STATE OF NEW YORK

2477--C

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. HOYLMAN-SIGAL, GOUNARDES, JACKSON -- read twice and ordered printed, and when printed to be committed 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 Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

Section 1. The labor law is amended by adding a new article 36 to read as follows:

ARTICLE 36
NEW YORK STATE FASHION WORKERS ACT
Section 1030. Short title.
1031. Definitions.
1032. Registration required.
1033. Registration process.
1034. Duties of model management companies.
1035. Prohibitions on model management companies.
1036. Power of attorney.
1037. Duties of clients.
1038. Prohibitions on clients.
1039. Violations, penalties and procedures.
1040. Other legal requirements.

§ 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:

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

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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, 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 for a client or consents in writing to the transfer of their legal right to the use of their name, portrait, picture, image, or digital replica 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, content creators, performing artists and other persons who perform modeling services.

3. "Model 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. "Modeling services" includes the use of a digital replica.

5. "Exclusive representation" means an agreement, or a clause contained in an agreement, entered into between a model management company and a model that restricts such model 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's work for the model management company.

6. "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.

7. "Deal memo" means a plain language written summary in a language the model sufficiently understands of the key terms of any employment, engagement, entertainment, exhibition, or performance, including but not limited to the scope of work, rate of pay, payment term, usages, incurred expenses, and expectations of the model.

8. "Digital replica" means a significant, computer-generated or artificial intelligence-enhanced representation of a model's likeness, including but not limited to, their face, body, or voice, which substantially replicates or replaces the model's appearance or performance, excluding routine photographic edits such as color correction, minor retouching, or other standard post-production modifications.

§ 1032. Registration required. A model 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

services to persons in this state unless the model management company is registered under this article. No person shall use the name or title "modeling agency", "model 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 that does not comply with the provisions of this article shall not be a registered model management company in this state.

§ 1033. Registration process. 1. Except as otherwise provided in this section, each model 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 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 and the address of each office it maintains in New York state;

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

(d) a list by jurisdiction of each name under which the model 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 the ultimate parent of a model management group is a privately or closely held company, the model management company or model 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 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 its predecessors in the preceding five years. In the event the model management company or the ultimate parent of a model management group is a publicly traded company, the model management company or model 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 the ultimate parent of the model management group at the time of application.

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

3. Within two years 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 model management group with more than five employees that either work from a location in this state or perform work relating to models in this state shall deposit with the department a surety bond in the sum of fifty thousand dollars.

5. Every person licensed under the provisions of this article to carry on the business of a model management company or model management group shall pay to the commissioner a license fee in accordance with the following schedule before such license is issued. The minimum fee for said license shall be five hundred dollars, and for a model management company or model management group operating with more than four placement employees, seven hundred dollars, provided, however, that if the license is to run less than one year, the fee shall be two hundred fifty dollars and three hundred fifty dollars respectively, and if the license

is to run less than six months, the fee shall be one hundred twenty-five dollars and one hundred seventy-five dollars respectively. For the purpose of determining the license fee which a model management company or model management group shall pay, the applicant for such license shall state in the application to the commissioner the average number of placement employees employed by the applicant's model management company or model management group during the preceding calendar year; or, in the event that the applicant has not previously conducted a model management company or model management group under the provisions of this article, he or she shall state the average number of placement employees which he or she reasonably expects will be employed by the model management company or model management group during the calendar year in which the license is issued. If the application for a license is denied or withdrawn, one-half of the license fee provided herein shall be returned to the applicant.

6. Two or more model management companies that are majority owned by the same ultimate parent, entity or persons may be registered as a model management group. A model 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, each company that is a member of the group shall guarantee payment of all financial obligations of each other member.

7. A model management company shall be exempt from the registration requirements specified in this section if such model 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 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.

8. The registration and exemption of a model management company under subdivision seven of this section shall be valid for two years.

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

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

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

1. be deemed to have a fiduciary duty to the models they represent and shall be required to act in good faith, with the utmost honesty and integrity, in the best interests of the models. This fiduciary duty shall encompass all aspects of the model management company's representation, including, but not limited to, negotiations, contracts, financial management, and the protection of the models' legal and financial rights;

2. conduct due diligence to ensure that any employment or engagement booked through the model management company does not pose an unreasonable risk of danger to the model. An unreasonable risk of danger shall include, but not be limited to, failing to establish and communicate a zero tolerance policy for abuse, harassment, or any other form of inappropriate behavior;

3. use its best efforts to procure employment, engagements, entertainments, exhibitions or performances for a fee for models signed to the model management company;

4. 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;

5. provide models with physical or digital copies of the final agreements the model management company has negotiated with clients and deal memos memorializing such agreements, at least twenty-four hours prior to the commencement of a model's services pertaining to each agreement, in a language the model sufficiently understands;

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

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

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

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

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

11. submit to the department a form or forms of contract to be utilized by such model management company in entering into written contracts with models for the employment or engagement of the services of such model management company by such models, 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; and

12. obtain clear written consent for the creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use. This consent must be obtained separately from the representation agreement.

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

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

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

3. book any accommodation, payment of which shall be provided or reimbursed by the model in any way, without providing a written disclosure of the rate charged for the accommodation to the model in advance of such model's stay at the accommodation;

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

5. advance the cost of travel without informed written consent from the model;

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

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

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

9. take any retaliatory action against any model 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

10. engage in discrimination or harassment of any kind against a model because of any protected status covered under paragraph (a) of subdivision one of section two hundred ninety-six of the executive law; or

11. create, alter, or manipulate a model's digital replica using artificial intelligence without clear, conspicuous and separate written consent from the model.

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

(a) be presented as an optional component of the model management company's representation agreement to which the model can opt in or out;

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

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

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

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

§ 1037. Duties of clients. A client shall:

1. compensate models 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;

2. 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;

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

4. 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;

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

6. provide adequate levels of liability insurance to cover and safeguard the health and safety of models; and

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

§ 1038. Prohibitions on clients. A client shall not:

1. engage in discrimination or harassment of any kind against a model because of any protected status covered under paragraph (a) of subdivision one of section two hundred ninety-six of the executive law; or

2. create, alter, or manipulate a model's digital replica using artificial intelligence without clear and conspicuous prior written consent from the model.

§ 1039. Violations, penalties and procedures. 1. Any model management company or person purporting to be a model 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 person purporting to be a model 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 person purporting to be a model 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, a person purporting to be a model management company, and all persons or entities that own a five percent or greater interest in the model 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 person purporting to be a model 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. A model may bring and maintain an action in a court of competent jurisdiction to enforce the provisions of this article. A model management company, person purporting to be a model management company, or client that violates this article shall be liable for actual damages to any model that has suffered damages due to such violation, reasonable attorneys' fees and costs, and, unless the employer proves a good faith basis to believe that its actions were in compliance with the law, an additional amount as liquidated damages in an amount of no more than one hundred percent of the total amount of actual damages, except such liquidated damages may be up to three hundred percent if found that the actions were willful.

8. 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, person purporting to be a model management company, or client has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transacting of business.

9. (a) A model who is aggrieved by a violation of this article may file a complaint with the commissioner within six 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 and of the person or entity alleged to have violated this article;

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

(iii) the model'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 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 has been paid in full and proof of such payment; or

(ii) a written statement that the model 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 a copy of:

(1) the response;

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

(3) materials informing the model that the model 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 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.

§ 1040. Other legal requirements. Nothing in this article shall diminish the rights, privileges, wages, working conditions or remedies of any employee under any applicable collective bargaining agreement.

§ 2. This act shall take effect on the one hundred eightieth 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.