STATE OF NEW YORK

4442

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the tax law, in relation to enacting the "New York State Transparency in Supply Chains Act", and to require businesses within the state to disclose their preventative measures against human trafficking

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 "New York state transparency in supply chains act".

§ 2. Legislative intent. The legislature hereby finds that human trafficking is a crime under state, federal and international law, and that these crimes exist in every country, including the United States, and the state of New York. As a result of the criminal nature of human trafficking, this crime is often difficult to uncover and track. Significant legislative efforts have been made to capture and punish the perpetrators of this crime and also to ensure that victims of human trafficking are provided with the necessary rights and protections. However, legislative efforts to address the market for goods and products tainted by human trafficking have been lacking, with the market being a key impetus for these crimes. Studies have shown that a number of goods from all over the world are believed to be produced by forced labor or child labor in violation of international standards, and consumers and businesses are inadvertently promoting and sanctioning these crimes through the purchase of goods and products that have been tainted in the supply chain. Absent public available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of human trafficking. Consumers are at a disadvantage in being able to force the eradication of human trafficking by way of their purchasing decisions. The purpose of this law is to ensure that large retailers and

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

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manufacturers provide consumers with accurate information regarding their efforts to eradicate human trafficking from their supply chain processes, to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of human trafficking.

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

§ 399-mm. Human trafficking supply chain transparency. 1. 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 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:

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

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

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

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

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

(6) tax refunds and other tax benefit recoveries;

(7) pension reversions;

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

(9) income from discharge of indebtedness;

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

(11) 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

(12) 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) "Manufacturer" shall mean a business entity which lists manufacturing as its principal business activity in the state of New York, as reported on the entity's state business tax return;

(d) "Retail seller" shall mean a business entity which lists retail trade as its principal business activity in the state of New York, as reported on the entity's state business tax return.

2. Every retail seller and manufacturer doing business in the state and having annual worldwide gross receipts that exceed one hundred million dollars shall disclose, as set forth in subdivision three of this section, its efforts to eradicate human trafficking from its direct supply chain for tangible goods offered for sale.

3. The disclosure described in subdivision two of this section shall be posted on the retail seller's or manufacturer's internet website with clear and easily understood link to the required information placed on the business' homepage. In the event the retail seller or manufacturer does not have an internet website, consumers shall be provided the written disclosure within thirty days of receiving a written request for the disclosure from a consumer.

4. The disclosure described in subdivision two of this section shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:

(a) engages in verification of product supply chains to evaluate and address risks of human trafficking. Such disclosure shall specify if the verification was not conducted by a third party;

(b) conducts audits of suppliers to evaluate supplier compliance with company standards for human trafficking in supply chains. Such disclosure shall specify if the verification was not an independent, unannounced audit;

(c) requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding human trafficking of the country or countries in which they are doing business;

(d) maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding human trafficking;

(e) provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking, particularly with respect to mitigating risks within the supply chain of products; and

5. The exclusive remedy for a violation of this section shall be an action brought by the attorney general for injunctive relief. Nothing in this section shall limit remedies available for a violation of any other state of federal law.

§ 4. The tax law is amended by adding a new section 220 to read as follows:

§ 220. Human trafficking reports required by business entities. 1. Notwithstanding any provision of law, the commissioner shall make available to the attorney general a list of retail sellers and manufacturers required to disclose efforts to eradicate human trafficking pursuant to section three hundred ninety-nine-mm of the general business law. The list shall be based on the tax return filed by the business in the previous tax year.

2. Each list required by this section shall be submitted annually to the attorney general by the thirtieth of November. The list shall be derived annually from original tax returns received by the state on or before the thirty-first of December.

3. Each annual list required by this section shall include the following:

(a) the entity's name; and

(b) the state tax identification number.

§ 5. This act shall take effect immediately.