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IN ASSEMBLY

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Introduced by M. of A. REYES, KELLES, BRONSON, SILLITTI, STECK, L. ROSENTHAL, DE LOS SANTOS, AUBRY, PAULIN, GLICK, COLTON, STIRPE, CRUZ, SIMONE, EPSTEIN, GIBBS, BURGOS, TAYLOR, RAGA, WEPRIN, JEAN-PIERRE, SIMON, TAPIA, CLARK, GONZALEZ-ROJAS, MITAYNES, BRABENEC, SMITH, ALVAREZ, WALLACE, THIELE, LEVENBERG, BURDICK, GALLAGHER, BENEDETTO, BICHOTTE HERMELYN, OTIS, JACOBSON, LUCAS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 36 to read
2 as follows:

3 ARTICLE 36

4 NEW YORK STATE FASHION WORKERS ACT

5 Section 1030. Short title.

6 1031. Definitions.

7 1032. Registration required.

8 1033. Registration process.

9 1034. Duties of model management companies.

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

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1 1035. Prohibitions on model management companies.

2 1036. Power of attorney.

3 1037. Duties of clients.

4 1038. Violations, penalties and procedures.

5 1039. Other legal requirements.

6 § 1030. Short title. This article shall be known and may be cited as
7 the "New York state fashion workers act".

8 § 1031. Definitions. As used in this article:

9 1. "Client" means a retail store, a manufacturer, a clothing designer,
10 an advertising agency, a photographer, a publishing company or any other
11 such person or entity that receives modeling services from a model,
12 directly or through intermediaries.

13 2. "Model" means an individual, regardless of the individual's status
14 as an independent contractor or employee, who performs modeling services
15 for a client and/or model management company or who provides showroom,
16 parts, or fit modeling services.

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

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

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

24 (c) renders vocational guidance or counseling services to models for a
25 fee.

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

35 5. "Exclusive representation" means an agreement, or a clause
36 contained in an agreement, entered into between a model management
37 company and a model that restricts such model from performing work for
38 another party not subject to such agreement for a specified period of
39 time or in a specified geographical area, that is similar to such
40 model's work for the model management company.

41 6. "Deal memo" means a summary written in plain language which identi-
42 fies the key components of any employment, engagement, entertainment,
43 exhibition, or performance, including but not limited to the scope of
44 work, rate of pay, payment term, usages, incurred expenses, and expecta-
45 tions of the model. A deal memo shall be provided in the language
46 requested by the model.

47 7. "Digital replica" means a significant, computer-generated or arti-
48 ficial intelligence-enhanced representation of a model's likeness,
49 including but not limited to, their face, body, or voice, which substan-
50 tially replicates or replaces the model's appearance or performance,
51 excluding routine photographic edits such as color correction, minor
52 retouching, or other standard post-production modifications.

53 § 1032. Registration required. A model management company shall not
54 engage in business in this state or enter into any arrangement with a
55 client or model for the purpose of providing model management company
56 services in this state unless the model management company is registered

1 under this article. A model management company that does not comply with
2 the provisions of this article shall not be a registered model manage-
3 ment company in this state.

4 § 1033. Registration process. 1. Except as otherwise provided in this
5 section, a model management company required to be registered under this
6 article shall provide the department with information required by the
7 department on forms that the department specifies.

8 2. Two or more model management companies that are majority owned by
9 the same ultimate parent, entity or persons may be registered as a model
10 management group. A model management group may satisfy any reporting and
11 financial requirements of this article on a consolidated basis. As a
12 condition of registration as a model management group, each company that
13 is a member of the group shall guarantee payment of all financial obli-
14 gations of each other member. At a minimum, a model management company
15 or model management group shall provide the following information:

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

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

20 (c) the model management company or model management group's taxpayer
21 or employer identification number;

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

26 (e) in the event the model management company or the ultimate parent
27 of a model management group is a privately or closely held company, the
28 model management company or model management group shall file a list of
29 all persons or entities that beneficially own a five percent or greater
30 interest in the model management company at the time of application and
31 a list of persons who formerly beneficially owned a five percent or
32 greater interest in the model management company or its predecessors in
33 the preceding five years. In the event the model management company or
34 the ultimate parent of a model management group is a publicly traded
35 company, the model management company or model management group shall
36 file a list of all persons or entities that beneficially own a fifty
37 percent or greater interest in the model management company or the ulti-
38 mate parent of the model management group at the time of application.

39 3. Each model management company or model management group operating
40 within this state shall complete its initial registration within one
41 year after the effective date of this article.

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

47 5. Every model management company or model management group registered
48 pursuant to the provisions of this article shall pay to the commissioner
49 a registration fee before the certificate of registration is issued. The
50 registration fee for a model management company or model management
51 group operating with five or less employees shall be five hundred
52 dollars, and for a model management company or model management group
53 operating with more than five employees, the registration fee shall be
54 seven hundred dollars. If the application for registration is denied or
55 withdrawn, one-half of the registration fee provided herein shall be
56 returned to the applicant.

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

3 (a) submits a properly executed request for an exemption from registra-
4 tion on a form provided by the department;

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

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

10 7. The registration or exemption from registration of a model manage-
11 ment company shall be valid for two years; the department shall also
12 establish a registration renewal process.

13 8. The department shall maintain a list of model management companies
14 registered under this article and shall issue a certificate of registra-
15 tion to each model management company duly registered.

16 9. The department shall prescribe forms necessary to promote the effi-
17 cient administration of this section.

18 § 1034. Duties of model management companies. A model management
19 company shall:

20 1. be deemed to have a fiduciary duty to the models they represent and
21 shall be required to act in good faith, with the utmost honesty and
22 integrity, in the best interests of the models. This fiduciary duty
23 shall encompass all aspects of the model management company's represen-
24 tation, including, but not limited to, negotiations, contracts, finan-
25 cial management, and the protection of the models' legal and financial
26 rights;

27 2. conduct due diligence to ensure that any employment or engagement
28 procured through the model management company does not pose an unreason-
29 able risk of danger to the model. An unreasonable risk of danger shall
30 include, but not be limited to, failing to establish and communicate a
31 zero tolerance policy for abuse, harassment, or any other form of inap-
32 propriate behavior;

33 3. use its best efforts to procure employment, engagements, enter-
34 tainments, exhibitions or performances for remuneration for the models
35 signed to the model management company;

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

41 5. provide models with written physical or digital copies of the final
42 agreements the model management company has negotiated with clients and
43 any deal memos memorializing such agreements at least twenty-four hours
44 prior to the commencement of a model's services pertaining to each
45 agreement in the language requested by the model;

46 6. clearly specify all items that may be initially paid for by the
47 model management company but will ultimately be deducted from the
48 compensation due to the model at the time of payment or settlement,
49 together with an itemized recitation as to how each item is to be
50 computed, provided such charges are not otherwise prohibited by this
51 article. On a quarterly basis, a model shall also be given copies of any
52 and all documentation held by or available to the model management
53 company necessary to determine the validity of each charge;

54 7. disclose any financial relationship, contractual or otherwise,
55 that may exist between the model management company and the client,
56 other than the agreement relating specifically to modeling services;

1 8. notify former models in writing, including electronic notification,
2 if the model management company collects royalties due to a model whom
3 the management company no longer represents;

4 9. post a physical copy of the model management company's certificate
5 of registration in a conspicuous place in the office of the model
6 management company and a digital copy on the model management company's
7 website;

8 10. include, in clear and legible type, the registration number of the
9 model management company in any advertisement, including social media
10 profiles for the model management company, for the purpose of the solic-
11 itation of models for the model management company and in any contract
12 with a model or client; and

13 11. obtain clear written consent for the creation or use of a model's
14 digital replica, detailing the scope, purpose, rate of pay, and duration
15 of such use. This consent must be obtained separately from the represen-
16 tation agreement.

17 § 1035. Prohibitions on model management companies. A model management
18 company shall not:

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

22 2. procure any accommodation for which payment shall be provided or
23 reimbursed by the model in any way, without providing a written disclo-
24 sure of the rate charged for the accommodation to the model in advance
25 of such model's stay at the accommodation;

26 3. deduct or offset from a model's payment or compensation any fee or
27 expense other than the agreed upon commission as set forth in the
28 contract and any items advanced pursuant to subdivision six of section
29 one thousand thirty-four of this article. Such prohibited fees and
30 expenses include but are not limited to website fees, accommodation
31 fees, delivery fees, and interest on payment of the model's earnings;

32 4. advance the cost of travel or visa-related costs without informed
33 written consent from the model;

34 5. require a model to sign a model management company contract that
35 contains a term greater than three years;

36 6. require a model to sign a model management company contract that
37 renews without the model's affirmative written consent;

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

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

45 9. engage in discrimination or harassment of any kind against a model
46 because of any protected status covered under paragraph (a) of subdivi-
47 sion one of section two hundred ninety-six of the executive law; or

48 10. create, alter, or manipulate a model's digital replica using arti-
49 ficial intelligence without clear, conspicuous and separate written
50 consent from the model.

51 § 1036. Power of attorney. 1. Any power of attorney agreement between
52 a model management company and a model shall:

53 (a) be presented as an optional component of the model management
54 company's representation agreement;

55 (b) not be presented as a necessary condition of entering into an
56 agreement with the model management company;

1 (c) be subject to termination by the model at any time and for any
2 reason;

3 (d) not violate the provisions of subdivision one of section one thou-
4 sand thirty-four of this article and extend only to matters directly
5 related to the provision of modeling services, with the exclusion of the
6 use of the model's digital replica.

7 2. Any power of attorney agreement that violates this section shall be
8 considered void as a matter of public policy.

9 § 1037. Duties of clients. A client shall:

10 1. compensate models at an hourly rate at least fifty percent higher
11 than the contracted hourly rate for any employment, engagement, enter-
12 tainment, exhibition or performance that exceeds eight hours in any
13 twenty-four hour period;

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

17 3. only offer an employment or engagement to a model that does not
18 pose an unreasonable risk of danger to the model. An unreasonable risk
19 of danger shall include, but not be limited to, failure to establish and
20 communicate a zero tolerance policy for abuse, harassment, or any other
21 form of inappropriate behavior;

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

27 5. allow the model to be accompanied by their agent, manager, chaper-
28 one, or other representative to any employment, engagement, enter-
29 tainment, exhibition or performance;

30 6. provide adequate levels of liability insurance to cover and safe-
31 guard the health and safety of models; and

32 7. obtain clear and conspicuous prior written consent for any creation
33 or use of a model's digital replica, detailing the scope, purpose, rate
34 of pay, and duration of such use.

35 § 1038. Violations, penalties and procedures. 1. Any model management
36 company that has failed to comply with the registration requirements of
37 section one thousand thirty-two of this article shall be deemed to have
38 violated this article.

39 2. Any model management company that has failed to comply within the
40 time specified by law with an order issued by the commissioner to comply
41 with the registration requirements of section one thousand thirty-two of
42 this article shall be deemed to have violated this article.

43 3. (a) The commissioner may impose a civil penalty upon a model
44 management company that has been deemed to have violated this article,
45 for no more than three thousand dollars for the initial violation, and
46 for no more than five thousand dollars for a second or subsequent
47 violation.

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

53 4. An order issued under this section shall be final and not subject
54 to review by any court or agency unless a review is had pursuant to
55 section one hundred one of this chapter. Provided that no proceeding for
56 administrative or judicial review as provided in this chapter shall then

1 be pending and the time for initiation of such proceeding shall have
2 expired, the commissioner may file with the county clerk of the county
3 where the person against whom the penalty has been imposed has a place
4 of business the order of the commissioner or the decision of the indus-
5 trial board of appeals containing the amount of the civil penalty. The
6 filing of such order or decision shall have the full force and effect of
7 a judgment duly docketed in the office of such clerk. The order or deci-
8 sion may be enforced by and in the name of the commissioner in the same
9 manner, and with like effect, as that prescribed by the civil practice
10 law and rules for the enforcement of a money judgment.

11 5. If any model management company has failed to comply within twenty
12 days of an order by the commissioner to register or renew registration,
13 the commissioner may seek to enjoin such unlawful activity, pursuant to
14 the civil practice law and rules.

15 6. The attorney general may bring and maintain an action in a court of
16 competent jurisdiction to enforce the provisions of this article when
17 the attorney general has determined there is reasonable cause to believe
18 that a model management company has engaged in repeated fraudulent or
19 illegal acts or otherwise demonstrates persistent fraud or illegality in
20 the carrying on, conducting, or transacting of business.

21 7. (a) A model who is aggrieved by a violation of this article may
22 file a complaint with the commissioner within six years after the acts
23 alleged to have violated this article occurred. The commissioner shall
24 prescribe the form of the complaint, which shall include, at a minimum:

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

27 (ii) a statement detailing the terms of the model's contract, includ-
28 ing a copy of such contract if available;

29 (iii) the model's occupation;

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

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

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

38 (ii) Notice shall include:

39 (1) a copy of the complaint;

40 (2) materials of remedies available to the model for the violations of
41 said article by the person or entity named in the complaint;

42 (3) materials informing the person or entity that twenty days after
43 receiving the notice of complaint, the person or entity identified in
44 the complaint must answer; and

45 (4) materials informing the person or entity that failure to respond
46 to the complaint will create a rebuttable presumption in any civil
47 action commenced pursuant to this article that such person or entity
48 committed the violations alleged in the complaint.

49 (c) The response shall include:

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

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

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

56 (1) the response;

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

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

4 (ii) If the commissioner receives no response from the person or enti-
5 ty alleged to have violated this article to the notice of complaint
6 within the time provided by this subdivision, then there shall be a
7 rebuttable presumption that such person or entity committed the
8 violations alleged in the complaint. The commissioner shall mail a
9 notice of non-response to both the model and the person or entity named
10 in the complaint by regular mail and shall include with such notice
11 proof that the commissioner previously mailed the notice of complaint to
12 the person or entity named in the complaint by certified mail.

13 8. An aggrieved model may bring and maintain an action in a court of
14 competent jurisdiction to enforce the provisions of sections one thou-
15 sand thirty-four and one thousand thirty-five of this article. A model
16 management company that violates these sections shall be liable for
17 actual damages to any model that has suffered damages due to such
18 violation, reasonable attorneys' fees and costs, and, unless the employ-
19 er proves a good faith basis to believe that its actions were in compli-
20 ance with the law, an additional amount as liquidated damages in an
21 amount of no more than one hundred percent of the total amount of actual
22 damages, except such liquidated damages may be up to three hundred
23 percent if found that the actions were willful.

24 § 1039. Other legal requirements. Nothing in this article shall dimin-
25 ish the rights, privileges, wages, working conditions or remedies of any
26 employee under any applicable collective bargaining agreement.

27 § 2. This act shall take effect on the one hundred eightieth day after
28 it shall have become a law. Effective immediately, the addition, amend-
29 ment and/or repeal of any rule or regulation necessary for the implemen-
30 tation of this act on its effective date are authorized to be made and
31 completed on or before such effective date.