

STATE OF NEW YORK

4333--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. KELLES, EPSTEIN, SIMON, HEVESI, GONZALEZ-ROJAS, FORREST, BURGOS, WEPRIN, REYES, FAHY, STECK, SEAWRIGHT, MITAYNES, GALLAGHER, RAGA, SIMONE, SHRESTHA, CUNNINGHAM, BORES, OTIS, LEVENBERG, CARROLL, THIELE, STERN, L. ROSENTHAL, RAJKUMAR, KIM, GUNTHER, ANDERSON, GLICK, LUNSFORD, BARRETT, SHIMSKY, MAMDANI, DINOWITZ, SANTABARBARA, JACOBSON, TAYLOR, CLARK, PAULIN, BICHOTTE HERMELYN, LAVINE, SLATER, EACHUS, DE LOS SANTOS, ARDILA, SILLITTI, SOLAGES, CONRAD, CRUZ, BENEDETTO, JACKSON, PRETLOW, TAPIA, STIRPE, MEEKS, LUPARDO, MCMAHON, LEE -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to requiring fashion sellers to be accountable to environmental and social standards; and to amend the state finance law, in relation to establishing a fashion remediation fund

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 "Fashion sustainability and social accountability act".

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

§ 399-mm. Fashion sustainability and social accountability act. 1. Definitions. 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

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

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1 income, in which the income, gain, or loss is recognized, or would be
2 recognized if the transaction were in the United States, under the
3 Internal Revenue Code, as applicable for purposes of this section.
4 Amounts realized on the sale or exchange of property shall not be
5 reduced by the cost of goods sold or the basis of property sold. Gross
6 receipts, even if business income, shall not include the following
7 items:

8 (i) repayment, maturity, or redemption of the principal of a loan,
9 bond, mutual fund, certificate of deposit, or similar marketable instru-
10 ment;

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

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

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

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

17 (vi) tax refunds and other tax benefit recoveries;

18 (vii) pension reversions;

19 (viii) contributions to capital, except for sales of securities by
20 securities dealers;

21 (ix) income from discharge of indebtedness;

22 (x) amounts realized from exchanges of inventory that are not recog-
23 nized under the Internal Revenue Code;

24 (xi) amounts received from transactions in intangible assets held in
25 connection with a treasury function of the taxpayer's unitary business
26 and the gross receipts and overall net gains from the maturity, redemp-
27 tion, sale, exchange, or other disposition of those intangible assets;
28 and

29 (xii) amounts received from hedging transactions involving intangible
30 assets. A "hedging transaction" means a transaction related to the
31 taxpayer's trading function involving futures and options transactions
32 for the purpose of hedging price risk of the products or commodities
33 consumed, produced, or sold by the taxpayer.

34 (c) "Fashion seller" shall mean a business entity which sells articles
35 of wearing apparel, footwear, or fashion bags that together exceed one
36 hundred million dollars in annual gross receipts, but shall not include
37 the sale of used wearing apparel, footwear, or fashion bags, nor shall
38 it include multi-brand retailers, except where the apparel, footwear,
39 and fashion bag private labels of those companies together exceed one
40 hundred million dollars in global revenue.

41 (d) "Article of wearing apparel" shall mean any costume or article of
42 clothing worn or intended to be worn by individuals.

43 (e) "Footwear" shall mean any covering worn or intended to be worn on
44 the foot.

45 (f) "Fashion bag" shall mean flexible packaging made of textiles,
46 leather or other animal products, woven material or other similar mate-
47 rials intended for repeated use.

48 (g) "Due diligence" shall mean the comprehensive process companies
49 shall carry out to identify, cease, prevent, mitigate, account for, and
50 remediate actual and potential adverse impacts to human rights and the
51 environment in their own operations and in their supply chain, in
52 compliance with, at a minimum, the standards outlined in the most recent
53 Organisation for Economic Co-operation and Development Guidelines for
54 Multinational Enterprises, and the most recent Organisation for Economic
55 Co-operation and Development Due Diligence Guidance for Responsible
56 Supply Chains in the Garment and Footwear Sector.

1 (h) "Due diligence report" shall mean the document prepared by the
2 company to communicate all relevant information concerning the exist-
3 ence, implementation and outcomes of due diligence in order to comply
4 with the requirements of this section, and to comply with any rules or
5 regulations established pursuant to this section.

6 (i) "Risk-based approach" shall mean commensurate to the likelihood
7 and severity of the harm. The fashion seller shall prioritize the order
8 in which it takes action based on the likelihood and severity of harm.
9 Severity of impacts shall be determined according to their scale or
10 gravity, scope, and irremediable character.

11 (j) "Supply chain tiers" shall mean a four tier system defined as the
12 following:

13 (i) "Tier one" shall mean suppliers who produce finished goods for
14 fashion sellers, including suppliers' subcontractors, who provide the
15 following services, including but not limited to sewing and embroider-
16 ing;

17 (ii) "Tier two" shall mean suppliers to tier one, including subcon-
18 tractors, who provide the following services or goods, including but not
19 limited to knitting, weaving, washing, dyeing, finishing, printing for
20 finished goods, and components and materials for finished goods when
21 they are stand-alone operations and not integrated with tier one. Compo-
22 nents shall mean materials used to build a product, including but not
23 limited to buttons, zippers, rubber soles, down, and fusibles;

24 (iii) "Tier three" shall mean suppliers to tier two suppliers, includ-
25 ing subcontractors, who process raw materials, such as ginning, spin-
26 ning, and suppliers of chemicals; and

27 (iv) "Tier four" shall mean companies, including subcontractors, that
28 provide raw materials to tier three.

29 (k) "Independently verified" shall mean audited by a verification body
30 accredited by the department of state as described in subdivision five
31 of this section.

32 (l) "Living wage" shall mean the remuneration received for a standard
33 workweek by a worker in a particular place sufficient to afford a decent
34 standard of living for such worker and their family. Elements of a
35 decent standard of living include food, water, housing, education,
36 health care, transportation, clothing, and other essential needs includ-
37 ing provision for unexpected events. Living wage shall be determined
38 exclusive of overtime wages and by net wages including in-kind and cash
39 benefits, and deducting taxes and deductions.

40 (m) "Open data principles" shall mean data that can be freely used,
41 reused and redistributed by anyone. Such data shall be findable or easi-
42 ly discoverable on a website or within a database, accessible or avail-
43 able in a machine readable, convenient, modifiable form and published as
44 a whole, complete dataset, interoperable or able to be mixed with
45 different datasets, and reusable or provided under an open license that
46 permits reuse and redistribution, including the intermixing with other
47 datasets.

48 (n) "Labor organizations" means any labor union or any organization of
49 any kind, or any agency or employee representation committee, associ-
50 ation, group or plan, in which employees participate and which exists
51 for the purpose, in whole or in part, of dealing with employers concern-
52 ing grievances, labor disputes, wages, rates of pay, hours of employment
53 or conditions of work.

54 (o) "Employee" shall mean all workers, whether full-time or part-time,
55 permanent or fixed-term, directly contracted or hired indirectly through
56 an agency or other intermediary.

1 2. Due Diligence. (a) Every fashion seller shall effectively carry out
2 human rights and environmental due diligence for the portions of their
3 business related to wearing apparel, footwear or fashion bags, including
4 wearing apparel, footwear or fashion bags produced as a private label,
5 which shall include:

6 (i) supply chain mapping:

7 (1) companies taking a risk-based approach and implementing good faith
8 efforts to map suppliers across tier one through tier four of
9 production. Tier one suppliers shall be mapped within twelve months of
10 the effective date of this section, and shall contain one hundred
11 percent of suppliers by volume. Tier two suppliers shall be mapped with-
12 in two years of the effective date of this section, and shall contain a
13 minimum of seventy-five percent of suppliers by volume. Tier three and
14 tier four suppliers shall be mapped within three years of the effective
15 date of this section and shall contain a minimum of fifty percent of
16 suppliers by volume or dollar value.

17 (2) supplier disclosure for all tiers shall include the name, address,
18 parent company, product type and number of workers at each site by coun-
19 try;

20 (3) for tier one suppliers, fashion sellers shall report, at a mini-
21 mum, the following information to the attorney general, which shall be
22 independently verified no less than once every two years:

23 (A) the mean wages of workers, and how this compares with local mini-
24 mum wage and living wages;

25 (B) the percentage of unionized factories; and

26 (C) hours worked weekly by month and the hours and frequency of over-
27 time by firm and country.

28 (ii) in carrying out effective due diligence, fashion sellers shall be
29 in compliance with the Organisation for Economic Co-operation and Devel-
30 opment Guidelines for Multinational Enterprises and the Organisation for
31 Economic Co-operation and Development Due Diligence Guidance for Respon-
32 sible Supply Chains in the Garment and Footwear Sector, requiring fash-
33 ion sellers to, at a minimum:

34 (1) embed responsible business conduct into the company's policies and
35 management systems;

36 (2) identify areas of significant risks in the contexts of its own
37 activities and business and supply chain relationships;

38 (3) identify, prioritize, and assess the significant potential and
39 actual adverse impacts of those risks;

40 (4) cease, prevent or mitigate those risks. This shall include, but
41 not be limited to:

42 (A) non-compliance shall include employees of tier one garment suppli-
43 ers not receiving their due wages and other monetary benefits. For the
44 purposes of this section, wages shall be inclusive of all monies owed in
45 accordance with the law of the country of manufacture, including wages,
46 overtime wages, paid leave, incentives, bonuses, severance and any other
47 form of payment or compensation. For the purposes of this section,
48 employees shall include all workers, whether full-time or part-time,
49 permanent or fixed-term, directly contracted or hired indirectly through
50 an agency or other intermediary;

51 (B) incentivizing improved supplier performance on workers' rights and
52 environmental impact by embedding responsible purchasing practices in
53 its supply chain relationships and contracts, including but not limited
54 to contract renewals, longer term contracts, price premiums, providing
55 reasonable assistance to suppliers so that they can meet applicable
56 human rights and environmental standards including but not limited to

1 meeting the carbon emission reduction targets set out in this section,
2 and developing pricing models that account for the cost of wages, bene-
3 fits, and investments in suitable work, specifically as reflected in
4 freight on board prices together with traditional pricing consider-
5 ations, such as quantities being purchased, cost of materials, and skill
6 requirements. Wages, benefits, and investments shall, at a minimum, be
7 in line with the requirements set out in local labor laws, including
8 minimum wage laws;

9 (C) utilizing responsible exit or disengagement strategies;

10 (D) consulting and engaging with impacted and potentially impacted
11 stakeholders and rights holders and their representatives;

12 (E) establishing quantitative baseline and reduction targets on green-
13 house gas emissions. Greenhouse gas emissions inventory shall be
14 reported annually, include absolute figures and conform with the
15 accounting and reporting requirements of the most recent Greenhouse Gas
16 Protocol Corporate Accounting and Reporting Standard, Scope Two Guid-
17 ance, and the most recent Corporate Value Chain Scope Three accounting
18 and reporting standard promulgated by the World Resources Institute and
19 the World Business Council for Sustainable Development. Greenhouse gas
20 emissions inventory reported in the due diligence report described in
21 subdivision three of this section shall be independently verified no
22 less than once every two years. Within four years of the effective date
23 of this section, primary data shall be used to capture tier two and tier
24 three inventory of the most significant suppliers contributing to green-
25 house gas emissions. Significant suppliers shall mean suppliers repres-
26 enting seventy-five percent of fabric by volume in tier two and fifty
27 percent of fabric by volume in tier three. Greenhouse gas emission
28 reduction targets must be near-term and long-term, covering scopes one,
29 two and three emissions, and align with, at a minimum, Science Based
30 Targets initiative's most recent target validation criteria as promul-
31 gated by World Resources Institute, CDP, United Nations Global Compact
32 and the World Wildlife Fund. For fashion sellers with global revenue
33 over one billion dollars, the Absolute Contraction Approach must be used
34 to calculate scope three emissions. Fashion sellers shall meet targets
35 and report their compliance on an annual basis in their due diligence
36 report, as described in subdivision three of this section. If found to
37 be out of compliance, fashion sellers shall have eighteen months to
38 remedy their emissions and return to the necessary reduction pathway to
39 deliver on their targets. In non-target years, non-compliance shall mean
40 an increase in absolute emissions in three consecutive years, for compa-
41 nies over a billion dollars in revenue. In target years, non-compliance
42 shall mean not reaching the target.

43 (F) in compliance with, at a minimum, the Zero Discharge of Hazardous
44 Chemicals Program's most recent wastewater guidelines, fashion sellers
45 shall be required, for all significant tier two dyeing, finishing and
46 garment washing suppliers, to sample and report on wastewater chemical
47 concentrations and water usage, within two years of the effective date
48 of this section. Such reports shall be independently verified. Fashion
49 sellers shall also provide corrective action plans for their wastewater
50 treatment within thirty months of the effective date of this section.
51 After three years of the effective date of this section, fashion sellers
52 shall be considered out of compliance if their significant tier two
53 dyeing, finishing and garment suppliers have not made adequate progress
54 in remediation of wastewater pollution concentrations. Significant
55 suppliers shall mean suppliers representing seventy-five percent of
56 fabric by volume;

1 (5) track implementation and results;

2 (6) provide for or co-operate in remediation in the event of an
3 adverse impact:

4 (A) remedies shall seek to restore the affected person or persons,
5 where practicable, to the situation they would have been in had the
6 adverse impact not occurred and shall enable remediation that is propor-
7 tionate to the significance and scale of the adverse impact;

8 (B) remedies shall include, depending on the nature and extent of the
9 adverse impact, apologies, restitution or rehabilitation including rein-
10 statement of dismissed workers, recognition of the labor organization
11 for the purpose of collective bargaining, financial or non-financial
12 compensation including establishing compensation funds for victims, or
13 for future outreach and educational programs, punitive sanctions includ-
14 ing the dismissals of staff responsible for wrongdoing, and taking meas-
15 ures to prevent future adverse impacts; and

16 (C) in relation to human rights impacts, fashion sellers shall consult
17 and engage with impacted rights holders and their representatives when
18 determining the remedy.

19 (b) The due diligence requirements pursuant to this subdivision shall
20 not be conditional upon the company being effectively involved in the
21 subsidiary's day-to-day operations or exercising a sufficient degree of
22 control on companies within its supply chain.

23 3. Reporting. Every fashion seller shall develop and submit to the
24 office of the attorney general annually, beginning within eighteen
25 months of the effective date of this section, a due diligence report.
26 Such report, excluding the information required in clause three of
27 subparagraph (i) of paragraph (a) of subdivision two of this section,
28 shall also be made publicly available on the fashion seller's website in
29 a machine readable and reusable format, published in line with open data
30 principles through a clear and easily discoverable link to the required
31 information. In the event the fashion seller does not have an internet
32 website, the company shall provide a written disclosure to any person
33 who has requested information within thirty days of receiving a request.
34 Such report shall also include the fashion seller's annual volume of
35 material produced, including breakdown by material type.

36 4. Regulations. The department of state shall, in consultation with
37 the department of environmental conservation and department of labor,
38 promulgate all rules and regulations necessary to implement the
39 provisions of this section within six months from the effective date of
40 this section. The department of state, in consultation with the depart-
41 ment of environmental conservation and department of labor, shall also
42 develop and disseminate educational materials to fashion sellers,
43 including providing alerts on time sensitive issues, emerging issues,
44 and high-risk country situations, and assisting fashion sellers in
45 improving the quality of their due diligence processes. The department
46 of state shall, in consultation with the Greenhouse Gas Protocol, devel-
47 op methodologies to calculate data capture as laid out in item (E) of
48 clause four of subparagraph (ii) of paragraph (a) of subdivision two of
49 this section, prior to that requirement becoming effective.

50 5. Verification. (a) The department of state shall, in consultation
51 with the department of environmental conservation and department of
52 labor, develop a process for accrediting verification bodies authorized
53 to provide verification services for the purposes of this section,
54 including which requirements the entity is authorized to verify.

55 (b) Such process shall at a minimum consider:

(i) the demonstrated qualifications of verification staff, including their education, experience, and professional licenses. Verification bodies must employ and retain at least five total full-time staff with expertise in the requirements they seek to verify under this section;

(ii) any judicial proceedings, enforcement actions, or administrative actions filed against the body within the previous five years; and

(iii) the policies and mechanisms in place to prevent conflicts of interest and to identify and resolve potential conflict of interest situations if they arise. The department shall require applicants to submit the following information, at a minimum:

(1) identification of services provided by the verification body, the industries that the body serves, and the locations where those services are provided;

(2) a detailed organizational chart that includes the verification body, its management structure, and any related entities; and

(3) the verification body's internal conflict of interest policy that identifies activities and limits to monetary or non-monetary gifts that apply to all employees and procedures to monitor conflicts of interest.

(c) Verification bodies shall not be authorized to provide services to a company where a conflict of interest exists. A conflict of interest shall include:

(i) where the verification body and reporting entity share any management staff or board of directors membership, or any of the senior management staff of the reporting entity have been employed by the verification body, or vice versa, within the previous five years;

(ii) any employee of the verification body, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided the reporting entity with services related to the areas of verification, or any services designated by the department of state, within the previous five years;

(iii) any staff member of the verification body provides any type of non-monetary incentive to a reporting entity to secure a verification services contract; and

(iv) any additional criteria provided by the department of state.

(d) Verification bodies that have been accredited by the department of state shall notify the department within thirty days if they no longer meet the verification requirements set forth by this section.

6. Enforcement. (a) The requirements imposed on fashion sellers by this section shall be monitored, investigated, and enforced by the attorney general or an administrator designated by the attorney general to bring civil proceedings for an injunction, or fines for monetary damages as described in this section, or civil performance of a statutory duty. Fashion sellers shall be deemed non-compliant with this section if they fail to conduct effective due diligence pursuant to subdivision two of this section or fail to file a due diligence report pursuant to subdivision three of this section.

(b) The attorney general, or the attorney general's designated administrator as applicable, shall annually publish and make publicly available a report regarding compliance with this section, listing the fashion sellers who are known to be out of compliance with this section and including an up-to-date report on the attorney general's monitoring of such compliance.

(c) Fashion sellers found to be out of compliance with this section after the attorney general, or the attorney general's designated administrator as applicable, has provided notice of non-compliance, and after a three-month period to meet obligations under this section has lapsed,

1 may be fined up to two percent of annual revenues. Such fines shall be
2 deposited in the community benefit fund established by section ninety-
3 seven-ccc of the state finance law.

4 (d) The attorney general, or the attorney general's designated admin-
5 istrator shall use a risk-based approach in enforcement and shall
6 publish enforcement guidelines.

7 (e) Any person may report a violation of this section to the attorney
8 general's office.

9 (f) Tier one employees or their representative labor organization may
10 commence a civil action against any fashion seller for a violation of
11 item (A) of clause four of subparagraph (ii) of paragraph (a) of subdi-
12 vision two of this section, if the attorney general does not bring a
13 case within six months of notification of non-compliance from tier one
14 employees or their representative labor organization. For the purposes
15 of this section, employees shall include all workers, whether full-time
16 or part-time, permanent or fixed-term, directly contracted or hired
17 indirectly through an agency or other intermediary.

18 (i) tier one employees do not need to exhaust administrative or judi-
19 cial remedies in the country of their employment before bringing a
20 claim.

21 (ii) class claims can be brought by both tier one employees acting as
22 class representatives, and by labor organizations representing workers.

23 (iii) courts can award attorneys' fees and costs to successful plain-
24 tiffs. Fees may be awarded based on a reasonable hourly rate for
25 services rendered, irrespective of the amount of recovery.

26 (iv) Courts may establish proportional awards or penalties depending
27 on the share of responsibility held by fashion sellers in violation of
28 item (A) of clause four of subparagraph (ii) of paragraph (a) of subdi-
29 vision two of this section. Courts may change the total awards or penal-
30 ties of fashion sellers found to be non-compliant to the degree that
31 fashion sellers either have or have not taken or are taking actions
32 towards compliance of item (A) of clause four of subparagraph (ii) of
33 paragraph (a) of subdivision two of this section.

34 (v) an administrative or judicial ruling on the claim in the country
35 of manufacture will be considered persuasive but not dispositive
36 evidence as to liability.

37 § 3. The state finance law is amended by adding a new section 97-ccc
38 to read as follows:

39 § 97-ccc. Fashion remediation fund. 1. There is hereby established in
40 the joint custody of the comptroller, the commissioner of taxation and
41 finance, the commissioner of environmental conservation, and the commis-
42 sioner of labor a special fund to be known as the fashion remediation
43 fund.

44 2. Such fund shall consist of all moneys deposited pursuant to para-
45 graph (c) of subdivision six of section three hundred ninety-nine-mm of
46 the general business law.

47 3. The moneys in the fund shall be expended by the comptroller to make
48 tier one garment workers whole, in the case where they have demonstrated
49 in a court action pursuant to paragraph (f) of subdivision six of
50 section three hundred ninety-nine-mm of the general business law that
51 they have not received due wages and the court has found that the fash-
52 ion seller has performed effective due diligence. Any additional funds
53 may be expended by the comptroller in consultation with the department
54 of environmental conservation, the department of labor and relevant
55 stakeholders for the purpose of implementing one or more environmental
56 benefit projects or labor remediation projects that directly and verifi-

ably benefit the workers and communities directly impacted, to the extent practicable, at the location the injury has occurred.

4. On or before the first day of February each year, the comptroller shall certify to the temporary president of the senate, and the speaker of the assembly, the amount of money deposited by source in the fund during the preceding calendar year, as well as all disbursements from the fund during the preceding calendar year.

5. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers certified and approved by the commissioner of environmental conservation and the commissioner of labor, as applicable.

§ 4. The attorney general shall certify to the governor that the office of the attorney general is prepared to execute the duties assigned in subdivision 6 of section 399-mm of the general business law within one year following the effective date of this act. If, after the expiration of one year, the attorney general requires more time to certify that the office of the attorney general is prepared to execute such duties, the attorney general may, for good cause shown, apply to the governor for an extension of time. The governor may grant or deny an extension of up to one year according to their discretion.

§ 5. Severability. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect immediately; provided, however, subdivision 6 of section 399-mm of the general business law as added by section two of this act shall take effect one year after the attorney general certifies that the office of the attorney general is prepared to execute the duties assigned in such subdivision. The attorney general shall notify the legislative bill drafting commission upon the occurrence of such certification in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.