117TH CONGRESS
2D SESSION

S.

To amend the Fair Labor Standards Act of 1938 to prohibit employers from paying employees in the garment industry by piece rate, to require manufacturers and contractors in the garment industry to register with the Department of Labor, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on ____________________

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit employers from paying employees in the garment industry by piece rate, to require manufacturers and contractors in the garment industry to register with the Department of Labor, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fashioning Account-

ability and Building Real Institutional Change Act” or the

“FABRIC Act”.
SEC. 2. PAYMENT AND LIABILITY REQUIREMENTS IN THE GARMENT INDUSTRY.

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(1) by inserting after section 7 (29 U.S.C. 207) the following:

“SEC. 8. REQUIREMENTS FOR THE GARMENT INDUSTRY.

“(a) Prohibition Against Payment by Piece Rate.—No employer shall pay an employee employed in the garment industry, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, by the piece or unit, or by piece rate.

“(b) Hourly Rates.—

“(1) In general.—An employer shall pay each employee employed in the garment industry, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, at an hourly rate that is not less than the rate in effect under section 6(a)(1).

“(2) Incentive bonuses.—Nothing in this section shall be construed to prohibit incentive-based bonuses for employees employed in the garment industry.
“(c) **Joint and Several Liability of Brand Guarantors.**—

“(1) **In general.**—A brand guarantor who contracts with an employer of an employee described in paragraph (2) for the performance of services in the garment industry shall share joint and several liability with such employer for any violations of the employer under this Act involving such employee.

“(2) **Employees.**—An employee described in this paragraph is any employee employed in the garment industry who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce.

“(3) **Subcontracts.**—For purposes of paragraph (1), an employer of an employee described in paragraph (2) includes any other person who, through 1 or more subcontracts, subcontracts with the employer of such an employee for the performance of services in the garment industry.

“(4) **Rule of Construction.**—Nothing in this subsection shall be construed to preclude a determination of joint employment, in the garment in-
dustry or otherwise, for entities other than brand

guarantors.

“(d) NONAPPLICABILITY.—Subsections (a) and (b)
shall not apply for purposes of an employee employed in
the garment industry who is covered by a bona fide collec-
tive bargaining agreement that expressly provides for—

“(1) wages, hours of work, and working condi-
tions of the employee;

“(2)(A) a wage rate for all hours worked by the
employee in excess of 40 hours in a week that is
greater than one and one-half times the regular rate
at which such employee is employed; and

“(B) a minimum hourly rate of pay for the em-
ployee that is not less than 10 percent more than
the higher of—

“(i) the minimum wage rate under an ap-
plicable State law; or

“(ii) the minimum wage rate in effect
under section 6(a)(1); and

“(3) a process to resolve disputes concerning
nonpayment of wages.

“(e) REGULATIONS.—The Secretary may prescribe
such regulations or other guidance as may be necessary
to carry out this section.

“(f) DEFINITIONS.—In this section:
“(1) BRAND GUARANTOR.—The term ‘brand guarantor’ means any person contracting for the performance of garment manufacturing, including through licensing of a brand or name, regardless of whether the party with whom the person contracts performs the manufacturing operations or hires garment contractors to perform the manufacturing operations.

“(2) GARMENT.—The term ‘garment’ includes any article of wearing apparel or accessory designed or intended to be worn by an individual, including clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts.

“(3) GARMENT CONTRACTOR.—The term ‘garment contractor’—

“(A) means any person who, with the assistance of an employee or any other individual, is primarily engaged in garment manufacturing for another person, including for another garment contractor, a garment manufacturer, or a brand guarantor; and

“(B) includes a subcontractor that is primarily engaged in garment manufacturing.
“(4) GARMENT INDUSTRY.—The term ‘garment industry’ means the industry of garment manufacturing.

“(5) GARMENT MANUFACTURER.—The term ‘garment manufacturer’ means any person who is engaged in garment manufacturing who is not a garment contractor.

“(6) GARMENT MANUFACTURING.—

“(A) IN GENERAL.—The term ‘garment manufacturing’ means—

“(i) sewing, cutting, making, processing, repairing, finishing, assembling, pressing, or dyeing a garment, including a section or component of a garment, designed for or intended to be worn by an individual, which is to be sold or offered for sale or resale;

“(ii) altering the design, or causing another person to alter the design, of a garment described in clause (i):

“(iii) affixing a label to a garment described in clause (i);

“(iv) any other form of preparation of a garment described in clause (i) by any
person contracting for such preparation; and

“(v) any other operation or practice as may be identified in regulations issued by the Secretary consistent with the purposes of this section.

“(B) Exclusions.—The term ‘garment manufacturing’ does not include—

“(i) manufacturing of garments by an individual who manufactures the garments by his or her self without the assistance of a garment contractor, employee, or any other individual;

“(ii) cleaning, altering, or tailoring any garment, including a section or component of a garment, after the garment has been sold at retail; or

“(iii) any other form of manufacturing as may be identified in regulations issued by the Secretary consistent with the purposes of this section.”.

(2) in section 15 (29 U.S.C. 215(a))—

(A) in subsection (a)—

(i) in paragraph (5), by striking the period and inserting “; or”; and
(ii) by adding at the end the following:

“(6) to violate section 8.”; and

(B) by adding at the end the following new subsection:

“(c) For the purposes of subsection (a)(6), it shall be an affirmative defense to an action under such subsection against a brand guarantor (as defined in section 8(f)) if such brand guarantor shows no knowledge of the violation of section 8 alleged in such action.”; and

(3) in section 16 (29 U.S.C. 216)—

(A) in subsection (b)—

(i) by inserting after the third sentence the following: “Any person who violates section 8 shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of such section, including the payment of wages lost and an additional equal amount as liquidated damages.”; and

(ii) in the last sentence, by inserting before the period at the end “or 8”; and

(B) in subsection (c), by adding at the end the following: “The authority and requirements described in this subsection shall apply with re-
spect to a violation of section 8, as appropriate, and the person in such violation shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of such section, including the payment of wages lost and an additional equal amount as liquidated damages.”.

(b) CONFORMING AMENDMENT.—Section 10 of the Fair Labor Standards Act of 1938 (29 U.S.C. 210) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 3. REGISTRATION OF GARMENT MANUFACTURERS AND CONTRACTORS.

(a) DEFINITIONS.—In this section:

(1) EMPLOYEE.—The term “employee” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(2) GARMENT CONTRACTOR; GARMENT INDUSTRY; GARMENT MANUFACTURER; GARMENT MANUFACTURING.—The terms “garment contractor”, “garment industry”, “garment manufacturer”, and “garment manufacturing” have the meanings given
such terms in section 8(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 208(f)).

(3) Production Employee.—The term “production employee”, with respect to a garment manufacturer or garment contractor, means any employee of the manufacturer or contractor who is engaged in the garment industry.

(4) Secretary.—The term “Secretary” means the Secretary of Labor, acting through the Under-secretary of the Garment Industry appointed under section 4(b).

(b) Requirement to Register with the Department of Labor.—Beginning on the date that is 6 months after the date of enactment of this Act, no garment manufacturer or garment contractor shall engage in the garment industry during any year unless the manufacturer or contractor has registered for such year with the Secretary in accordance with this section.

(c) Registration Requirements.—

(1) In general.—A garment manufacturer or garment contractor registering under this section shall submit to the Secretary—

(A) a form, in writing, containing the information described in paragraph (2);
(B) photographic verification of the identify of—

(i) each owner or partner of the garment manufacturer or garment contractor; and

(ii) in the case the garment manufacturer or garment contractor is a corporation, each officer of the corporation;

(C) verification that the garment manufacturer or garment contractor has in effect a workers’ compensation insurance policy for all production employees of the manufacturer or contractor; and

(D) payment of the applicable registration fee described in paragraph (3).

(2) INFORMATION IN FORM.—The information described in this paragraph is each of the following:

(A) A statement of whether the garment manufacturer or garment contractor is a sole proprietorship, partnership, or corporation.

(B) The name, residential address, and phone number of all production employees of the garment manufacturer or garment contractor.
(C) The name, residential address, phone number, and social security number of—

(i) each owner or partner of the garment manufacturer or garment contractor;

(ii) if applicable, each officer of the garment manufacturer or garment contractor; and

(iii) if applicable, each of the 10 largest shareholders of the garment manufacturer or garment contractor.

(D) The name, residential address, and social security number of each person with a financial interest in the business of the garment manufacturer in the garment industry, and the amount of that interest (if any).

(E) In the case in which the garment manufacturer or garment contractor is a corporation, a statement ensuring that no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association.

(F) A statement of how long the garment manufacturer or garment contractor has been in business in the garment industry.
(G) If applicable, the tax identification number of the garment manufacturer or garment contractor.

(H) A statement of the status of the garment manufacturer or garment contractor as a manufacturer or contractor.

(I) A statement of whether the garment manufacturer or garment contractor has contracted with a labor organization, and, if so, the name and address of such labor organization.

(J)(i) A statement as to whether, within the preceding 3-year period, any of the following persons or entities have been found by a court or the Secretary to have violated the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.):

   (I) The garment manufacturer or garment contractor.

   (II) Any owner of or any partner of the garment manufacturer or garment contractor.

   (III) In the case the garment manufacturer or garment contractor is a corporation, any officer of the corporation or
any of the 10 largest shareholders of the corporation.

(ii) If any person or entity described in any of subclauses (I) through (III) of clause (i) has violated the Fair Labor Standards Act of 1938 within the period described in such clause, a statement of the nature of such violation and the date on which such violation occurred.

(K) In the case of a contractor, a statement of whether the contractor has subcontracts for the cutting, sewing, dying, or assembling of textiles or apparel or sections or components of apparel.

(3) Registration fee.—

(A) In general.—The registration fee required under this subsection for each year shall be $200.

(B) Pro rated fees.—The Secretary may prorate the registration fee under subparagraph (A) for any registration described in subsection (d)(2)(B)(i).

(C) Use.—The Secretary shall use the total amount of each registration fee required under this subsection for carrying out this section.
(d) Submission.—

(1) Consolidation.—Each division, subsidiary corporation, or related company of a garment manufacturer or garment contractor may, at the option of the manufacturer or contractor, be named and included under 1 registration under this section.

(2) Timing.—

(A) In General.—Except as provided under subparagraph (B), each registration submitted under this section shall be filed not later than the date that is 6 months after the date of enactment of this Act and annually thereafter on a date determined by the Secretary.

(B) New Manufacturers or Contractors.—In the case of a garment manufacturer or garment contractor that begins garment manufacturing operations or enters into a contract for such operations for the first time after the date of enactment of this Act, the registration required under this section shall be submitted—

(i) not later than 6 months after the date on which the garment manufacturing operations begin or the contractor enters into the contract for such operations; and
(ii) annually thereafter on a date determined by the Secretary.

(c) Certificates.—

(1) In general.—The Secretary shall issue a certificate of registration to each garment manufacturer or garment contractor that submits a registration meeting the requirements under this section.

(2) Applicability.—

(A) In general.—Except as provided in subparagraph (B), each certificate issued under paragraph (1) shall be effective for a period of 12 months.

(B) New manufacturers or contractors.—A certificate with respect to a registration submitted under subsection (d)(2)(B)(i) shall be effective until the following registration date as determined by the Secretary.

(3) Posting.—Each garment manufacturer or garment contractor receiving a certificate under paragraph (1) shall post such certificate in a place where it may be read by any employee of the manufacturer or contractor during the workday.

(4) Suspension or revocation.—The Secretary may suspend or revoke a certificate of registration issued under paragraph (1) if the garment
manufacturer or garment contractor that submitted
the registration—

(A) has knowingly made any misrepresen-
tation in the application for such certificate; or

(B) has failed to comply with this Act or
any regulation under this Act.

(f) RECORDKEEPING.—The Secretary shall, through
regulations, establish requirements for recordkeeping for
all garment manufacturers and garment contractors en-
gaging in the garment industry in order to assist in en-
forcing the requirements of this section.

(g) ENFORCEMENT.—

(1) IN GENERAL.—The Secretary may impose a
civil money penalty of not more than $50,000,000
against any person who violates a requirement under
this section.

(2) CONSIDERATIONS.—In assessing the
amount of a penalty under this subsection, the Sec-
retary shall give consideration to—

(A) the size of the business of the person;

(B) whether the violation of the person
was committed in good faith;

(C) the gravity of the violation;

(D) the history of any previous violations
of the person under this section; and
(E) the history of the person in complying
with the recordkeeping requirements under sub-
section (f).

(h) Regulations.—The Secretary may prescribe
such regulations or other guidance as may be necessary
to carry out this section.

SEC. 4. UNDERSECRETARY OF THE GARMENT INDUSTRY.

(a) In General.—There is established in the De-
partment of Labor the Office of the Garment Industry (re-
ferred to in this section as the “Office”).

(b) Undersecretary.—

(1) In General.—The Secretary of Labor shall
appoint an Undersecretary of the Garment Industry
(referred to in this section as the “Undersecretary”) to head the Office.

(2) Functions.—The Undersecretary shall—

(A) carry out section 3 using sums appro-
riated under subsection (c);

(B) carry out the national domestic gar-
ment manufacturing support program under
section 5; and

(C) provide assistance to the Administrator
of the Wage and Hour Division in enforcing
section 8 of the Fair Labor Standards Act of
(c) Authorization of Appropriations.—

(1) In general.—There are authorized to be appropriated to the Secretary of the Labor—

(A) $10,000,000 for fiscal year 2022, to establish the Office and carry out the functions described in subparagraphs (A) and (C) of subsection (b)(2); and

(B) $3,000,000 for each of fiscal years 2023 through 2027, to carry out the functions described in subparagraphs (A) and (C) of subsection (b)(2).

(2) Availability.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.

SEC. 5. NATIONAL DOMESTIC GARMENT MANUFACTURING SUPPORT PROGRAM.

(a) Definitions.—In this section:

(1) Eligible entity.—The term “eligible entity” means an entity that is—

(A) a garment manufacturer that is incorporated in and performs garment manufacturing within the United States; or
(B) a nonprofit organization that provides workforce development opportunities with respect to the garment industry.

(2) Garment industry; garment manufacturer; garment manufacturing.—The terms “garment industry”, “garment manufacturer”, and “garment manufacturing” have the meanings given such terms in section 8(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 208(f)).

(3) Secretary.—The term “Secretary” means the Secretary of Labor, acting through the Undersecretary of the Garment Industry appointed under section 4(b).

(b) In General.—From amounts made available under subsection (g), the Secretary shall award grants, on a competitive basis, to eligible entities to support garment manufacturing in the United States.

(c) Application.—An eligible entity seeking a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the project that the eligible entity proposes to carry out using such grant; and

(2) an implementation plan of such project that reflects the expected participation of, and partner-
ship with, applicable labor organizations and relevant community stakeholders.

(d) AWARD.—

(1) SELECTION.—In awarding grants under this section to eligible entities, the Secretary shall give priority to eligible entities—

(A) with a workforce that is covered by a collective bargaining agreement;

(B) that are certified by a State in which such eligible entity operates as a minority-owned businesses, women-owned businesses, or veteran-owned businesses; or

(C) who have operated as a garment manufacturer within the United States for more than 5 years.

(2) AMOUNT.—The amount of a grant awarded under this section may not be more than $5,000,000.

(e) USE OF FUNDS.—An eligible entity receiving a grant under this section shall use the grant funds to support—

(1) investments in training and workforce development for employees within the garment industry;
(2) the acquisition of relevant tools and equipment for garment manufacturing in the United States;

(3) the acquisition of, and capital improvements to, facilities for garment manufacturing in the United States and to promote the health and safety of employees in such facilities; or

(4) efforts to assist in educating employees about rights under this Act and other relevant Federal, State, or local laws.

(f) REPORT.—Not later than 6 months after the date on which an eligible entity receives a grant under this section, the eligible entity shall submit to the Secretary a report that includes an account of the use of grant funds awarded under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $40,000,000 to carry out this section.

SEC. 6. CREDIT FOR INSOURCING EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:
"SEC. 45U. CREDIT FOR INSOURCING EXPENSES.

“(a) In general.—For purposes of section 38, the insourcing expenses credit for any taxable year is an amount equal to 30 percent of the eligible insourcing expenses of the taxpayer which are taken into account in such taxable year under subsection (d).

“(b) Eligible insourcing expenses.—For purposes of this section—

“(1) In general.—The term ‘eligible insourcing expenses’ means—

“(A) eligible expenses paid or incurred by the taxpayer in connection with the elimination of any business unit of the taxpayer (or of any member of any expanded affiliated group in which the taxpayer is also a member) located outside the United States, and

“(B) eligible expenses paid or incurred by the taxpayer in connection with the establishment of any business unit of the taxpayer (or of any member of any expanded affiliated group in which the taxpayer is also a member) located within—

“(i) a HUBZone (as defined in section 31(b) of the Small Business Act (15 U.S.C. 657a(b))), or
“(ii) a low-income community (as described in section 45D(e)),

if such establishment constitutes the relocation of the business unit so eliminated. For purposes of the preceding sentence, a relocation shall not be treated as failing to occur merely because such elimination occurs in a different taxable year than such establishment.

“(2) ELIGIBLE EXPENSES.—The term ‘eligible expenses’ means—

“(A) any amount for which a deduction is allowed to the taxpayer under section 162, and

“(B) permit and license fees, lease brokerage fees, equipment installation costs, and, to the extent provided by the Secretary, other similar expenses.

Such term does not include any compensation which is paid or incurred in connection with severance from employment and, to the extent provided by the Secretary, any similar amount.

“(3) BUSINESS UNIT.—The term ‘business unit’ means—

“(A) any trade or business within the garment industry (as defined in section 8(f) of the Fair Labor Standards Act of 1938), and
“(B) any line of business, or functional unit, which is part of any trade or business described in subparagraph (A).

“(4) **EXPANDED AFFILIATED GROUP.**—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined without regard to section 1504(b)(3) and by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears in section 1504(a). A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this paragraph).

“(5) **EXPENSES MUST BE PURSUANT TO INSOURCING PLAN.**—Amounts shall be taken into account under paragraph (1) only to the extent that such amounts are paid or incurred pursuant to a written plan to carry out the relocation described in paragraph (1).

“(6) **OPERATING EXPENSES NOT TAKEN INTO ACCOUNT.**—Any amount paid or incurred in connection with the on-going operation of a business unit
shall not be treated as an amount paid or incurred in connection with the establishment or elimination of such business unit.

“(c) Increased Domestic Employment Requirement.—No credit shall be allowed under this section unless the number of full-time equivalent employees of the taxpayer for the taxable year for which the credit is claimed exceeds the number of full-time equivalent employees of the taxpayer for the last taxable year ending before the first taxable year in which such eligible insourcing expenses were paid or incurred. For purposes of this subsection, full-time equivalent employees has the meaning given such term under section 45R(d) (and the applicable rules of section 45R(e)). All employers treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer for purposes of this subsection.

“(d) Credit Allowed Upon Completion of Insourcing Plan.—

“(1) In general.—Except as provided in paragraph (2), eligible insourcing expenses shall be taken into account under subsection (a) in the taxable year during which the plan described in subsection (b)(5) has been completed and all eligible insourcing ex-
expenses pursuant to such plan have been paid or incurred.

“(2) Election to Apply Employment Test and Claim Credit in First Full Taxable Year After Completion of Plan.—If the taxpayer elects the application of this paragraph, eligible insourcing expenses shall be taken into account under subsection (a) in the first taxable year after the taxable year described in paragraph (1).

“(e) Possessions Treated as Part of the United States.—For purposes of this section, the term ‘United States’ shall be treated as including each possession of the United States (including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands).

“(f) Regulations.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section.”.

(b) Credit To Be Part of General Business Credit.—Subsection (b) of section 38 of such Code is amended by striking “plus” at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting “, plus”, and by adding at the end the following new paragraph:
“(34) the insourcing expenses credit determined under section 45U(a).”.

(c) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 45U. Credit for insourcing expenses.”.

(d) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

(e) Application to United States Possessions.—

(1) Payments to possessions.—

(A) Mirror code possessions.—The Secretary of the Treasury shall make periodic payments to each possession of the United States with a mirror code tax system in an amount equal to the loss to that possession by reason of section 45U of the Internal Revenue Code of 1986. Such amount shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) Other possessions.—The Secretary of the Treasury shall make annual payments to each possession of the United States which does
not have a mirror code tax system in an amount estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of section 45U of such Code if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payment to the residents of such possession.

(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes under section 45U of such Code to any person—

(A) to whom a credit is allowed against taxes imposed by the possession by reason of such section, or

(B) who is eligible for a payment under a plan described in paragraph (1)(B).

(3) DEFINITIONS AND SPECIAL RULES.—
(A) Possessions of the United States.—For purposes of this section, the term “possession of the United States” includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(B) Mirror Code Tax System.—For purposes of this section, the term “mirror code tax system” means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(C) Treatment of Payments.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from sections referred to in such section 1324(b)(2).