STATE OF NEW YORK

4333--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. KELLES, EPSTEIN, SIMON, HEVESI, GONZALEZ-ROJAS, FORREST, BURGOS, WEPRIN, REYES, FAHY, STECK, SEAWRIGHT, MITAYNES, GALLAGHER, RAGA, SIMONE, SHRESTHA, CUNNINGHAM, BORES, OTIS, LEVENBERG, CARROLL, THIELE, STERN, L. ROSENTHAL, RAJKUMAR, KIM, GUNTHER, ANDERSON, GLICK, LUNSFORD, BARRETT, SHIMSKY, MAMDANI, DINOWITZ, SANTABARBARA, JACOBSON, TAYLOR, CLARK, PAULIN, BICHOTTE HERMELYN, LAVINE, SLATER, EACHUS, DE LOS SANTOS, ARDILA, SILLITTI, SOLAGES, CONRAD, CRUZ, BENEDETTO, JACKSON, PRETLOW, TAPIA, STIRPE, MEEKS, LUPARDO, McMAHON, LEE -- read once and referred to the Committee on Consumer Affairs and Protection -- 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:

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

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

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

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

(b) "Gross receipts" shall mean the gross amounts realized, otherwise known as the sum of money and the fair market value of other property or services received, on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business

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

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income, in which the income, gain, or loss is recognized, or would be recognized if the transaction were in the United States, under the Internal Revenue Code, as applicable for purposes of this section. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income, shall not include the following items:

(i) repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument;

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

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

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

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

(vi) tax refunds and other tax benefit recoveries;

(vii) pension reversions;

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

(ix) income from discharge of indebtedness;

(x) amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code;

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

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

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

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

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

(f) "Fashion bag" shall mean flexible packaging made of textiles, leather or other animal products, woven material or other similar materials intended for repeated use.

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

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

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

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

(i) "Tier one" shall mean suppliers who produce finished goods for fashion sellers, including suppliers' subcontractors, who provide the following services, including but not limited to sewing and embroidering;

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

(iii) "Tier three" shall mean suppliers to tier two suppliers, including subcontractors, who process raw materials, such as ginning, spinning, and suppliers of chemicals; and

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

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

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

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

(n) "Labor organizations" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(o) "Employee" shall mean all workers, whether full-time or part-time, permanent or fixed-term, directly contracted or hired indirectly through an agency or other intermediary.

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

(i) supply chain mapping:

(1) companies taking a risk-based approach and implementing good faith efforts to map suppliers across tier one through tier four of production. Tier one suppliers shall be mapped within twelve months of the effective date of this section, and shall contain one hundred percent of suppliers by volume. Tier two suppliers shall be mapped within two years of the effective date of this section, and shall contain a minimum of seventy-five percent of suppliers by volume. Tier three and tier four suppliers shall be mapped within three years of the effective date of this section and shall contain a minimum of fifty percent of suppliers by volume or dollar value.

(2) supplier disclosure for all tiers shall include the name, address, parent company, product type and number of workers at each site by country;

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

(A) the mean wages of workers, and how this compares with local minimum wage and living wages;

(B) the percentage of unionized factories; and

(C) hours worked weekly by month and the hours and frequency of overtime by firm and country.

(ii) in carrying out effective due diligence, fashion sellers shall be in compliance with the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, requiring fashion sellers to, at a minimum:

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

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

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

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

(A) non-compliance shall include employees of tier one garment suppliers not receiving their due wages and other monetary benefits. For the purposes of this section, wages shall be inclusive of all monies owed in accordance with the law of the country of manufacture, including wages, overtime wages, paid leave, incentives, bonuses, severance and any other form of payment or compensation. For the purposes of this section, employees shall include all workers, whether full-time or part-time, permanent or fixed-term, directly contracted or hired indirectly through an agency or other intermediary;

(B) incentivizing improved supplier performance on workers' rights and environmental impact by embedding responsible purchasing practices in its supply chain relationships and contracts, including but not limited to contract renewals, longer term contracts, price premiums, providing reasonable assistance to suppliers so that they can meet applicable human rights and environmental standards including but not limited to

meeting the carbon emission reduction targets set out in this section, and developing pricing models that account for the cost of wages, benefits, and investments in suitable work, specifically as reflected in freight on board prices together with traditional pricing considerations, such as quantities being purchased, cost of materials, and skill requirements. Wages, benefits, and investments shall, at a minimum, be in line with the requirements set out in local labor laws, including minimum wage laws;

(C) utilizing responsible exit or disengagement strategies;

(D) consulting and engaging with impacted and potentially impacted stakeholders and rights holders and their representatives;

(E) establishing quantitative baseline and reduction targets on greenhouse gas emissions. Greenhouse gas emissions inventory shall be reported annually, include absolute figures and conform with the accounting and reporting requirements of the most recent Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Scope Two Guidance, and the most recent Corporate Value Chain Scope Three accounting and reporting standard promulgated by the World Resources Institute and the World Business Council for Sustainable Development. Greenhouse gas emissions inventory reported in the due diligence report described in subdivision three of this section shall be independently verified no less than once every two years. Within four years of the effective date of this section, primary data shall be used to capture tier two and tier three inventory of the most significant suppliers contributing to greenhouse gas emissions. Significant suppliers shall mean suppliers representing seventy-five percent of fabric by volume in tier two and fifty percent of fabric by volume in tier three. Greenhouse gas emission reduction targets must be near-term and long-term, covering scopes one, two and three emissions, and align with, at a minimum, Science Based Targets initiative's most recent target validation criteria as promulgated by World Resources Institute, CDP, United Nations Global Compact and the World Wildlife Fund. For fashion sellers with global revenue over one billion dollars, the Absolute Contraction Approach must be used to calculate scope three emissions. Fashion sellers shall meet targets and report their compliance on an annual basis in their due diligence report, as described in subdivision three of this section. If found to be out of compliance, fashion sellers shall have eighteen months to remedy their emissions and return to the necessary reduction pathway to deliver on their targets. In non-target years, non-compliance shall mean an increase in absolute emissions in three consecutive years, for companies over a billion dollars in revenue. In target years, non-compliance shall mean not reaching the target.

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

(5) track implementation and results;

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

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

(B) remedies shall include, depending on the nature and extent of the adverse impact, apologies, restitution or rehabilitation including reinstatement of dismissed workers, recognition of the labor organization for the purpose of collective bargaining, financial or non-financial compensation including establishing compensation funds for victims, or for future outreach and educational programs, punitive sanctions including the dismissals of staff responsible for wrongdoing, and taking measures to prevent future adverse impacts; and

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

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

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

4. Regulations. The department of state shall, in consultation with the department of environmental conservation and department of labor, promulgate all rules and regulations necessary to implement the provisions of this section within six months from the effective date of this section. The department of state, in consultation with the department of environmental conservation and department of labor, shall also develop and disseminate educational materials to fashion sellers, including providing alerts on time sensitive issues, emerging issues, and high-risk country situations, and assisting fashion sellers in improving the quality of their due diligence processes. The department of state shall, in consultation with the Greenhouse Gas Protocol, develop methodologies to calculate data capture as laid out in item (E) of clause four of subparagraph (ii) of paragraph (a) of subdivision two of this section, prior to that requirement becoming effective.

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

(b) Such process shall at a minimum consider:

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

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

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

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

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

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

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

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

(ii) any employee of the verification body, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided the reporting entity with services related to the areas of verification, or any services designated by the department of state, within the previous five years;

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

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

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

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

(b) The attorney general, or the attorney general's designated administrator as applicable, shall annually publish and make publicly available a report regarding compliance with this section, listing the fashion sellers who are known to be out of compliance with this section and including an up-to-date report on the attorney general's monitoring of such compliance.

(c) Fashion sellers found to be out of compliance with this section after the attorney general, or the attorney general's designated administrator as applicable, has provided notice of non-compliance, and after a three-month period to meet obligations under this section has lapsed,

may be fined up to two percent of annual revenues. Such fines shall be deposited in the community benefit fund established by section ninety-seven-ccc of the state finance law.

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

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

(f) Tier one employees or their representative labor organization may commence a civil action against any fashion seller for a violation of item (A) of clause four of subparagraph (ii) of paragraph (a) of subdivision two of this section, if the attorney general does not bring a case within six months of notification of non-compliance from tier one employees or their representative labor organization. For the purposes of this section, employees shall include all workers, whether full-time or part-time, permanent or fixed-term, directly contracted or hired indirectly through an agency or other intermediary.

(i) tier one employees do not need to exhaust administrative or judicial remedies in the country of their employment before bringing a claim.

(ii) class claims can be brought by both tier one employees acting as class representatives, and by labor organizations representing workers.

(iii) courts can award attorneys' fees and costs to successful plaintiffs. Fees may be awarded based on a reasonable hourly rate for services rendered, irrespective of the amount of recovery.

(iv) Courts may establish proportional awards or penalties depending on the share of responsibility held by fashion sellers in violation of item (A) of clause four of subparagraph (ii) of paragraph (a) of subdivision two of this section. Courts may change the total awards or penalties of fashion sellers found to be non-compliant to the degree that fashion sellers either have or have not taken or are taking actions towards compliance of item (A) of clause four of subparagraph (ii) of paragraph (a) of subdivision two of this section.

(v) an administrative or judicial ruling on the claim in the country of manufacture will be considered persuasive but not dispositive evidence as to liability.

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

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

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

3. The moneys in the fund shall be expended by the comptroller to make tier one garment workers whole, in the case where they have demonstrated in a court action pursuant to paragraph (f) of subdivision six of section three hundred ninety-nine-mm of the general business law that they have not received due wages and the court has found that the fashion seller has performed effective due diligence. Any additional funds may be expended by the comptroller in consultation with the department of environmental conservation, the department of labor and relevant stakeholders for the purpose of implementing one or more environmental benefit projects or labor remediation projects that directly and verifi-

ably benefit the workers and communities directly impacted, to the extent practicable, at the location the injury has occurred.

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

5. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers certified and approved by the commissioner of environmental conservation and the commissioner of labor, as applicable.

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

§ 5. Severability. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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