

1498

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. WRIGHT -- read once and referred to the Committee  
on Labor

AN ACT to amend the labor law and the workers' compensation law, in  
relation to the definition of employment as it concerns professional  
models and the individuals and entities which engage them; and to  
repeal certain provisions of the labor law and the workers' compen-  
sation law relating thereto

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

- 1     Section 1. Subparagraph 3 of paragraph (b) of subdivision 1 of section  
2     511 of the labor law is REPEALED.  
3     S 2. Subdivision 1 of section 511 of the labor law is amended by  
4     adding a new paragraph (c) to read as follows:  
5     (C) THE TERM "EMPLOYMENT" DOES NOT INCLUDE THE SERVICES OF A PROFES-  
6     SIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR  
7     OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF  
8     THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING  
9     CRITERIA:  
10    (1) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE  
11    BASIS FOR REIMBURSEMENT FOR EXPENSES;  
12    (2) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK  
13    AND PERFORMANCE LOCATIONS;  
14    (3) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS  
15    OR ENTITIES;  
16    (4) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;  
17    (5) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS  
18    BILL; AND  
19    (6) RECEIVES NO FRINGE BENEFITS.

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

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1 AS USED IN THIS PARAGRAPH, (I) "PROFESSIONAL MODEL" MEANS A PERSON  
2 WHO, IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION,  
3 PERFORMS MODELING SERVICES;

4 (II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL  
5 IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED  
6 OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

7 (III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS  
8 PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

9 S 3. The fifth undesignated paragraph of subdivision 4 of section 2 of  
10 the workers' compensation law is REPEALED.

11 S 4. Section 2 of the workers' compensation law is amended by adding a  
12 new subdivision 4-a to read as follows:

13 4-A. THE TERM "EMPLOYEE" DOES NOT INCLUDE THE SERVICES OF A PROFES-  
14 SIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR  
15 OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF  
16 THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING  
17 CRITERIA:

18 (A) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE  
19 BASIS FOR REIMBURSEMENT FOR EXPENSES;

20 (B) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK  
21 AND PERFORMANCE LOCATIONS;

22 (C) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS  
23 OR ENTITIES;

24 (D) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;

25 (E) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS  
26 BILL; AND

27 (F) RECEIVES NO FRINGE BENEFITS.

28 AS USED IN THIS SECTION, (I) "PROFESSIONAL MODEL" MEANS A PERSON WHO,  
29 IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION, PERFORMS  
30 MODELING SERVICES;

31 (II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL  
32 IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED  
33 OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

34 (III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS  
35 PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

36 S 5. The closing paragraph of subdivision 5 of section 201 of the  
37 workers' compensation law is REPEALED.

38 S 6. Section 201 of the workers' compensation law is amended by adding  
39 a new subdivision 5-a to read as follows:

40 5-A. THE TERM "EMPLOYEE" DOES NOT INCLUDE THE SERVICES OF A PROFES-  
41 SIONAL MODEL NOR IS A MODEL MANAGER, ADVERTISER, PERSON, CORPORATION OR  
42 OTHER ENTITY AN "EMPLOYER" OF A PROFESSIONAL MODEL FOR THE PURPOSES OF  
43 THIS ARTICLE, WHERE THE PROFESSIONAL MODEL MEETS ALL OF THE FOLLOWING  
44 CRITERIA:

45 (A) HAS THE RIGHT TO NEGOTIATE HIS OR HER RATE OF COMPENSATION AND THE  
46 BASIS FOR REIMBURSEMENT FOR EXPENSES;

47 (B) HAS THE RIGHT TO ACCEPT OR REJECT JOB ASSIGNMENTS, HOURS OF WORK  
48 AND PERFORMANCE LOCATIONS;

49 (C) HAS THE RIGHT TO PERFORM SERVICES FOR OTHER ADVERTISERS, PERSONS  
50 OR ENTITIES;

51 (D) INCURS HIS OR HER OWN EXPENSES, INCLUDING EXPENSES FOR PORTFOLIOS;

52 (E) BEARS HIS OR HER OWN RISK OF LOSS IF A CLIENT FAILS TO PAY ITS  
53 BILL; AND

54 (F) RECEIVES NO FRINGE BENEFITS.

1 AS USED IN THIS SECTION, (I) "PROFESSIONAL MODEL" MEANS A PERSON WHO,  
2 IN THE COURSE OF HIS OR HER TRADE, OCCUPATION OR PROFESSION, PERFORMS  
3 MODELING SERVICES;

4 (II) "MODELING SERVICES" MEANS THE APPEARANCE BY A PROFESSIONAL MODEL  
5 IN PHOTOGRAPHIC SESSIONS OR THE ENGAGEMENT OF SUCH MODEL IN LIVE, FILMED  
6 OR TAPED MODELING PERFORMANCES FOR REMUNERATION;

7 (III) "MODEL MANAGER" MEANS A PERSON OR ENTITY WHICH REPRESENTS  
8 PROFESSIONAL MODELS WITH RESPECT TO THEIR MODELING CAREERS.

9 S 7. This act shall take effect immediately.