STATE OF NEW YORK

8352

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

Introduced by M. of A. KELLES -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring fashion retail sellers and manufacturers to disclose environmental and social due diligence policies; and to amend the state finance law, in relation to establishing a community benefit fund

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

Section 1. Short title. This act shall be known and may be cited as the "Fashion sustainability and social accountability act".

§ 2. The general business law is amended by adding a new section 399-mm to read as follows:

§ 399-mm. Fashion sustainability and social accountability act. 1. As used in this section, the following terms shall have the following meanings:

(a) "Doing business in this state" shall mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) "Gross receipts" shall mean the gross amounts realized, otherwise known as the sum of money and the fair market value of other property or services received, on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized, or would be recognized if the transaction were in the United States, under the Internal Revenue Code, as applicable for purposes of this section. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income, shall not include the following items:

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

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(1) repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument;

(2) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(3) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(4) damages and other amounts received as the result of litigation;

(5) property acquired by an agent on behalf of another;

(6) tax refunds and other tax benefit recoveries;

(7) pension reversions;

(8) contributions to capital, except for sales of securities by securities dealers;

(9) income from discharge of indebtedness;

(10) amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code;

(11) amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's unitary business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets; and

(12) amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(c) "Fashion manufacturer" shall mean a business entity which lists manufacturing as its principal business activity in the state of New York, as reported on the entity's state business tax return, and primarily manufactures articles of wearing apparel or footwear.

(d) "Fashion retail seller" shall mean a business entity which lists retail trade as its principal business activity in the state of New York, as reported on the entity's state business tax return, and primarily sells articles of wearing apparel or footwear.

(e) "Article of wearing apparel" shall mean any costume or article of clothing worn or intended to be worn by individuals.

(f) "Footwear" shall mean any covering worn or intended to be worn on the foot.

(g) "Due diligence" shall mean the process companies should carry out to identify, prevent, mitigate and account for how they address actual and potential adverse impacts in their own operations, their supply chain and other business relationships, as recommended in the Organisation for Economic Co-operation and Development guidelines for multinational enterprises, the Organisation for Economic Co-operation and Development due diligence guidance for responsible business conduct and United Nations guiding principles for business and human rights.

2. Every fashion retail seller and fashion manufacturer doing business in the state and having annual worldwide gross receipts that exceed one hundred million dollars shall disclose, as set forth in subdivision four of this section, its environmental and social due diligence policies, processes and outcomes, including significant real or potential adverse environmental and social impacts and disclose targets for prevention and improvement.

3. The disclosure described in subdivision two of this section shall be posted on the fashion retail seller's or fashion manufacturer's website with a clear and easily understood link to the required informa-

tion placed on such fashion retail seller's or fashion manufacturer's homepage within twelve months of the enactment of such policies, processes and outcomes, except as otherwise provided. In the event the fashion retail seller or fashion manufacturer does not have an internet website, consumers shall be provided a written disclosure within thirty days of receiving a written request for the disclosure from a consumer.

4. The disclosure required pursuant to subdivision two of this section shall include, at a minimum:

(a) supply chain mapping and disclosure, including:

(i) taking a risk-based approach, use good faith efforts to map suppliers across all tiers of production, from raw material to final production. A minimum of fifty percent of suppliers by volume across all tiers of production shall be mapped; and

(ii) using good faith efforts to map the suppliers and associated supply chains relevant to the prioritized risk, and obtain and disclose the names of prioritized suppliers.

(b) impact and due diligence disclosure, including a social and environmental sustainability report, to include externally relevant information on due diligence policies, processes and activities conducted to identify, prevent, mitigate, and account for potential adverse impacts, including the findings and outcomes of those activities. Such report shall include, in line with the United Nations guiding principles on business and human rights, the International Labor Organization declaration on fundamental principles and rights at work, the Organisation for Economic Co-operation and Development guidelines for multinational enterprises and the Organisation for Economic Co-operation and Development due diligence guidance for responsible business conduct:

(i) a link on the fashion retail seller's or fashion manufacturer's website to relevant policies on responsible business conduct;

(ii) information on measures taken to embed responsible business conduct into policies and management systems;

(iii) the fashion retail seller's or fashion manufacturer's identified areas of significant risks in the contexts of its own activities and business relationships such as supply chains;

(iv) the significant adverse impacts on risks identified, prioritized and assessed in the context of its own activities and business relationships such as supply chains;

(v) the prioritization criteria;

(vi) the actions taken to prevent or mitigate those risks, such as corrective action plans, to be cited where available, including estimated timelines, targets and benchmarks for improvement and their outcomes;

(vii) measures to track implementation and results; and

(viii) the fashion retail seller's or fashion manufacturer's provision of or co-operation in any remediation.

(c) impact disclosure on prioritized adverse environmental and social impacts within eighteen months after enactment of the policies, processes, and outcomes, including:

(i) a quantitative baseline and reduction targets on energy and greenhouse gas emissions, water, chemical management. Greenhouse gas reporting shall be independently verified, include absolute figures and conform with the greenhouse gas protocol corporate accounting and reporting standard and the greenhouse gas protocol corporate value chain scope three standard promulgated by the World Resources Institute;

(ii) annual volume of material produced, including breakdown by material type which shall be independently verified;

(iii) how much production has been displaced with recycled materials as compared to growth targets which shall be independently verified;

(iv) the median wages of workers of prioritized suppliers and how this compares with local minimum wage and living wages; and

(v) the company's approach for incentivizing supplier performance on workers' rights; state any key performance indicators or performance incentives used; and describe the incentives used to reward suppliers and encourage good performance. Examples may include contract renewals, price premiums and the offer of longer-term contracts.

(d) what targets, fashion retail sellers and fashion manufacturers have for impact reductions, and for tracking due diligence implementation and results, including where possible estimated timelines and benchmarks for improvement. Climate change targets must be absolute targets, align with the apparel and footwear sector science-based targets guidance promulgated by the World Resources Institute and include all scopes of production. Fashion retail sellers and fashion manufacturers shall meet targets and report their compliance on an annual basis.

5. (a) The requirements imposed on fashion retail sellers and fashion manufacturers by this section may be enforced by the attorney general or an administrator designated by the attorney general bringing civil proceedings for an injunction, monetary damages, or civil performance of a statutory duty.

(i) The attorney general, or the attorney general's designated administrator as applicable, shall annually publish and make publicly available a report regarding compliance with this section, listing the fashion retail sellers and fashion manufacturers who are known to be out of compliance with this section and including an up-to-date report on the attorney general's monitoring of such compliance.

(ii) Fashion retail sellers and fashion manufacturers found to be out of compliance with this section after the attorney general, or the attorney general's designated administrator as applicable, has provided notice of non-compliance, and after a three-month period to meet obligations under this section has lapsed, may be fined up to two percent of annual revenues of four hundred fifty million dollars or more. Such fines shall be deposited in the community benefit fund established by section ninety-seven-ccc of the state finance law.

(b) Any citizen may commence a civil action:

(1) against any person who is alleged to have violated or to be in violation of this section or an order by the attorney general, or the attorney general's designated administrator as applicable, with respect to the standards and requirements set forth in this section, including:

(i) New York state;

(ii) governmental instrumentality or agency to the extent permitted by the eleventh amendment to the United States constitution; and

(iii) any business.

(2) to compel the attorney general, or the attorney general's designated administrator as applicable, to investigate an entity's compliance with this section, to enforce compliance with this section, or to apply the prohibitions set forth in this section to any business operating within this state; and

(3) against the attorney general, or the attorney general's designated administrator as applicable, where there is an alleged failure of the attorney general or the attorney general's designated administrator to perform any act or duty under this section which is not discretionary

with the attorney general, or the attorney general's designated administrator as applicable.

§ 3. The state finance law is amended by adding a new section 97-ccc to read as follows:

§ 97-ccc. Community benefit fund. 1. There is hereby established in the joint custody of the comptroller, the commissioner of taxation and finance, and the commissioner of environmental conservation a special fund to be known as the community benefit fund.

2. Such fund shall consist of all moneys deposited pursuant to subparagraph (ii) of paragraph (a) of subdivision five of section three hundred ninety-nine-mm of the general business law.

3. The moneys in the fund shall be expended by the department for environmental conservation for the purpose of implementing one or more environmental benefit projects that directly and verifiably benefit environmental justice communities.

4. On or before the first day of February each year, the comptroller shall certify to the temporary president of the senate, and the speaker of the assembly, the amount of money deposited by source in the fund during the preceding calendar year, as well as all disbursements from the fund during the preceding calendar year.

5. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers certified and approved by the commissioner of environmental conservation.

§ 4. This act shall take effect immediately.