January 1, 2021.
- Increases the state minimum wage rate paid to employees under age 16 and employees of smaller businesses from \$7.25 per hour to \$10.55 per hour beginning January 1, 2021.
- Increases the state minimum wage for tipped employees to \$10.55 per hour beginning January 1, 2021.
- Requires the minimum wage rates to be adjusted annually based on the Consumer Price Index, in accordance with Ohio's constitutional minimum wage requirements.

### DETAILED ANALYSIS

#### State minimum wage

The bill raises the state minimum wage rate payable to employees to \$10.55 per hour beginning January 1, 2021.<sup>1</sup> Under current law, the basic state minimum wage is \$8.70 per hour and will increase to \$8.80 per hour beginning January 1, 2021. The basic state minimum wage is currently set pursuant to the Minimum Wage Amendment of the Ohio Constitution (MWA). The MWA requires the basic state minimum wage to be increased annually according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government, rounded to the nearest five cents. However, the MWA allows laws to be passed that set the state minimum wage at a rate higher than the rate calculated pursuant to the MWA. The bill sets a higher minimum wage rate while retaining the annual recalculation requirement.

<sup>1</sup> R.C. 4111.02, with conforming changes in R.C. 4111.09 and 4111.14.

The bill also increases the minimum wage to \$10.55 per hour for employees who are under 16 years of age or who are employed by a business with gross annual receipts of \$319,000 or less in 2019. Currently, pursuant to MWA, these employees must be paid at least the federal minimum wage rate, which is \$7.25 per hour. Under the MWA, the amount of gross annual receipts is adjusted annually based on the Consumer Price Index. Thus, beginning January 1, 2021, the MWA requires a business with gross annual receipts of \$323,000 or less in 2020 to pay its employees no less than the federal minimum wage.

The MWA allows tipped employees to be paid less than, but not less than half, the basic state minimum wage rate if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the state minimum wage rate for all hours worked. The bill raises the state minimum wage for tipped employees to \$10.55 per hour, regardless of the amount they earn in tips.<sup>2</sup>

The bill also eliminates the authority of the Director of Commerce to adopt rules permitting the employment of apprentices at a wage rate not less than 85% of the state minimum wage. The Director has not adopted these rules.<sup>3</sup>

## Relationship between state and federal law

The federal Fair Labor Standards Act<sup>4</sup> (FLSA) and Ohio's minimum wage laws both specify minimum wages that an employer must pay the employer's employees. An employer may be subject to one or both laws. The FLSA specifies that if an employer is subject to both laws, the employer is governed by the law that establishes the higher minimum wage, or, for purposes of determining overtime, the lower maximum workweek.<sup>5</sup> Currently, Ohio has the same maximum workweek as specified in the FLSA (40 hours per week) but has a higher basic minimum wage (\$8.70 per hour in 2020 and \$8.80 in 2021) as compared to the basic minimum wage under the FLSA (\$7.25 per hour). Thus, employers subject to both laws pay the state rate under current law and under the bill.

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## HISTORY

Action	Date
Introduced	11-05-19

H0391-I-133/ec

<sup>2</sup> Ohio Constitution, Article II, Section 34a; Ohio Department of Commerce, Division of Industrial Compliance, State of Ohio 2020 Minimum Wage, available [here](#); and Ohio Department of Commerce, Division of Industrial Compliance, State of Ohio 2021 Minimum Wage, available [here](#).

<sup>3</sup> R.C. 4111.07, repealed.

<sup>4</sup> 29 United States Code (U.S.C.) 201 *et seq.*

<sup>5</sup> 29 U.S.C. 218.