A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Phil Mendelson, introduced the following bill, which was referred to the Committee on ____________________.

To establish standards for responsible business practices by large retailers by ensuring that they pay living wages and provide benefits.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Large Retailer Accountability Act of 2013.”

Sec. 2. Findings and Declaration of Policy.

(1) The Council of the District of Columbia declares that it is the policy of the District to promote living wage jobs to help working families make ends meet and protect the health, safety and welfare of our community.

(2) Large retailers are becoming an important source of jobs for local residents. Some large retailers pay very low wages and do not provide their workers affordable health benefits. Without safeguards, large retailers threaten to erode both living standards for working families in the District, especially given the cost of living in the District. By adopting living wage standards for large retailers, The District can ensure that economic development better meets the
community’s need for family-supporting jobs.

(3) Responsible retailers that pay living wages and provide affordable health benefits face growing pressure to cut back when their competitors are permitted to pay low wages and no benefits. The result could be increased costs to the District when businesses that provide health care to their employees are replaced by those that do not and instead rely on city health clinics, public hospitals, and publicly funded programs such as Medicaid to provide health care to their employees.

(4) It is appropriate to set a standard for larger businesses in the retail industry because:

(A) large retailers are better able to afford the cost of paying a living wage than many other kinds of employers; (B) a number of large retailers in the region are already paying a living wage, providing evidence that it is feasible for employers in this industry to create good jobs while still operating profitably; (C) large retailers generally are less likely than other kinds of businesses to respond to such regulation by closing or reducing employment because the retail industry is more location-dependent; and (D) in others cities, the enactment of living wage laws has had no negative impact on retail employment and development.

(5) In order to safeguard the public health, safety, welfare and prosperity of all Washingtonians, the District must establish a code of conduct for responsible retailers in our community ensuring that large retailers pay their workers a living wage and provide affordable health benefits.

Sec. 3. For the purposes of this chapter, the term:

(1) “District” means the District of Columbia.

(2) “Business” means any natural person, corporation, partnership, limited liability
company, joint venture, sole proprietorship, association, trust or any other entity.

(3) "Large retailer" means any business that operates a retail store located within the geographic boundaries of the District where:

(A) the indoor premises of the retail store comprise 75,000 square feet or more. For the purposes of this definition, the indoor premises of adjacent stores shall be aggregated if the stores share check stands, management, a controlling ownership interest, a warehouse, or a distribution facility; and

(B) where the parent company's gross revenues total $1 billion or more on an annual basis.

(4) "Subcontractor" means any business that performs services, including but not limited to janitorial or security services, on the premises of a large retailer, 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.

(5) "Employee" includes not only common-law employees of a large retailer who are regularly employed on or about the premises of a retail store, but also persons who regularly work on or about the premises of a large retailer's 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 large retailer shall not be deemed "regularly working" on or about that retailer's premises 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.

Sec. 4. Living wages and benefits.

(a) Large retailers 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 large retailer. Large retailers may provide new employees minimum compensation of up to $2.00 less than the living wage rate for the first ninety calendar days after their date of hire.

(b) The Mayor shall establish living wage rates according to the following guidelines:

(1) Beginning on the effective date of this Chapter, the living wage rate shall be an hourly rate of $11.75.

(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 Washington Metropolitan Statistical Area, as published by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

(c) The prorated hourly cost of any benefits that a large retailer 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 District and federal wage laws. “Benefits” means payments made by a large retailer for any bona fide fringe benefits, paid directly to an employee or to 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 large retailer 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.

(d) Large retailers shall be jointly and severally responsible for any violation of this act by
a subcontractor of the large retailer.

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

Sec. 5. Notice, posting and payroll records.

(a) By December 1 of each year, the Mayor 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 Mayor shall publish and make available to large
retailers, in English and Spanish, a notice suitable for posting by large retailers in the workplace
informing employees of the current living wage and benefits rate and of their rights under this
Act.

(c) Every large retailer 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
large retailer shall post such notices in English and Spanish.

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

Sec. 6. First source hiring provision.

(a) Section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), is amended as follows:

(1) The introductory language of subsection (a) (D.C. Official Code § 2-219.03(a)) is amended to read as follows:

“(a) The Mayor shall include for every government-assisted project and in the license requirement of every large retailer as defined by the Large Retailer Accountability Act of 2011, a requirement that the beneficiary or large retailer enter into an employment agreement with the District of Columbia government which states that:”

(2) The introductory language of subsection (d) (D.C. Official Code § 2-219.03(d)) is amended to read as follows:

“(d) Each beneficiary or large retailer shall submit to the Department of Employment Services, every month following the execution of the contract, a contract compliance report for the project that includes the:”

Sec. 7. Prohibition against retaliation,
(a) It shall be unlawful for an large retailer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Act or for informing other employees of any legal rights under federal, state or local law, to the extent that such protection is permitted by state and federal law. Rights protected under this Act include, but are not limited to: the right to file a complaint or inform any person about any party’s alleged noncompliance with this Act or any other federal, state or local law; and the right to inform any person of his or her potential rights under this Act or other law and to assist him or her in asserting such rights. Protections of this Act shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Act or any other law. Taking adverse action against a person within ninety (90) days of the person’s exercise of rights protected under this Act shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

Sec. 8. Implementation and enforcement.

(a) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §2-501 et. seq.) shall issue rules to implement the provisions of this act.

(b) This act shall be enforced pursuant to the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 et. seq.)

(c) Civil enforcement.

The Mayor, one or more employees or persons acting on behalf of an employee or similarly situated employees shall be entitled to maintain an action in any court of competent jurisdiction to recover unpaid compensation, damages, and other appropriate relief on behalf of
any employee(s) injured by violation of this Act and fines and administrative penalties on behalf of the District. A prevailing plaintiff in such an action shall be entitled to recover from the large retailer his or her expenses in pursuing the action, including reasonable attorney's fees and costs of the action. The Mayor and the District shall not be liable under this Act for any plaintiff's damages or legal expenses. The remedies set forth herein are not exclusive of any other remedies available at law, and none is a prerequisite for pursuing another remedy.

(d) Any waiver by an individual of any of the provisions of this Act shall be deemed contrary to public policy and shall be void and unenforceable, except that employees are not barred from entering into a written valid collective bargaining agreement waiving provisions of this Act if such waiver is set forth in clear and unambiguous terms.

(e) This Act shall be liberally construed in favor of its purposes. If any provision or application of this Act is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Act in order to preserve the maximum permissible effect thereof.

Sec. 9. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02 (c)(3)).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
provided in section 602(c)(1) of the District of Columbia home rule act, approved December 24, 1973 (87 stat. 813; D.C. official code § 1-206.02(c)(1)), and publication in the District of Columbia Register.