

# STATE OF NEW YORK

8638

## IN SENATE

March 23, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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 Section 958. Short title.

4 959. Definitions.

5 960. Registration required.

6 961. Registration process.

7 962. Duties of model management companies and creative manage-  
8 ment companies.

9 963. Prohibitions on model management companies and creative  
10 management companies.

11 964. Duties of clients and hiring parties.

12 965. Prohibitions on clients and hiring parties.

13 966. Violations, penalties and procedures.

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

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

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

22 2. "Hiring party" means any person or entity who exercises any form of  
23 control over a model's or creative's services, including modeling and  
24 creative entities, brands, and other clients, other than:

25 (a) the United States government;  
26

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

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1 (b) the state of New York, including any office, department, agency,  
2 authority or other body of the state including the legislature and the  
3 judiciary;

4 (c) a local government, including any office, department, agency or  
5 other body of that local government; or

6 (d) any foreign government.

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

15 4. "Modeling management company" means any person or entity, other  
16 than a person or entity licensed as an employment agency under article  
17 eleven of the general business law, that:

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

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

22 (c) renders vocational guidance or counselling services to models for  
23 a fee.

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

32 6. "Creatives" are all individuals who perform various tasks or  
33 services directly related to the provision of "modeling services" by  
34 "models," including but not limited to, photographers, stylists, casting  
35 directors, make-up artists, hairdressers, and other vendors or persons  
36 performing non-modeling creative work supporting the provision of  
37 "modeling services."

38 7. "Creative management company" means a person or entity, other than  
39 a person or entity licensed as an employment agency under article eleven  
40 of the general business law, that:

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

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

46 (c) renders vocational guidance or counseling services to creatives  
47 for a fee.

48 8. "Exclusive representation" means an agreement, or a clause  
49 contained in an agreement, which is entered into between a "modeling  
50 management company" and a "model" or a "creative management company" and  
51 a "creative" which restricts such model or creative from performing work  
52 for another party not subject to such agreement for a specified period  
53 of time or in a specified geographical area, that is similar to such  
54 model or creative's work for the model management company or creative  
55 management company.

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, hiring parties, employ-  
41 ment, engagements, entertainments, exhibitions and performances to  
42 ensure the health, safety 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 job opportunities  
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 sixty 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;

55 6. provide models and creatives with access to and copies, which may  
56 consist of digital copies, of all contracts and agreements the model

1 management company or creative management company has entered into with  
2 a client or hiring party involving rate of pay and scope of work,  
3 provide plain language summaries of such contracts and agreements, and  
4 disclose any relationship, contractual or otherwise, that may exist  
5 between the model management company or creative management company and  
6 the client or hiring party other than the agreement relating specif-  
7 ically to modeling services or creative services;

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

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

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

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

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

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

42 13. provide all materials, including financial statements, agreements,  
43 and contracts pertaining to the model or creative, in a language the  
44 model or creative sufficiently understands.

45 § 963. Prohibitions on model management companies and creative manage-  
46 ment companies. A model management company or creative management compa-  
47 ny shall not:

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

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

54 3. deduct or offset from a model or creative's payment or compensation  
55 any fee or expense other than the agreed upon commission. Such prohibit-



ed fees and expenses include but are not limited to website fees, travel fees, accommodation fees, and delivery fees;

4. require a model or creative to sign a model management company or creative management company contract that contains either a term greater than two years or a term allowing the model management company or creative management company to renew the contract without the model or creative's affirmative consent;

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

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

7. engage in discrimination or harassment of any kind against a model or creative based on any legally protected categories as prohibited by title VII of the federal Civil Rights Act of 1964, as amended; or

8. management companies acting as visa employer-sponsors shall not deduct visa-related costs and fees from the pay of a model or creative if the applicable federal regulations/statutes governing the visa category under which the model or creative entered the United States for the purposes of engaging in modeling services or creative services requires that the management company cover all of those visa-related costs and fees.

§ 964. Duties of clients and hiring parties. A client or hiring party shall:

1. provide fees, payment and compensation due to a model or creative, including compensation required by subdivision two of this section, within thirty days of the end of any employment, engagement, entertainment, exhibition or performance;

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

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

§ 965. Prohibitions on clients and hiring parties. A client or hiring party shall not engage in discrimination or harassment of any kind against a model or creative based on any legally protected categories as prohibited by title VII of the federal Civil Rights Act of 1964, as amended.

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

2. Any model management company or creative management company or person purporting to be a professional employer organization 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 nine hundred sixty 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 creative management company or person purporting to be a model management company or creative management company, who is required

1 to register, but whom the client knows or should have known has failed  
2 to register, failed to renew its registration or had its registration  
3 revoked by the commissioner shall be deemed to have violated this arti-  
4 cle.

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

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

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

23 5. An order issued under this section shall be final and not subject  
24 to review by any court or agency unless review is had pursuant to  
25 section one hundred one of this chapter. Provided that no proceeding for  
26 administrative or judicial review as provided in this chapter shall then  
27 be pending and the time for initiation of such proceeding shall have  
28 expired, the commissioner may file with the county clerk of the county  
29 where the person against whom the penalty has been imposed has a place  
30 of business the order of the commissioner or the decision of the indus-  
31 trial board of appeals containing the amount of the civil penalty. The  
32 filing of such order or decision shall have the full force and effect of  
33 a judgment duly docketed in the office of such clerk. The order or deci-  
34 sion may be enforced by and in the name of the commissioner in the same  
35 manner, and with like effect, as that prescribed by the civil practice  
36 law and rules for the enforcement of a money judgment.

37 6. If any model management company or creative management company or  
38 person purporting to be a model management company or creative manage-  
39 ment company shall have failed to comply within twenty days of an order  
40 by the commissioner to register or renew registration, the commissioner  
41 may seek to enjoin such unlawful activity, pursuant to the civil prac-  
42 tice law and rules.

43 7. The intentional failure of a model management company or creative  
44 management company or person purporting to be a model management company  
45 or creative management company to comply with the registration require-  
46 ments of section nine hundred sixty of this article shall be a class B  
47 misdemeanor. The officers and agents of a model management company or  
48 creative management company or person purporting to be a model manage-  
49 ment company or creative management company who knowingly permit such  
50 model management company or creative management company to violate the  
51 registration requirements of section nine hundred sixty of this article  
52 shall be guilty of a class B misdemeanor.

53 8. A model management company or creative management company, person  
54 purporting to be a model management company or creative management  
55 company, hiring party or client that otherwise violates this article  
56 shall be liable for actual damages to any model or creative that has

1 suffered damages due to such violation, and the court may, in its  
2 discretion, award punitive damages.

3 § 2. Section 196-a of the labor law, as amended by chapter 564 of the  
4 laws of 2010, is amended to read as follows:

5 § 196-a. Complaints by employees to commissioner. ~~[(a)]~~ 1. Any  
6 employee; person or organization acting on the employee's behalf; or the  
7 recognized and certified collective bargaining agent acting on the  
8 employee's behalf, may file with the commissioner a complaint regarding  
9 a violation of this article, article five, seven, nineteen, or nine-  
10 teen-A of this chapter for an investigation of such complaint and state-  
11 ment setting the appropriate remedy, if any. The commissioner shall keep  
12 the names of employees that are the subject of an investigation confi-  
13 dential until such time that disclosure is necessary for resolution of  
14 an investigation or a complaint. Failure of an employer to keep adequate  
15 records or provide statements of wages to employees as required under  
16 this chapter, in addition to exposing such employer to penalties author-  
17 ized under subdivision one of section two hundred eighteen of this chap-  
18 ter, shall not operate as a bar to filing of a complaint by an employee.  
19 In such a case the employer in violation shall bear the burden of prov-  
20 ing that the complaining employee was paid wages, benefits and wage  
21 supplements.

22 ~~[(b)]~~ 2. Any employee, or the recognized and certified collective  
23 bargaining agent acting on the employee's behalf, contractor, or the  
24 recognized and certified labor organization with which the contractor  
25 has executed a collective bargaining agreement covering wages, benefits  
26 and supplements, may file with the commissioner a complaint regarding an  
27 alleged violation of this article or article nineteen of this chapter  
28 occasioned by another person, corporation, employer or entities in  
29 violation of article thirty-five-E of the general business law for an  
30 investigation of such complaint and statement setting the appropriate  
31 remedy, if any.

32 3. (a) A model or creative who is aggrieved by a violation of article  
33 thirty-four of this chapter may file a complaint with the commissioner  
34 within two years after the acts alleged to have violated said article  
35 occurred. The commissioner shall prescribe the form of the complaint,  
36 which shall include, at a minimum:

37 (i) the name and mailing address of the model or creative and of the  
38 hiring party alleged to have violated article thirty-four of this chap-  
39 ter;

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

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

43 (iv) a statement detailing the alleged violations of article thirty-  
44 four of this chapter; and

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

47 (b) (i) Within twenty days of receiving a complaint alleging a  
48 violation of article thirty-four of this chapter, the commissioner shall  
49 send the hiring party named in the complaint a written notice of  
50 complaint. The commissioner shall send such notice by certified mail  
51 and shall bear the cost of sending such notice.

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

53 (1) inform the hiring party that a complaint has been filed alleging  
54 violations of article thirty-four of this chapter;

55 (2) detail the remedies available to a model or creative for  
56 violations of said article by a hiring party;



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

2 (4) inform the hiring party that failure to respond to the complaint  
3 will create a rebuttable presumption in any civil action commenced  
4 pursuant to article thirty-four of this chapter that the hiring party  
5 committed the violations alleged in the complaint.

6 (c) Within twenty days of receiving the notice of complaint, the  
7 hiring party identified in the complaint shall send the commissioner one  
8 of the following:

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

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

13 (d) (i) Within twenty days of receiving the written response, the  
14 commissioner shall send the model or creative a copy of:

15 (1) the response;

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

17 (3) materials informing the model or creative that he or she may bring  
18 an action in a court of competent jurisdiction; and

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

20 (ii) If the commissioner receives no response from the hiring party to  
21 the notice of complaint within the time provided by this subdivision,  
22 the commissioner shall mail a notice of non-response to both the model  
23 or creative and the hiring party by regular mail and shall include with  
24 such notice proof that the commissioner previously mailed the notice of  
25 complaint to the hiring party by certified mail. Upon satisfying the  
26 requirements of this paragraph, the commissioner may close the case.

27 (e) As used in this subdivision, "model" and "creative" shall have the  
28 meanings defined in section nine hundred fifty-nine of this chapter.

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