

STATE OF NEW YORK

9762--A

IN ASSEMBLY

March 28, 2022

Introduced by M. of A. REYES, KELLEES -- read once and referred to the Committee on Labor -- 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:

1 Section 1. The labor law is amended by adding a new article 34 to read
2 as follows:

ARTICLE 34

NEW YORK STATE FASHION WORKERS ACT

3
4
5 Section 958. Short title.

6 959. Definitions.

7 960. Registration required.

8 961. Registration process.

9 962. Duties of model management companies and creative manage-
10 ment companies.

11 963. Prohibitions on model management companies and creative
12 management companies.

13 964. Duties of clients.

14 965. Prohibitions on clients.

15 966. Violations, penalties and procedures.

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

18 § 959. Definitions. As used in this article:

19 1. "Client" means a retail store, a manufacturer, a clothing designer,
20 an advertising agency, a photographer, a publishing company or any other
21 such person or entity that receives modeling services from a model or
22 other services related to the provision of modeling services from a
23 creative, directly or through intermediaries.

24 2. "Model" means an individual, regardless of the individual's status
25 as an independent contractor or employee, who performs modeling services
26 for a client or consents in writing to the transfer of their legal right
27 to the use of their name, portrait, picture or image, for advertising

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

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1 purposes or for the purposes of trade, directly to a client or who
2 provides showroom, parts, or fit modeling services. The term "model"
3 shall include influencers, performing artists and other persons who
4 perform modeling services.

5 3. "Modeling management company" means any person or entity, other
6 than a person or entity licensed as an employment agency under article
7 eleven of the general business law, that:

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

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

12 (c) renders vocational guidance or counselling services to models for
13 a fee.

14 4. "Modeling services" means the appearance by a model in photographic
15 sessions or the engagement of a model in live runway, live, filmed, or
16 taped performances, including on social media platforms, requiring the
17 model to pose, provide an example or standard of artistic expression or
18 to be a representation to show the construction or appearance of some
19 thing or place for purposes of display or advertising, including the
20 provisions of castings, fittings, photoshoots, showroom, parts or fit
21 modeling services.

22 5. "Creatives" are all individuals who perform various tasks or
23 services directly related to the provision of "modeling services" by
24 "models," including but not limited to, photographers, stylists, casting
25 directors, make-up artists, hairdressers, and other vendors or persons
26 performing non-modeling creative work supporting the provision of
27 "modeling services."

28 6. "Creative management company" means a person or entity, other than
29 a person or entity licensed as an employment agency under article eleven
30 of the general business law, that:

31 (a) is in the business of managing creatives participating in enter-
32 tainments, exhibitions or performances;

33 (b) procures or attempts to procure, for a fee, employment or engage-
34 ments for persons seeking employment or engagements directly related to
35 the provision of "modeling services" by "models"; or

36 (c) renders vocational guidance or counseling services to creatives
37 for a fee.

38 7. "Exclusive representation" means an agreement, or a clause
39 contained in an agreement, which is entered into between a "modeling
40 management company" and a "model" or a "creative management company" and
41 a "creative" which restricts such model or creative from performing work
42 for another party not subject to such agreement for a specified period
43 of time or in a specified geographical area, that is similar to such
44 model or creative's work for the model management company or creative
45 management company.

46 8. "Department" means the department of labor and "commissioner" means
47 the commissioner of labor, except that a city with a population of one
48 million or more may, by local law, designate a city agency to enforce
49 the provisions of this article within the jurisdiction of such city, in
50 which case "department" shall refer to the agency designated by such
51 local law and "commissioner" shall refer to the head of such agency.

52 9. "Deal memo" means a thorough description in writing of the employ-
53 ment, engagement, entertainment, exhibition, or performance, including
54 but not limited to the scope of work, rate of pay, usages, incurred
55 expenses, and expectations of the model or creative.

1 § 960. Registration required. A model management company or creative
2 management company shall not engage in business from offices in this
3 state or enter into any arrangement with a person for the purpose of
4 providing model management company or creative management company
5 services to persons in this state unless the management company is
6 registered under this article. No person shall use the name or title
7 "modeling agency", "model management company", "creative agency", "crea-
8 tive management company", or otherwise represent that it is registered
9 under this article unless the entity or person is registered under this
10 article. A model management company or creative management company that
11 does not comply with the provisions of this article shall not be a
12 registered model management company or creative management company in
13 this state.

14 § 961. Registration process. 1. Except as otherwise provided in this
15 section, each model management company or creative management company
16 required to be registered under this article shall provide the depart-
17 ment with information required by the department on forms that the
18 department specifies. At a minimum, model management companies and crea-
19 tive management companies shall provide the following information:

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

21 (b) the address of the principal place of business of the model
22 management company or creative management company and the address of
23 each office it maintains in New York state;

24 (c) the model management company's or creative management company's
25 taxpayer or employer identification number;

26 (d) a list by jurisdiction of each name under which the model manage-
27 ment company or creative management company has operated in the preced-
28 ing five years, including any alternative names, names of predecessors
29 and, if known, successor business entities; and

30 (e) in the event the model management company or creative management
31 company or the ultimate parent of a model management group or creative
32 management company group is a privately or closely held company, the
33 model management company or creative management company or model manage-
34 ment group or creative management group shall file a list of all persons
35 or entities that beneficially own a five percent or greater interest in
36 the model management company or creative management company at the time
37 of application and a list of persons who formerly beneficially owned a
38 five percent or greater interest in the model management company or
39 creative management company or its predecessors in the preceding five
40 years. In the event the model management company or creative management
41 company or the ultimate parent of a modeling agency group is a publicly
42 traded company, the model management company or creative management
43 company or model management group or creative management group shall
44 file a list of all persons or entities that beneficially own a fifty
45 percent or greater interest in the model management company or creative
46 management company or the ultimate parent of the model management group
47 or creative management group at the time of application.

48 2. Each model management company or creative management company oper-
49 ating within this state shall complete its initial registration within
50 one year after the effective date of this article.

51 3. Within one year of the initial registration or any renewal regis-
52 tration, each registrant shall renew its registration by notifying the
53 department of any changes in the information previously provided pursu-
54 ant to this section.

55 4. Upon application for registration, a model management company or
56 creative management company or model management group or creative

1 management group with more than five employees that either work from a
2 location in this state or perform work relating to models or creatives
3 in this state shall deposit with the department a surety bond in the sum
4 of fifty thousand dollars.

5 5. Two or more model management companies or creative management
6 companies that are majority owned by the same ultimate parent, entity or
7 persons may be registered as a model management group or creative
8 management group. A model management group or creative management group
9 may satisfy any reporting and financial requirements of this article on
10 a consolidated basis. As a condition of registration as a model manage-
11 ment group or creative management group, each company that is a member
12 of the group shall guarantee payment of all financial obligations of
13 each other member.

14 6. A model management company or creative management company shall be
15 exempt from the registration requirements specified in this section if
16 such model management company or creative management company:

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

19 (b) is domiciled outside this state and is licensed or registered as a
20 model management company or creative management company in another state
21 that has the same or greater requirements as this article; and

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

24 7. The registration and exemption of a model management company or
25 creative management company under subdivision six of this section shall
26 be valid for one year.

27 8. The department shall maintain a list of model management companies
28 and creative management companies registered under this article and
29 shall issue a certificate of registration to each model management
30 company or creative management company duly registered.

31 9. The department may prescribe forms necessary to promote the effi-
32 cient administration of this section.

33 § 962. Duties of model management companies and creative management
34 companies. A model management company or creative management company
35 shall:

36 1. have a fiduciary duty to any model or creative the model management
37 company or creative management company manages, procures or attempts to
38 procure employment or engagement for, or renders vocational guidance or
39 counselling services to;

40 2. conduct reasonable inquiries into clients, employment, engagements,
41 entertainments, exhibitions and performances to ensure the health, safe-
42 ty and welfare of models and creatives;

43 3. use all reasonable efforts to procure employment or engagements for
44 models and creatives signed to the model management company or creative
45 management company;

46 4. refrain from enforcing a requirement of exclusive representation
47 should the model or creative not have been provided a job opportunity
48 booked or contracted by a client through the management company to
49 provide modeling services or creative services for a fee in the previous
50 one hundred twenty days;

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

1 6. provide models and creatives with access to and copies, which may
2 consist of digital copies, of all contracts and agreements the model
3 management company or creative management company has entered into with
4 a client involving rate of pay and scope of work, provide plain language
5 summaries of the rate of pay and scope of work involved with such
6 contracts and agreements, and disclose any relationship, contractual or
7 otherwise, that may exist between the model management company or crea-
8 tive management company and the client other than the agreement relating
9 specifically to modeling services or creative services;

10 7. if receiving any payment of funds on behalf of a model or creative,
11 immediately deposit the funds in a client trust account and disburse
12 such funds, less the model management company or creative management
13 company's commission, within thirty days of receipt, within no more than
14 forty-five days from the date the modeling services or creative services
15 were completed except when the funds are the subject of an action,
16 proceeding or controversy before a court or other governmental body, in
17 which case such funds shall remain in the client trust account;

18 8. in the case of a dispute with a client regarding late or non-pay-
19 ment of modeling services or creative services rendered, the management
20 company shall pay the model or creative and then keep the payment from
21 the client when the dispute is resolved;

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

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

30 11. include, in clear and legible type, the registration number of the
31 model management company or creative management company in any adver-
32 tisement, including social media profiles for the management company,
33 for the purpose of the solicitation of models or creatives for the model
34 management company or creative management company and in any contract
35 with a model, creative, or client;

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

44 13. provide all representation agreements and contracts and/or deal
45 memos pertaining to the model or creative, or ensure that these docu-
46 ments have been provided, in a language the model or creative suffi-
47 ciently understands.

48 § 963. Prohibitions on model management companies and creative manage-
49 ment companies. A model management company or creative management compa-
50 ny shall not:

51 1. require or collect any fee or deposit from a model or creative upon
52 the signing of, or as a condition to entering into, any contract or
53 agreement between the model management company or creative management
54 company and the model or creative;

55 2. charge more than the daily fair market rate for accommodation for
56 the model or creative;

1 3. deduct or offset from a model or creative's payment or compensation
2 any fee or expense other than the agreed upon commission. Such prohibit-
3 ed fees and expenses include but are not limited to website fees, travel
4 fees, accommodation fees, and delivery fees;

5 4. advance the cost of travel except on a case-by-case basis without
6 interest if the model or creative is informed of the cost and consents
7 in writing;

8 5. advance visa-related costs as a visa employer-sponsor if the appli-
9 cable federal regulations and statutes governing the visa category under
10 which the model or creative entered the United States for the purposes
11 of engaging in modeling services or creative services requires that the
12 management company cover all of those visa-related costs and fees;

13 6. require a model or creative to sign a model management company or
14 creative management company contract that contains either a term greater
15 than three years or a term allowing the model management company or
16 creative management company to renew the contract without the model or
17 creative's affirmative consent;

18 7. impose a commission fee greater than twenty percent of the model or
19 creative's payment or compensation;

20 8. take any retaliatory action against any model or creative who files
21 or attempts to file a complaint pursuant to this article or declines or
22 discontinues participation in any casting or booking on account of
23 reasonable, good faith concerns regarding an actual or potential
24 violation of this article; or

25 9. engage in discrimination or harassment of any kind against a model
26 or creative based on any legally protected categories as prohibited by
27 title VII of the federal Civil Rights Act of 1964, as amended, article
28 fifteen of the executive law, or any applicable local human rights laws
29 and regulations.

30 § 964. Duties of clients. A client shall:

31 1. provide fees, payment, reimbursements for expenses and compensation
32 due to a model or creative, including compensation required by subdivi-
33 sion two of this section, within thirty days of the end of any employ-
34 ment, engagement, entertainment, exhibition or performance;

35 2. compensate models and creatives at an hourly rate at least fifty
36 percent higher than the contracted hourly rate for any employment,
37 engagement, entertainment, exhibition or performance that exceeds eight
38 hours in any twenty-four hour period;

39 3. provide at least one thirty-minute meal break for any employment,
40 engagement, entertainment, exhibition or performance that exceeds eight
41 hours in any twenty-four hour period;

42 4. conduct reasonable inquiries into employment, engagements, enter-
43 tainments, exhibitions and performances to ensure the health, safety and
44 welfare of models and creatives;

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

50 6. allow the model or creative to be accompanied by their agent,
51 manager, chaperone, or other representative to any employment, engage-
52 ment, entertainment, exhibition or performance; and

53 7. provide adequate levels of liability insurance to cover and safe-
54 guard the health and safety of models and creatives.

55 § 965. Prohibitions on clients. A client shall not engage in discrimi-
56 nation or harassment of any kind against a model or creative based on

1 any legally protected categories as prohibited by title VII of the
2 federal Civil Rights Act of 1964, as amended, article fifteen of the
3 executive law, or any applicable local human rights laws and regu-
4 lations.

5 § 966. Violations, penalties and procedures. 1. Any model management
6 company or creative management company or person purporting to be a
7 model management company or creative management company who has failed
8 to comply with the registration requirements of section nine hundred
9 sixty of this article shall be deemed to have violated this article.

10 2. Any model management company or creative management company or
11 person purporting to be a model management company or creative manage-
12 ment company who has failed to comply within the time specified by law
13 with an order issued by the commissioner to comply with the registration
14 requirements of section nine hundred sixty of this article shall be
15 deemed to have violated this article.

16 3. Any client who enters into an agreement with a model management
17 company or creative management company or person purporting to be a
18 model management company or creative management company, who is required
19 to register, but whom the client knows or should have known has failed
20 to register, failed to renew its registration or had its registration
21 revoked by the commissioner shall be deemed to have violated this arti-
22 cle.

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

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

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

41 5. An order issued under this section shall be final and not subject
42 to review by any court or agency unless review is had pursuant to
43 section one hundred one of this chapter. Provided that no proceeding for
44 administrative or judicial review as provided in this chapter shall then
45 be pending and the time for initiation of such proceeding shall have
46 expired, the commissioner may file with the county clerk of the county
47 where the person against whom the penalty has been imposed has a place
48 of business the order of the commissioner or the decision of the indus-
49 trial board of appeals containing the amount of the civil penalty. The
50 filing of such order or decision shall have the full force and effect of
51 a judgment duly docketed in the office of such clerk. The order or deci-
52 sion may be enforced by and in the name of the commissioner in the same
53 manner, and with like effect, as that prescribed by the civil practice
54 law and rules for the enforcement of a money judgment.

55 6. If any model management company or creative management company or
56 person purporting to be a model management company or creative manage-

1 ment company shall have failed to comply within twenty days of an order
2 by the commissioner to register or renew registration, the commissioner
3 may seek to enjoin such unlawful activity, pursuant to the civil prac-
4 tice law and rules.

5 7. The intentional failure of a model management company or creative
6 management company or person purporting to be a model management company
7 or creative management company to comply with the registration require-
8 ments of section nine hundred sixty of this article shall be a class B
9 misdemeanor. The officers and agents of a model management company or
10 creative management company or person purporting to be a model manage-
11 ment company or creative management company who knowingly permit such
12 model management company or creative management company to violate the
13 registration requirements of section nine hundred sixty of this article
14 shall be guilty of a class B misdemeanor.

15 8. A model or creative may bring and maintain an action in a court of
16 competent jurisdiction to enforce the provisions of this article. A
17 model management company or creative management company, person purport-
18 ing to be a model management company or creative management company, or
19 client that violates this article shall be liable for actual damages to
20 any model or creative that has suffered damages due to such violation,
21 and the court may, in its discretion, award punitive damages.

22 9. The attorney general may bring and maintain an action in a court of
23 competent jurisdiction to enforce the provisions of this article when
24 the attorney general has determined there is reasonable cause to believe
25 that a model management company or creative management company, person
26 purporting to be a model management company or creative management
27 company, or client has engaged in a consistent pattern or practice of
28 violating this article.

29 10. (a) A model or creative who is aggrieved by a violation of this
30 article may file a complaint with the commissioner within two years
31 after the acts alleged to have violated this article occurred. The
32 commissioner shall prescribe the form of the complaint, which shall
33 include, at a minimum:

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

36 (ii) a statement detailing the terms of the model or creative's
37 contract, including a copy of such contract if available;

38 (iii) the model or creative's occupation;

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

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

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

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

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

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

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

54 (4) inform the person or entity named in the complaint that failure to
55 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 or creative has been paid in
7 full and proof of such payment; or

8 (ii) a written statement that the model or creative has not been paid
9 in full and 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 or creative a copy of:

12 (1) the response;

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

14 (3) materials informing the model or creative that the model or crea-
15 tive may bring an action 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 or creative and the
21 person or entity named in the complaint by regular mail and shall
22 include with such notice proof that the commissioner previously mailed
23 the notice of complaint to the person or entity named in the complaint
24 by certified mail. Upon satisfying the requirements of this paragraph,
25 the commissioner may close the case.

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