STATE OF NEW YORK

5631

2023-2024 Regular Sessions

IN ASSEMBLY

March 20, 2023

Introduced by M. of A. REYES, KELLES -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the New York state fashion workers act

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

Section 1. The labor law is amended by adding a new article 35 to read as follows:

ARTICLE 35

NEW YORK STATE FASHION WORKERS ACT

Section 1030. Short title.

1031. Definitions.

1032. Registration required.

1033. Registration process.

1034. Duties of model management companies and creative management companies.

1035. Prohibitions on model management companies and creative management companies.

1036. Duties of clients.

1037. Prohibitions on clients.

1038. Violations, penalties and procedures.

§ 1030. Short title. This article shall be known and may be cited as the "New York State Fashion Workers Act".

§ 1031. Definitions. As used in this article:

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

2. "Model" means an individual, regardless of the individual's status 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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for a client or consents in writing to the transfer of their legal right to the use of their name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to a client or who provides showroom, parts, or fit modeling services. The term "model" shall include influencers, performing artists and other persons who perform modeling services.

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

(a) is in the business of managing models participating in entertainments, exhibitions or performances;

(b) procures or attempts to procure, for a fee, employment or engagements for persons seeking employment or engagements as models; or

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

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

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

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

(a) is in the business of managing creatives participating in entertainments, exhibitions or performances;

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

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

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

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

9. "Deal memo" means a thorough description in writing of the employment, engagement, entertainment, exhibition, or performance, including

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

§ 1032. Registration required. A model management company or creative management company shall not engage in business from offices in this state or enter into any arrangement with a person for the purpose of providing model management company or creative management company services to persons in this state unless the management company is registered under this article. No person shall use the name or title "modeling agency", "model management company", "creative agency", "creative management company", or otherwise represent that it is registered under this article unless the entity or person is registered under this article. A model management company or creative management company that does not comply with the provisions of this article shall not be a registered model management company or creative management company in this state.

§ 1033. Registration process. 1. Except as otherwise provided in this section, each model management company or creative management company required to be registered under this article shall provide the department with information required by the department on forms that the department specifies. At a minimum, model management companies and creative management companies shall provide the following information:

(a) all names under which it conducts business;

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

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

(d) a list by jurisdiction of each name under which the model management company or creative management company has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities; and

(e) in the event the model management company or creative management company or the ultimate parent of a model management group or creative management company group is a privately or closely held company, the model management company or creative management company or model management group or creative management group shall file a list of all persons or entities that beneficially own a five percent or greater interest in the model management company or creative management company at the time of application and a list of persons who formerly beneficially owned a five percent or greater interest in the model management company or creative management company or its predecessors in the preceding five years. In the event the model management company or creative management company or the ultimate parent of a modeling agency group is a publicly traded company, the model management company or creative management company or model management group or creative management group shall file a list of all persons or entities that beneficially own a fifty percent or greater interest in the model management company or creative management company or the ultimate parent of the model management group or creative management group at the time of application.

2. Each model management company or creative management company operating within this state shall complete its initial registration within one year after the effective date of this article.

3. Within one year of the initial registration or any renewal registration, each registrant shall renew its registration by notifying the department of any changes in the information previously provided pursuant to this section.

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

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

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

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

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

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

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

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

9. The department may prescribe forms necessary to promote the efficient administration of this section.

§ 1034. Duties of model management companies and creative management companies. A model management company or creative management company shall:

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

2. conduct reasonable inquiries into clients, employment, engagements, entertainments, exhibitions and performances to ensure the health, safety and welfare of models and creatives;

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

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

5. ensure that any employment, engagement, entertainment, exhibition or performance which requires nudity or other sexually explicit material shall comply with the requirements of subdivision three of section

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

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

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

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

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

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

11. include, in clear and legible type, the registration number of the model management company or creative management company in any advertisement, including social media profiles for the management company, for the purpose of the solicitation of models or creatives for the model management company or creative management company and in any contract with a model, creative, or client;

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

13. provide all representation agreements and contracts and/or deal memos pertaining to the model or creative, or ensure that these documents have been provided, in a language the model or creative sufficiently understands.

§ 1035. Prohibitions on model management companies and creative management companies. A model management company or creative management company shall not:

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

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

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

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

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

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

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

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

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

§ 1036. Duties of clients. A client shall:

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

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

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

4. conduct reasonable inquiries into employment, engagements, entertainments, exhibitions and performances to ensure the health, safety and welfare of models and creatives;

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

6. allow the model or creative to be accompanied by their agent, manager, chaperone, or other representative to any employment, engagement, entertainment, exhibition or performance; and

7. provide adequate levels of liability insurance to cover and safeguard the health and safety of models and creatives.

§ 1037. Prohibitions on clients. A client shall not engage in discrimination or harassment of any kind against a model or creative based on any legally protected categories as prohibited by title VII of the federal Civil Rights Act of 1964, as amended, article fifteen of the executive law, or any applicable local human rights laws and regulations.

§ 1038. Violations, penalties and procedures. 1. Any model management company or creative management company or person purporting to be a model management company or creative management company who has failed to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

2. Any model management company or creative management company or person purporting to be a model management company or creative management company who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

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

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

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

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

5. An order issued under this section shall be final and not subject to review by any court or agency unless a review is had pursuant to section one hundred one of this chapter. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the person against whom the penalty has been imposed has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same

manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. If any model management company or creative management company or person purporting to be a model management company or creative management company shall have failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

7. The intentional failure of a model management company or creative management company or person purporting to be a model management company or creative management company to comply with the registration requirements of section one thousand thirty-two of this article shall be a class B misdemeanor. The officers and agents of a model management company or creative management company or person purporting to be a model management company or creative management company who knowingly permit such model management company or creative management company to violate the registration requirements of section one thousand thirty-two of this article shall be guilty of a class B misdemeanor.

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

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

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

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

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

(iii) the model or creative's occupation;

(iv) a statement detailing the alleged violations of this article; and

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

(b) (i) Within twenty days of receiving a complaint alleging a violation of this article, the commissioner shall send the person or entity named in the complaint a written notice of complaint. The commissioner shall send such notice by certified mail and shall bear the cost of sending such notice.

(ii) The notice required by this paragraph shall:

(1) inform the person or entity named in the complaint that a complaint has been filed alleging violations of this article;

(2) detail the remedies available to a model or creative for violations of said article by the person or entity named in the complaint;

(3) include a copy of the complaint; and

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

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

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

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

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

(1) the response;

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

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

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

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

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