S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

November 27, 2013

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT in relation to enacting the New York fair wage act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "New York fair wage act".

S 2. For the purposes of this act, the term:

A. "Business" means any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

B. "Formula retail store" means a retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: (1) a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark; or (2) a servicemark.

C. "Subcontractor" means any business that performs services, including but not limited to janitorial or security services, on the premises of a formula retail store, that holds a sublease or contract authorizing that party to occupy, use, control or do business on the premises of the large retailer, or that performs construction work on premises that are or will be occupied by a large retailer.

D. "Employee" includes not only common-law employees of a formula retail store who are regularly employed on or about the premises of a formula retail store, but also persons who regularly work on or about the premises of a formula retail store for the benefit of that retailer's business, whether they are engaged as a contractor, subcontractor, tenant, subtenant, licensee or sublicensee, or as an employee thereof. Workers who are not common-law employees of a formula retail store shall not be deemed "regularly working" on or about the retailer's premises

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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unless they spend an average of ten or more hours per week there for four or more weeks. "Employee" does not include any managerial or administrative employees receiving more than $50,000 per year in wages, salary, bonus, commission or other compensation from a large retailer.

E. "Living wage rates" means:

(1) Beginning on the effective date of this act, the living wage rate shall be an hourly rate of $15.

(2) No later than January 1 of each successive year, the living wage rate shall be increased in proportion to the increase during the preceding twelve months, if any, in the Consumer Price Index for All Urban Consumers in the New York state metropolitan statistical area, as published by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

(3) The prorated hourly cost of any benefits that a formula retail store chooses to provide an employee may be credited toward payment of the minimum hourly compensation required under this act, provided that this provision shall not be construed as amending or superseding any other applicable state and federal wage laws.

F. "Benefits" means payments made by a formula retail store for any bona fide fringe benefits, paid directly to an employee or a third party on behalf of an employee or employee's family, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are deducted from an employee's wages or otherwise reimbursed by an employee, or that are required by any federal, state or local law. A formula retail store may use any reasonable methodology for determining the hourly dollar value of any benefits provided and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits provided.

S 3. A. Formula retail stores shall provide employees an hourly compensation package with a value of no less than the living wage rate for each hour that the employee works on the premises of a formula retail store.

B. Formula retail stores shall be jointly and severally responsible for any violation of this act by a subcontractor of the formula retail store.

C. The provisions of this section may be waived by the written terms of a bona fide collective bargaining agreement.

S 4. A. By December 1 of each year, the state shall publish and make available to large retailers a bulletin announcing the adjusted living wage and benefits rate for the upcoming year, which shall take effect on January 1.

B. By December 1 of each year, the state shall publish and make available to formula retail stores, in English and Spanish, and on-line, a notice suitable for posting by formula retail store in the workplace informing employees of the current living wage and benefits rate and of their rights under this act.

C. Every formula retail store shall post in a conspicuous place at any workplace or job site where an employee works the notice published each year by the agency informing employees of the current living wage and health care supplement rate and of their rights under this act. Every formula retail store shall post such notices in English and Spanish.

D. Formula retail stores shall retain payroll and benefits records pertaining to employees for a period of four years, and shall allow the agency access to such records to monitor compliance with the requirements of this act. Formula retail stores shall permit an employee or an

employee's designated representative to inspect the formula retail store's payroll and benefits pertaining to the employee. Where a formula retail store does not maintain or retain adequate records documenting wages paid or does not allow the state reasonable access to such records, there shall be a rebuttable presumption that the formula retail store has not paid the living wage. This presumption may be overcome if the large retailer proves by clear and convincing evidence that the formula retail store has paid the living wage.

S 5. This act shall take effect immediately.