

STATE OF NEW YORK

7428--A

2021-2022 Regular Sessions

IN SENATE

October 8, 2021

Introduced by Sens. BIAGGI, BRISPORT, HOYLMAN, JACKSON, KAVANAGH, LIU, MAY, RIVERA, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to requiring fashion sellers to be accountable to environmental and social standards; and to amend the state finance law, in relation to establishing a fashion remediation fund

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

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

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

5 § 399-mm. Fashion sustainability and social accountability act. 1.
6 Definitions. As used in this section, the following terms shall have the
7 following meanings:

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

10 (b) "Gross receipts" shall mean the gross amounts realized, otherwise
11 known as the sum of money and the fair market value of other property or
12 services received, on the sale or exchange of property, the performance
13 of services, or the use of property or capital, including rents, royalti-
14 ties, interest, and dividends, in a transaction that produces business
15 income, in which the income, gain, or loss is recognized, or would be
16 recognized if the transaction were in the United States, under the
17 Internal Revenue Code, as applicable for purposes of this section.
18 Amounts realized on the sale or exchange of property shall not be
19 reduced by the cost of goods sold or the basis of property sold. Gross

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

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1 receipts, even if business income, shall not include the following
2 items:

3 (i) repayment, maturity, or redemption of the principal of a loan,
4 bond, mutual fund, certificate of deposit, or similar marketable instru-
5 ment;

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

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

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

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

12 (vi) tax refunds and other tax benefit recoveries;

13 (vii) pension reversions;

14 (viii) contributions to capital, except for sales of securities by
15 securities dealers;

16 (ix) income from discharge of indebtedness;

17 (x) amounts realized from exchanges of inventory that are not recog-
18 nized under the Internal Revenue Code;

19 (xi) amounts received from transactions in intangible assets held in
20 connection with a treasury function of the taxpayer's unitary business
21 and the gross receipts and overall net gains from the maturity, redemp-
22 tion, sale, exchange, or other disposition of those intangible assets;
23 and

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

29 (c) "Fashion seller" shall mean a business entity which sells articles
30 of wearing apparel, footwear, or fashion bags that together exceed one
31 hundred million dollars in annual gross receipts, but shall not include
32 the sale of used wearing apparel, footwear, or fashion bags, nor shall
33 it include multi-brand retailers, except where the apparel, footwear,
34 and fashion bag private labels of those companies together exceed one
35 hundred million dollars in global revenue.

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

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

40 (f) "Fashion bag" shall mean flexible packaging made of textiles,
41 leather or other animal products, woven material or other similar mate-
42 rials intended for repeated use.

43 (g) "Due diligence" shall mean the comprehensive process companies
44 shall carry out to identify, cease, prevent, mitigate, account for, and
45 remediate actual and potential adverse impacts to human rights and the
46 environment in their own operations and in their supply chain, in
47 compliance with, at a minimum, the standards outlined in the most recent
48 Organisation for Economic Co-operation and Development Guidelines for
49 Multinational Enterprises, and the Organisation for Economic Co-opera-
50 tion and Development Due Diligence Guidance for Responsible Supply
51 Chains in the Garment and Footwear Sector.

52 (h) "Due diligence report" shall mean the document prepared by the
53 company to communicate all relevant information concerning the exist-
54 ence, implementation and outcomes of due diligence in order to comply
55 with the requirements of this section, and to comply with any rules or
56 regulations established pursuant to this section.

1 (i) "Risk-based approach" shall mean commensurate to the likelihood
2 and severity of the harm. The fashion seller shall prioritize the order
3 in which it takes action based on the likelihood and severity of harm.
4 Severity of impacts shall be determined according to their scale or
5 gravity, scope, and irremediable character.

6 (j) "Supply chain tiers" shall mean a four tier system defined as the
7 following:

8 (i) "Tier one" shall mean suppliers who produce finished goods for
9 fashion sellers, including suppliers' subcontractors, who provide the
10 following services, including but not limited to sewing and embroider-
11 ing;

12 (ii) "Tier two" shall mean suppliers to tier one, including subcon-
13 tractors, who provide the following services or goods, including but not
14 limited to knitting, weaving, washing, dyeing, finishing, printing for
15 finished goods, and components and materials for finished goods when
16 they are stand-alone operations and not integrated with tier one. Compo-
17 nents shall mean materials used to build a product, including but not
18 limited to buttons, zippers, rubber soles, down, and fusibles;

19 (iii) "Tier three" shall mean suppliers to tier two suppliers, includ-
20 ing subcontractors, who process raw materials, such as ginning, spin-
21 ning, and suppliers of chemicals; and

22 (iv) "Tier four" shall mean companies, including subcontractors, that
23 provide raw materials to tier three.

24 (k) "Independently verified" shall mean audited by a verification body
25 accredited by the department of state as described in subdivision five
26 of this section.

27 (l) "Living wage" shall mean the remuneration received for a standard
28 workweek by a worker in a particular place sufficient to afford a decent
29 standard of living for such worker and their family. Elements of a
30 decent standard of living include food, water, housing, education,
31 health care, transportation, clothing, and other essential needs includ-
32 ing provision for unexpected events. Living wage shall be determined
33 exclusive of overtime wages and by net wages including in-kind and cash
34 benefits, and deducting taxes and deductions.

35 (m) "Open data principles" shall mean data that can be freely used,
36 reused and redistributed by anyone. Such data shall be findable or easi-
37 ly discoverable on a website or within a database, accessible or avail-
38 able in a machine readable, convenient, modifiable form and published as
39 a whole, complete dataset, interoperable or able to be mixed with
40 different datasets, and reusable or provided under an open license that
41 permits reuse and redistribution, including the intermixing with other
42 datasets.

43 2. Due Diligence. (a) Every fashion seller shall effectively carry out
44 human rights and environmental due diligence for the portions of their
45 business related to wearing apparel, footwear or fashion bags, including
46 wearing apparel, footwear or fashion bags produced as a private label,
47 which shall include:

48 (i) supply chain mapping:

49 (1) companies taking a risk-based approach and implementing good faith
50 efforts to map suppliers across tier one through tier four of
51 production. Tier one suppliers shall be mapped within twelve months of
52 the effective date of this section, and shall contain a minimum of
53 seventy-five percent of suppliers by volume. Tier two suppliers shall be
54 mapped within two years of the effective date of this section, and shall
55 contain a minimum of seventy-five percent of suppliers by volume. Tier
56 three and tier four suppliers shall be mapped within three years of the

1 effective date of this section and shall contain a minimum of fifty
2 percent of suppliers by volume or dollar value.

3 (2) supplier disclosure for all tiers shall include the name, address,
4 parent company, product type and number of workers at each site by coun-
5 try;

6 (3) for tier one suppliers, fashion sellers shall report, at a mini-
7 imum, the following information to the attorney general, which shall be
8 independently verified no less than once every two years:

9 (A) the mean wages of workers, and how this compares with local mini-
10 imum wage and living wages;

11 (B) the percentage of unionized factories; and

12 (C) hours worked weekly by month and the hours and frequency of over-
13 time by firm and country.

14 (ii) in carrying out effective due diligence, fashion sellers shall be
15 in compliance with the Organisation for Economic Co-operation and Devel-
16 opment Guidelines for Multinational Enterprises and the Organisation for
17 Economic Co-operation and Development Due Diligence Guidance for Respon-
18 sible Supply Chains in the Garment and Footwear Sector, requiring fash-
19 ion sellers to, at a minimum:

20 (1) embed responsible business conduct into the company's policies and
21 management systems;

22 (2) identify areas of significant risks in the contexts of its own
23 activities and business and supply chain relationships;

24 (3) identify, prioritize, and assess the significant potential and
25 actual adverse impacts of those risks;

26 (4) cease, prevent or mitigate those risks. This shall include, but
27 not be limited to:

28 (A) Incentivizing improved supplier performance on workers' rights and
29 environmental impact by embedding responsible purchasing practices in
30 its supply chain relationships and contracts, including but not limited
31 to contract renewals, longer term contracts, price premiums, providing
32 reasonable assistance to suppliers so that they can meet applicable
33 human rights and environmental standards including but not limited to
34 meeting the carbon emission reduction targets set out in this section,
35 and developing pricing models that account for the cost of wages, bene-
36 fits, and investments in suitable work, specifically as reflected in
37 freight on board prices together with traditional pricing consider-
38 ations, such as quantities being purchased, cost of materials, and skill
39 requirements. Wages, benefits, and investments shall, at a minimum, be
40 in line with the requirements set out in local labor laws, including
41 minimum wage laws;

42 (B) Utilizing responsible exit or disengagement strategies;

43 (C) Consulting and engaging with impacted and potentially impacted
44 stakeholders and rights holders and their representatives;

45 (D) Establishing quantitative baseline and reduction targets on green-
46 house gas emissions. Greenhouse gas emissions inventory shall be
47 reported annually, include absolute figures and conform with the
48 accounting and reporting requirements of the most recent Greenhouse Gas
49 Protocol Corporate Accounting and Reporting Standard, Scope Two Guid-
50 ance, and the most recent Corporate Value Chain Scope Three accounting
51 and reporting standard promulgated by the World Resources Institute and
52 the World Business Council for Sustainable Development. Greenhouse gas
53 emissions inventory reported in the due diligence report described in
54 subdivision three of this section shall be independently verified no
55 less than once every two years. Within four years of the effective date
56 of this section, primary data shall be used to capture tier two and tier

1 three inventory of the most significant suppliers contributing to green-
2 house gas emissions. Significant suppliers shall mean suppliers repres-
3 enting seventy-five percent of fabric by volume in tier two and fifty
4 percent of fabric by volume in tier three. Greenhouse gas emission
5 reduction targets must be near-term and long-term, covering scopes one,
6 two and three emissions, and align with, at a minimum, Science Based
7 Targets initiative's most recent target validation criteria as promul-
8 gated by World Resources Institute, CDP, United Nations Global Compact
9 and the World Wildlife Fund. For fashion sellers with global revenue
10 over one billion dollars, the Absolute Contraction Approach must be used
11 to calculate scope three emissions. Fashion sellers shall meet targets
12 and report their compliance on an annual basis in their due diligence
13 report, as described in subdivision three of this section. If found to
14 be out of compliance, fashion sellers shall have eighteen months to
15 remedy their emissions and return to the necessary reduction pathway to
16 deliver on their targets. In non-target years, non-compliance shall mean
17 an increase in absolute emissions in three consecutive years, for compa-
18 nies over a billion dollars in revenue. In target years, non-compliance
19 shall mean not reaching the target.

20 (E) In compliance with, at a minimum, the Zero Discharge of Hazardous
21 Chemicals Program's most recent wastewater guidelines, fashion sellers
22 shall be required, for all significant tier two dyeing, finishing and
23 garment washing suppliers, to sample and report on wastewater chemical
24 concentrations and water usage, within two years of the effective date
25 of this section. Such reports shall be independently verified. Fashion
26 sellers shall also provide corrective action plans for their wastewater
27 treatment within thirty months of the effective date of this section.
28 After three years of the effective date of this section, fashion sellers
29 shall be considered out of compliance if their significant tier two
30 dyeing, finishing and garment suppliers have not made adequate progress
31 in remediation of wastewater pollution concentrations. Significant
32 suppliers shall mean suppliers representing seventy-five percent of
33 fabric by volume;

34 (5) track implementation and results;

35 (6) provide for or co-operate in remediation in the event of an
36 adverse impact:

37 (A) remedies shall seek to restore the affected person or persons,
38 where practicable, to the situation they would have been in had the
39 adverse impact not occurred and shall enable remediation that is propor-
40 tionate to the significance and scale of the adverse impact;

41 (B) remedies shall include, depending on the nature and extent of the
42 adverse impact, apologies, restitution or rehabilitation including rein-
43 statement of dismissed workers, recognition of the trade union for the
44 purpose of collective bargaining, financial or non-financial compen-
45 sation including establishing compensation funds for victims, or for
46 future outreach and educational programs, punitive sanctions including
47 the dismissals of staff responsible for wrongdoing, and taking measures
48 to prevent future adverse impacts; and

49 (C) in relation to human rights impacts, fashion sellers shall consult
50 and engage with impacted rights holders and their representatives when
51 determining the remedy.

52 (b) The due diligence requirements pursuant to this subdivision shall
53 not be conditional upon the company being effectively involved in the
54 subsidiary's day-to-day operations or exercising a sufficient degree of
55 control on companies within its supply chain.

1 3. Reporting. Every fashion seller shall develop and submit to the
2 office of the attorney general annually, beginning within eighteen
3 months of the effective date of this section, a due diligence report.
4 Such report, excluding the information required in clause three of
5 subparagraph (i) of paragraph (a) of subdivision two of this section,
6 shall also be made publicly available on the fashion seller's website in
7 a machine readable and reusable format, published in line with open data
8 principles through a clear and easily discoverable link to the required
9 information. In the event the fashion seller does not have an internet
10 website, the company shall provide a written disclosure to any person
11 who has requested information within thirty days of receiving a request.
12 Such report shall also include the fashion seller's annual volume of
13 material produced, including breakdown by material type.

14 4. Regulations. The department of state shall, in consultation with
15 the department of environmental conservation and department of labor,
16 promulgate all rules and regulations necessary to implement the
17 provisions of this section within six months from the effective date of
18 this section. The department of state, in consultation with the depart-
19 ment of environmental conservation and department of labor, shall also
20 develop and disseminate educational materials to fashion sellers,
21 including providing alerts on time sensitive issues, emerging issues,
22 and high-risk country situations, and assisting fashion sellers in
23 improving the quality of their due diligence processes.

24 5. Verification. (a) The department of state shall, in consultation
25 with the department of environmental conservation and department of
26 labor, develop a process for accrediting verification bodies authorized
27 to provide verification services for the purposes of this section,
28 including which requirements the entity is authorized to verify.

29 (b) Such process shall at a minimum consider:

30 (i) the demonstrated qualifications of verification staff, including
31 their education, experience, and professional licenses. Verification
32 bodies must employ and retain at least five total full-time staff with
33 expertise in the requirements they seek to verify under this section;

34 (ii) any judicial proceedings, enforcement actions, or administrative
35 actions filed against the body within the previous five years; and

36 (iii) the policies and mechanisms in place to prevent conflicts of
37 interest and to identify and resolve potential conflict of interest
38 situations if they arise. The department shall require applicants to
39 submit the following information, at a minimum:

40 (1) identification of services provided by the verification body, the
41 industries that the body serves, and the locations where those services
42 are provided;

43 (2) a detailed organizational chart that includes the verification
44 body, its management structure, and any related entities; and

45 (3) the verification body's internal conflict of interest policy that
46 identifies activities and limits to monetary or non-monetary gifts that
47 apply to all employees and procedures to monitor conflicts of interest.

48 (c) Verification bodies shall not be authorized to provide services to
49 a company where a conflict of interest exists. A conflict of interest
50 shall include:

51 (i) where the verification body and reporting entity share any manage-
52 ment staff or board of directors membership, or any of the senior
53 management staff of the reporting entity have been employed by the
54 verification body, or vice versa, within the previous five years;

55 (ii) any employee of the verification body, or any employee of a
56 related entity, or a subcontractor who is a member of the verification

1 team has provided the reporting entity with services related to the
2 areas of verification, or any services designated by the department of
3 state, within the previous five years;

4 (iii) any staff member of the verification body provides any type of
5 non-monetary incentive to a reporting entity to secure a verification
6 services contract; and

7 (iv) any additional criteria provided by the department of state.

8 (d) Verification bodies that have been accredited by the department of
9 state shall notify the department within thirty days if they no longer
10 meet the verification requirements set forth by this section.

11 6. Enforcement. (a) The requirements imposed on fashion sellers by
12 this section shall be monitored, investigated, and enforced by the
13 attorney general or an administrator designated by the attorney general
14 to bring civil proceedings for an injunction, monetary damages, or civil
15 performance of a statutory duty. Fashion sellers shall be deemed non-
16 compliant with this section if they fail to conduct effective due dili-
17 gence pursuant to subdivision two of this section or fail to file a due
18 diligence report pursuant to subdivision three of this section.

19 (b) The attorney general, or the attorney general's designated admin-
20 istrator as applicable, shall annually publish and make publicly avail-
21 able a report regarding compliance with this section, listing the fash-
22 ion sellers who are known to be out of compliance with this section and
23 including an up-to-date report on the attorney general's monitoring of
24 such compliance.

25 (c) Fashion sellers found to be out of compliance with this section
26 after the attorney general, or the attorney general's designated admin-
27 istrator as applicable, has provided notice of non-compliance, and after
28 a three-month period to meet obligations under this section has lapsed,
29 may be fined up to two percent of annual revenues. Such fines shall be
30 deposited in the community benefit fund established by section ninety-
31 seven-ccc of the state finance law.

32 (d) The attorney general, or the attorney general's designated admin-
33 istrator shall use a risk-based approach in enforcement and shall
34 publish enforcement guidelines.

35 (e) Any person may report a violation of this section to the attorney
36 general's office.

37 (f) Any fashion seller shall be held jointly and severally liable for
38 the payment of wages of the employees of its tier one suppliers. For the
39 purposes of this section, wages shall be inclusive of all moneys owed in
40 accordance with the law of the country of manufacture, including wages,
41 overtime wages, paid leave, incentives, bonuses, severance and any other
42 form of payment or compensation. For the purposes of this section,
43 employee shall include all workers, whether full-time or part-time,
44 permanent or fixed-term, directly contracted or hired indirectly through
45 an agency or other intermediary. Fashion sellers shall be liable for
46 payment of lost wages and an additional equal amount as liquidated
47 damages.

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

50 § 97-ccc. Fashion remediation fund. 1. There is hereby established in
51 the joint custody of the comptroller, the commissioner of taxation and
52 finance, the commissioner of environmental conservation, and the commis-
53 sioner of labor a special fund to be known as the fashion remediation
54 fund.

1 2. Such fund shall consist of all moneys deposited pursuant to para-
2 graph (c) of subdivision six of section three hundred ninety-nine-mm of
3 the general business law.

4 3. The moneys in the fund shall be expended by the comptroller in
5 consultation with the department of environmental conservation, the
6 department of labor and relevant stakeholders for the purpose of imple-
7 menting one or more environmental benefit projects or labor remediation
8 projects that directly and verifiably benefit the workers and communi-
9 ties directly impacted, to the extent practicable, at the location the
10 injury has occurred.

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

16 5. Moneys shall be payable from the fund on the audit and warrant of
17 the comptroller on vouchers certified and approved by the commissioner
18 of environmental conservation and the commissioner of labor, as applica-
19 ble.

20 § 4. The attorney general shall certify to the governor that the
21 office of the attorney general is prepared to execute the duties
22 assigned in subdivision 6 of section 399-mm of the general business law
23 within one year following the effective date of this act. If, after the
24 expiration of one year, the attorney general requires more time to
25 certify that the office of the attorney general is prepared to execute
26 such duties, the attorney general may, for good cause shown, apply to
27 the governor for an extension of time. The governor may grant or deny an
28 extension of up to one year according to their discretion.

29 § 5. This act shall take effect immediately; provided, however, subdi-
30 vision 6 of section 399-mm of the general business law as added by
31 section two of this act shall take effect one year after the attorney
32 general certifies that the office of the attorney general is prepared to
33 execute the duties assigned in such subdivision. The attorney general
34 shall notify the legislative bill drafting commission upon the occur-
35 rence of such certification in order that the commission may maintain an
36 accurate and timely effective data base of the official text of the laws
37 of the state of New York in furtherance of effectuating the provisions
38 of section 44 of the legislative law and section 70-b of the public
39 officers law.