

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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state transparency in supply chains act".
3 § 2. Legislative intent. The legislature hereby finds that human traf-
4 ficking is a crime under state, federal and international law, and that
5 these crimes exist in every country, including the United States, and
6 the state of New York. As a result of the criminal nature of human traf-
7 ficking, this crime is often difficult to uncover and track. Signif-
8 icant legislative efforts have been made to capture and punish the
9 perpetrators of this crime and also to ensure that victims of human
10 trafficking are provided with the necessary rights and protections.
11 However, legislative efforts to address the market for goods and
12 products tainted by human trafficking have been lacking, with the market
13 being a key impetus for these crimes. Studies have shown that a number
14 of goods from all over the world are believed to be produced by forced
15 labor or child labor in violation of international standards, and
16 consumers and businesses are inadvertently promoting and sanctioning
17 these crimes through the purchase of goods and products that have been
18 tainted in the supply chain. Absent public available disclosures,
19 consumers are at a disadvantage in being able to distinguish companies
20 on the merits of their efforts to supply products free from the taint of
21 human trafficking. Consumers are at a disadvantage in being able to
22 force the eradication of human trafficking by way of their purchasing
23 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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1 manufacturers provide consumers with accurate information regarding
2 their efforts to eradicate human trafficking from their supply chain
3 processes, to educate consumers on how to purchase goods produced by
4 companies that responsibly manage their supply chains, and, thereby, to
5 improve the lives of victims of human trafficking.

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

8 § 399-mm. Human trafficking supply chain transparency. 1. As used in
9 this section, the following terms shall have the following meanings:

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

12 (b) "Gross receipts" shall mean the gross amounts realized, otherwise
13 known as the sum of money and the fair market value of other property or
14 services received, on the sale or exchange of property, the performance
15 of services, or the use of property or capital, including rents, royalti-
16 ties, interest, and dividends, in a transaction that produces business
17 income, in which the income, gain, or loss is recognized, or would be
18 recognized if the transaction were in the United States, under the
19 Internal Revenue Code, as applicable for purposes of this section.
20 Amounts realized on the sale or exchange of property shall not be
21 reduced by the cost of goods sold or the basis of property sold. Gross
22 receipts, even if business income, shall not include the following
23 items:

24 (1) repayment, maturity, or redemption of the principal of a loan,
25 bond, mutual fund, certificate of deposit, or similar marketable instru-
26 ment;

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

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

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

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

33 (6) tax refunds and other tax benefit recoveries;

34 (7) pension reversions;

35 (8) contributions to capital (except for sales of securities by secu-
36 rities dealers);

37 (9) income from discharge of indebtedness;

38 (10) amounts realized from exchanges of inventory that are not recog-
39 nized under the Internal Revenue Code;

40 (11) amounts received from transactions in intangible assets held in
41 connection with a treasury function of the taxpayer's unitary business
42 and the gross receipts and overall net gains from the maturity, redemp-
43 tion, sale, exchange, or other disposition of those intangible assets;
44 and

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

50 (c) "Manufacturer" shall mean a business entity which lists manufac-
51 turing as its principal business activity in the state of New York, as
52 reported on the entity's state business tax return;

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

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

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

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

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

19 (b) conducts audits of suppliers to evaluate supplier compliance with
20 company standards for human trafficking in supply chains. Such disclo-
21 sure shall specify if the verification was not an independent, unan-
22 nounced audit;

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

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

29 (e) provides company employees and management, who have direct respon-
30 sibility for supply chain management, training on human trafficking,
31 particularly with respect to mitigating risks within the supply chain of
32 products; and

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

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

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

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

50 3. Each annual list required by this section shall include the follow-
51 ing:

52 (a) the entity's name; and

53 (b) the state tax identification number.

54 § 5. This act shall take effect immediately.