

# 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.

LBD14365-08-2

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.