

STATE OF NEW YORK

5631--B

2023-2024 Regular Sessions

IN ASSEMBLY

March 20, 2023

Introduced by M. of A. REYES, KELLES, BRONSON, SILLITTI, STECK, L. ROSENTHAL, DE LOS SANTOS, AUBRY, PAULIN, GLICK, COLTON, STIRPE, CRUZ, SIMONE, EPSTEIN, GIBBS, BURGOS, TAYLOR, RAGA, WEPRIN, JEAN-PIERRE, SIMON, TAPIA, CLARK, GONZALEZ-ROJAS, MITAYNES, BRABENEC, SMITH, ALVAREZ, WALLACE, THIELE -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to enacting the New York state fashion workers act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new article 36 to read as follows:

ARTICLE 36

NEW YORK STATE FASHION WORKERS ACT

Section 1030. Short title.

1031. Definitions.

1032. Registration required.

1033. Registration process.

1034. Duties of model management companies.

1035. Prohibitions on model management companies.

1036. Power of attorney.

1037. Duties of clients.

1038. Prohibitions on clients.

1039. Violations, penalties and procedures.

§ 1030. Short title. This article shall be known and may be cited as the "New York State Fashion Workers Act".

§ 1031. Definitions. As used in this article:

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

LBD02078-05-4

1 1. "Client" means a retail store, a manufacturer, a clothing designer,
2 an advertising agency, a photographer, a publishing company or any other
3 such person or entity that receives modeling services from a model,
4 directly or through intermediaries.

5 2. "Model" means an individual, regardless of the individual's status
6 as an independent contractor or employee, who performs modeling services
7 for a client or consents in writing to the transfer of their legal right
8 to the use of their name, portrait, picture, image, or digital replica
9 for advertising purposes or for the purposes of trade, directly to a
10 client or who provides showroom, parts, or fit modeling services. The
11 term "model" shall include influencers, content creators, performing
12 artists and other persons who perform modeling services.

13 3. "Model management company" means any person or entity, other than a
14 person or entity licensed as an employment agency under article eleven
15 of the general business law, that:

16 (a) is in the business of managing models participating in enter-
17 tainments, exhibitions or performances;

18 (b) procures or attempts to procure, for a fee, employment or engage-
19 ments for persons seeking employment or engagements as models; or

20 (c) renders vocational guidance or counselling services to models for
21 a fee.

22 4. "Modeling services" means the appearance by a model in photographic
23 sessions or the engagement of a model in live runway, live, filmed, or
24 taped performances, including on social media platforms, requiring the
25 model to pose, provide an example or standard of artistic expression or
26 to be a representation to show the construction or appearance of some
27 thing or place for purposes of display or advertising, including the
28 provisions of castings, fittings, photoshoots, showroom, parts or fit
29 modeling services. "Modeling services" includes the use of a digital
30 replica.

31 5. "Exclusive representation" means an agreement, or a clause
32 contained in an agreement, entered into between a model management
33 company and a model that restricts such model from performing work for
34 another party not subject to such agreement for a specified period of
35 time or in a specified geographical area, that is similar to such
36 model's work for the model management company.

37 6. "Department" means the department of labor and "commissioner" means
38 the commissioner of labor, except that a city with a population of one
39 million or more may, by local law, designate a city agency to enforce
40 the provisions of this article within the jurisdiction of such city, in
41 which case "department" shall refer to the agency designated by such
42 local law and "commissioner" shall refer to the head of such agency.

43 7. "Deal memo" means a plain language written summary in a language
44 the model sufficiently understands of the key terms of any employment,
45 engagement, entertainment, exhibition, or performance, including but not
46 limited to the scope of work, rate of pay, payment term, usages,
47 incurred expenses, and expectations of the model.

48 8. "Digital replica" means a significant, computer-generated or arti-
49 ficial intelligence-enhanced representation of a model's likeness,
50 including but not limited to, their face, body, or voice, which substan-
51 tially replicates or replaces the model's appearance or performance,
52 excluding routine photographic edits such as color correction, minor
53 retouching, or other standard post-production modifications.

54 § 1032. Registration required. A model management company shall not
55 engage in business from offices in this state or enter into any arrange-
56 ment with a person for the purpose of providing model management company

1 services to persons in this state unless the model management company is
2 registered under this article. No person shall use the name or title
3 "modeling agency", "model management company", or otherwise represent
4 that it is registered under this article unless the entity or person is
5 registered under this article. A model management company that does not
6 comply with the provisions of this article shall not be a registered
7 model management company in this state.

8 § 1033. Registration process. 1. Except as otherwise provided in this
9 section, each model management company required to be registered under
10 this article shall provide the department with information required by
11 the department on forms that the department specifies. At a minimum,
12 model management companies shall provide the following information:

13 (a) all names under which it conducts business;

14 (b) the address of the principal place of business of the model
15 management company and the address of each office it maintains in New
16 York state;

17 (c) the model management company's taxpayer or employer identification
18 number;

19 (d) a list by jurisdiction of each name under which the model manage-
20 ment company has operated in the preceding five years, including any
21 alternative names, names of predecessors and, if known, successor busi-
22 ness entities; and

23 (e) in the event the model management company or the ultimate parent
24 of a model management group is a privately or closely held company, the
25 model management company or model management group shall file a list of
26 all persons or entities that beneficially own a five percent or greater
27 interest in the model management company at the time of application and
28 a list of persons who formerly beneficially owned a five percent or
29 greater interest in the model management company or its predecessors in
30 the preceding five years. In the event the model management company or
31 the ultimate parent of a model management group is a publicly traded
32 company, the model management company or model management group shall
33 file a list of all persons or entities that beneficially own a fifty
34 percent or greater interest in the model management company or the ulti-
35 mate parent of the model management group at the time of application.

36 2. Each model management company operating within this state shall
37 complete its initial registration within one year after the effective
38 date of this article.

39 3. Within two years of the initial registration or any renewal regis-
40 tration, each registrant shall renew its registration by notifying the
41 department of any changes in the information previously provided pursu-
42 ant to this section.

43 4. Upon application for registration, a model management company or
44 model management group with more than five employees that either work
45 from a location in this state or perform work relating to models in this
46 state shall deposit with the department a surety bond in the sum of
47 fifty thousand dollars.

48 5. Every person licensed under the provisions of this article to carry
49 on the business of a model management company or model management group
50 shall pay to the commissioner a license fee in accordance with the
51 following schedule before such license is issued. The minimum fee for
52 said license shall be five hundred dollars, and for a model management
53 company or model management group operating with more than four place-
54 ment employees, seven hundred dollars, provided, however, that if the
55 license is to run less than one year, the fee shall be two hundred fifty
56 dollars and three hundred fifty dollars respectively, and if the license

1 is to run less than six months, the fee shall be one hundred twenty-five
2 dollars and one hundred seventy-five dollars respectively. For the
3 purpose of determining the license fee which a model management company
4 or model management group shall pay, the applicant for such license
5 shall state in the application to the commissioner the average number of
6 placement employees employed by the applicant's model management company
7 or model management group during the preceding calendar year; or, in the
8 event that the applicant has not previously conducted a model management
9 company or model management group under the provisions of this article,
10 he or she shall state the average number of placement employees which he
11 or she reasonably expects will be employed by the model management
12 company or model management group during the calendar year in which the
13 license is issued. If the application for a license is denied or with-
14 drawn, one-half of the license fee provided herein shall be returned to
15 the applicant.

16 6. Two or more model management companies that are majority owned by
17 the same ultimate parent, entity or persons may be registered as a model
18 management group. A model management group may satisfy any reporting and
19 financial requirements of this article on a consolidated basis. As a
20 condition of registration as a model management group, each company that
21 is a member of the group shall guarantee payment of all financial obli-
22 gations of each other member.

23 7. A model management company shall be exempt from the registration
24 requirements specified in this section if such model management company:

25 (a) submits a properly executed request for registration and exemption
26 on a form provided by the department;

27 (b) is domiciled outside this state and is licensed or registered as a
28 model management company in another state that has the same or greater
29 requirements as this article; and

30 (c) does not maintain an office in this state or solicit in any manner
31 clients located or domiciled within this state.

32 8. The registration and exemption of a model management company under
33 subdivision seven of this section shall be valid for two years.

34 9. The department shall maintain a list of model management companies
35 registered under this article and shall issue a certificate of registra-
36 tion to each model management company duly registered.

37 10. The department may prescribe forms necessary to promote the effi-
38 cient administration of this section.

39 § 1034. Duties of model management companies. A model management
40 company shall:

41 1. be deemed to have a fiduciary duty to the models they represent and
42 shall be required to act in good faith, with the utmost honesty and
43 integrity, in the best interests of the models. This fiduciary duty
44 shall encompass all aspects of the model management company's represen-
45 tation, including, but not limited to, negotiations, contracts, finan-
46 cial management, and the protection of the models' legal and financial
47 rights;

48 2. conduct due diligence to ensure that any employment or engagement
49 booked through the model management company does not pose an unreason-
50 able risk of danger to the model. An unreasonable risk of danger shall
51 include, but not be limited to, failing to establish and communicate a
52 zero tolerance policy for abuse, harassment, or any other form of inap-
53 propriate behavior;

54 3. use its best efforts to procure employment, engagements, enter-
55 tainments, exhibitions or performances for a fee for models signed to
56 the model management company;

1 4. ensure that any employment, engagement, entertainment, exhibition
2 or performance which requires nudity or other sexually explicit material
3 shall comply with the requirements of subdivision three of section
4 fifty-two-c of the civil rights law, as added by chapter three hundred
5 four of the laws of two thousand twenty;

6 5. provide models with physical or digital copies of the final agree-
7 ments the model management company has negotiated with clients and deal
8 memos memorializing such agreements, at least twenty-four hours prior to
9 the commencement of a model's services pertaining to each agreement, in
10 a language the model sufficiently understands;

11 6. clearly specify all items that may be initially paid for by the
12 model management company but will ultimately be deducted from the
13 compensation due to the model at the time of payment or settlement,
14 together with an itemized recitation as to how each item is to be
15 computed, provided such charges are not otherwise prohibited by this
16 article. On a quarterly basis, a model shall also be given copies of any
17 and all documentation held by or available to the model management
18 company necessary to determine the validity of each charge;

19 7. disclose any financial relationship, contractual or otherwise,
20 that may exist between the model management company and the client,
21 other than the agreement relating specifically to modeling services;

22 8. notify former models in writing, including email, if the model
23 management company collects royalties due to a model whom the management
24 company no longer represents;

25 9. post a physical copy of the model management company's certificate
26 of registration in a conspicuous place in the office of the model
27 management company and a digital copy on the model management company's
28 website;

29 10. include, in clear and legible type, the registration number of the
30 model management company in any advertisement, including social media
31 profiles for the model management company, for the purpose of the solic-
32 itation of models for the model management company and in any contract
33 with a model or client;

34 11. submit to the department a form or forms of contract to be
35 utilized by such model management company in entering into written
36 contracts with models for the employment or engagement of the services
37 of such model management company by such models, and secure the approval
38 of the department thereof, provided the department shall not withhold
39 approval unless such proposed form of contract is unfair, unjust and
40 oppressive to the model; and

41 12. obtain clear written consent for the creation or use of a model's
42 digital replica, detailing the scope, purpose, rate of pay, and duration
43 of such use. This consent must be obtained separately from the represen-
44 tation agreement.

45 § 1035. Prohibitions on model management companies. A model management
46 company shall not:

47 1. require or collect any fee or deposit from a model upon the signing
48 of, or as a condition to entering into, any contract or agreement
49 between the model management company and the model;

50 2. charge more than the daily fair market rate for accommodation for
51 the model;

52 3. book any accommodation, payment of which shall be provided or reim-
53 bursed by the model in any way, without providing a written disclosure
54 of the rate charged for the accommodation to the model in advance of
55 such model's stay at the accommodation;

1 4. deduct or offset from a model's payment or compensation any fee or
2 expense other than the agreed upon commission as set forth in the
3 contract and any items advanced pursuant to subdivision six of section
4 one thousand thirty-four of this article. Such prohibited fees and
5 expenses include but are not limited to website fees, accommodation
6 fees, delivery fees, and interest on payment of the model's earnings;

7 5. advance the cost of travel without informed written consent from
8 the model;

9 6. require a model to sign a model management company contract that
10 contains a term greater than three years;

11 7. require a model to sign a model management company contract that
12 renews without the model's affirmative written consent;

13 8. impose a commission fee greater than twenty percent of the model's
14 payment or compensation;

15 9. take any retaliatory action against any model who files or attempts
16 to file a complaint pursuant to this article or declines or discontinues
17 participation in any casting or booking on account of reasonable, good
18 faith concerns regarding an actual or potential violation of this arti-
19 cle; or

20 10. engage in discrimination or harassment of any kind against a model
21 because of any protected status covered under paragraph (a) of subdivi-
22 sion one of section two hundred ninety-six of the executive law; or

23 11. create, alter, or manipulate a model's digital replica using arti-
24 ficial intelligence without clear, conspicuous and separate written
25 consent from the model.

26 § 1036. Power of attorney. 1. Any power of attorney agreement between
27 a model management company and a model shall:

28 (a) be presented as an optional component of the model management
29 company's representation agreement to which the model can opt in or out;

30 (b) not be presented as a necessary condition of entering into an
31 agreement with the model management company;

32 (c) be subject to termination by the model at any time and for any
33 reason;

34 (d) not violate the provisions of subdivision one of section one thou-
35 sand thirty-four of this article; and extend only to matters directly
36 related to the provision of modeling services, with the exclusion of the
37 use of the model's digital replica.

38 2. Any power of attorney agreement that violates this section shall be
39 considered void as a matter of public policy.

40 § 1037. Duties of clients. A client shall:

41 1. compensate models at an hourly rate at least fifty percent higher
42 than the contracted hourly rate for any employment, engagement, enter-
43 tainment, exhibition or performance that exceeds eight hours in any
44 twenty-four hour period;

45 2. provide at least one thirty minute meal break for any employment,
46 engagement, entertainment, exhibition or performance that exceeds eight
47 hours in any twenty-four hour period;

48 3. only offer an employment or engagement to a model that does not
49 pose an unreasonable risk of danger to the model. An unreasonable risk
50 of danger shall include, but not be limited to, failure to establish and
51 communicate a zero tolerance policy for abuse, harassment, or any other
52 form of inappropriate behavior;

53 4. ensure that any employment, engagement, entertainment, exhibition
54 or performance which requires nudity or other sexually explicit material
55 shall comply with the requirements of subdivision three of section

fifty-two-c of the civil rights law, as added by chapter three hundred four of the laws of two thousand twenty;

5. allow the model to be accompanied by their agent, manager, chapter-one, or other representative to any employment, engagement, entertainment, exhibition or performance;

6. provide adequate levels of liability insurance to cover and safeguard the health and safety of models; and

7. obtain clear and conspicuous prior written consent for any creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use.

§ 1038. Prohibitions on clients. A client shall not:

1. engage in discrimination or harassment of any kind against a model because of any protected status covered under paragraph (a) of subdivision one of section two hundred ninety-six of the executive law; or

2. create, alter, or manipulate a model's digital replica using artificial intelligence without clear and conspicuous prior written consent from the model.

§ 1039. Violations, penalties and procedures. 1. Any model management company or person purporting to be a model management company who has failed to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

2. Any model management company or person purporting to be a model management company who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

3. Any client who enters into an agreement with a model management company or person purporting to be a model management company, who is required to register, but whom the client knows or should have known has failed to register, failed to renew its registration or had its registration revoked by the commissioner shall be deemed to have violated this article.

4. (a) The commissioner may impose a civil penalty upon a model management company, a person purporting to be a model management company, and all persons or entities that own a five percent or greater interest in the model management company, that have been deemed to have violated this article, for no more than three thousand dollars for the initial violation, and for no more than five thousand dollars for a second or subsequent violation.

(b) The commissioner may impose a civil penalty upon any client described in subdivision three of this section that has been deemed to have violated this article, for no more than three thousand dollars for the initial violation, and for no more than five thousand dollars for a second or subsequent violation.

(c) The order imposing such civil penalty may be served personally or by certified mail at the last known mailing address of the person being served. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivisions one, two and three of this section alleged to have been violated.

5. An order issued under this section shall be final and not subject to review by any court or agency unless a review is had pursuant to section one hundred one of this chapter. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county

1 where the person against whom the penalty has been imposed has a place
2 of business the order of the commissioner or the decision of the indus-
3 trial board of appeals containing the amount of the civil penalty. The
4 filing of such order or decision shall have the full force and effect of
5 a judgment duly docketed in the office of such clerk. The order or deci-
6 sion may be enforced by and in the name of the commissioner in the same
7 manner, and with like effect, as that prescribed by the civil practice
8 law and rules for the enforcement of a money judgment.

9 6. If any model management company or person purporting to be a model
10 management company shall have failed to comply within twenty days of an
11 order by the commissioner to register or renew registration, the commis-
12 sioner may seek to enjoin such unlawful activity, pursuant to the civil
13 practice law and rules.

14 7. A model may bring and maintain an action in a court of competent
15 jurisdiction to enforce the provisions of this article. A model manage-
16 ment company, person purporting to be a model management company, or
17 client that violates this article shall be liable for actual damages to
18 any model that has suffered damages due to such violation, reasonable
19 attorneys' fees and costs, and, unless the employer proves a good faith
20 basis to believe that its actions were in compliance with the law, an
21 additional amount as liquidated damages in an amount of no more than one
22 hundred percent of the total amount of actual damages, except such
23 liquidated damages may be up to three hundred percent if found that the
24 actions were willful.

25 8. The attorney general may bring and maintain an action in a court of
26 competent jurisdiction to enforce the provisions of this article when
27 the attorney general has determined there is reasonable cause to believe
28 that a model management company, person purporting to be a model manage-
29 ment company, or client has engaged in repeated fraudulent or illegal
30 acts or otherwise demonstrates persistent fraud or illegality in the
31 carrying on, conducting, or transacting of business.

32 9. (a) A model who is aggrieved by a violation of this article may
33 file a complaint with the commissioner within six years after the acts
34 alleged to have violated this article occurred. The commissioner shall
35 prescribe the form of the complaint, which shall include, at a minimum:

36 (i) the name and mailing address of the model and of the person or
37 entity alleged to have violated this article;

38 (ii) a statement detailing the terms of the model's contract, includ-
39 ing a copy of such contract if available;

40 (iii) the model's occupation;

41 (iv) a statement detailing the alleged violations of this article; and

42 (v) a signed affirmation that all facts alleged in the complaint are
43 true.

44 (b) (i) Within twenty days of receiving a complaint alleging a
45 violation of this article, the commissioner shall send the person or
46 entity named in the complaint a written notice of complaint. The
47 commissioner shall send such notice by certified mail and shall bear the
48 cost of sending such notice.

49 (ii) The notice required by this paragraph shall:

50 (1) inform the person or entity named in the complaint that a
51 complaint has been filed alleging violations of this article;

52 (2) detail the remedies available to a model for violations of said
53 article by the person or entity named in the complaint;

54 (3) include a copy of the complaint; and

55 (4) inform the person or entity named in the complaint that failure to
56 respond to the complaint will create a rebuttable presumption in any

1 civil action commenced pursuant to this article that such person or
2 entity committed the violations alleged in the complaint.

3 (c) Within twenty days of receiving the notice of complaint, the
4 person or entity identified in the complaint shall send the commissioner
5 one of the following:

6 (i) a written statement that the model has been paid in full and proof
7 of such payment; or

8 (ii) a written statement that the model has not been paid in full and
9 the reasons for the failure to provide such payment.

10 (d) (i) Within twenty days of receiving the written response, the
11 commissioner shall send the model a copy of:

12 (1) the response;

13 (2) any enclosures submitted to the commissioner with the response;

14 (3) materials informing the model that the model may bring an action
15 in a court of competent jurisdiction; and

16 (4) any other information about the status of the complaint.

17 (ii) If the commissioner receives no response from the person or enti-
18 ty alleged to have violated this article to the notice of complaint
19 within the time provided by this subdivision, the commissioner shall
20 mail a notice of non-response to both the model and the person or entity
21 named in the complaint by regular mail and shall include with such
22 notice proof that the commissioner previously mailed the notice of
23 complaint to the person or entity named in the complaint by certified
24 mail. Upon satisfying the requirements of this paragraph, the commis-
25 sioner may close the case.

26 § 2. This act shall take effect on the one hundred eightieth day after
27 it shall have become a law. Effective immediately, the addition, amend-
28 ment and/or repeal of any rule or regulation necessary for the implemen-
29 tation of this act on its effective date are authorized to be made and
30 completed on or before such effective date.