

STATE OF NEW YORK

8638--A

Cal. No. 1290

IN SENATE

March 23, 2022

Introduced by Sens. HOYLMAN, BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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1 for a client or consents in writing to the transfer of their legal right
2 to the use of their name, portrait, picture or image, for advertising
3 purposes or for the purposes of trade, directly to a client or who
4 provides showroom, parts, or fit modeling services. The term "model"
5 shall include influencers, performing artists and other persons who
6 perform modeling services.

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

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

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

14 (c) renders vocational guidance or counselling services to models for
15 a fee.

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

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

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

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

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

38 (c) renders vocational guidance or counseling services to creatives
39 for a fee.

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

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

54 9. "Deal memo" means a thorough description in writing of the employ-
55 ment, engagement, entertainment, exhibition, or performance, including

1 but not limited to the scope of work, rate of pay, usages, incurred
2 expenses, and expectations of the model or creative.

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

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

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

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

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

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

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

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

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

1 4. Upon application for registration, a model management company or
2 creative management company or model management group or creative
3 management group with more than five employees that either work from a
4 location in this state or perform work relating to models or creatives
5 in this state shall deposit with the department a surety bond in the sum
6 of fifty thousand dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 5. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 965. Prohibitions on clients. A client shall not engage in discrimi-
2 nation or harassment of any kind against a model or creative based on
3 any legally protected categories as prohibited by title VII of the
4 federal Civil Rights Act of 1964, as amended, article fifteen of the
5 executive law, or any applicable local human rights laws and regu-
6 lations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (iii) the model or creative'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 or creative for
53 violations of said article by the person or entity named in the
54 complaint;

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

1 (4) inform the person or entity named in the complaint that failure to
2 respond to the complaint will create a rebuttable presumption in any
3 civil action commenced pursuant to this article that such person or
4 entity committed the violations alleged in the complaint.

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

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

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

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

14 (1) the response;

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

16 (3) materials informing the model or creative that the model or crea-
17 ative may bring an action in a court of competent jurisdiction; and

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

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

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