

# STATE OF NEW YORK

5631--B

2023-2024 Regular Sessions

## IN ASSEMBLY

March 20, 2023

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 -- 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

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:

### 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.

15 § 1030. Short title. This article shall be known and may be cited as  
16 the "New York State Fashion Workers Act".

17 § 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 1. "Client" means a retail store, a manufacturer, a clothing designer,  
2 an advertising agency, a photographer, a publishing company or any other  
3 such person or entity that receives modeling services from a model,  
4 directly or through intermediaries.

5 2. "Model" means an individual, regardless of the individual's status  
6 as an independent contractor or employee, who performs modeling services  
7 for a client or consents in writing to the transfer of their legal right  
8 to the use of their name, portrait, picture, image, or digital replica  
9 for advertising purposes or for the purposes of trade, directly to a  
10 client or who provides showroom, parts, or fit modeling services. The  
11 term "model" shall include influencers, content creators, performing  
12 artists and other persons who perform modeling services.

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

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

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

20 (c) renders vocational guidance or counselling services to models for  
21 a fee.

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

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

37 6. "Department" means the department of labor and "commissioner" means  
38 the commissioner of labor, except that a city with a population of one  
39 million or more may, by local law, designate a city agency to enforce  
40 the provisions of this article within the jurisdiction of such city, in  
41 which case "department" shall refer to the agency designated by such  
42 local law and "commissioner" shall refer to the head of such agency.

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

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

54 § 1032. Registration required. A model management company shall not  
55 engage in business from offices in this state or enter into any arrange-  
56 ment with a person for the purpose of providing model management company

1 services to persons in this state unless the model management company is  
2 registered under this article. No person shall use the name or title  
3 "modeling agency", "model management company", or otherwise represent  
4 that it is registered under this article unless the entity or person is  
5 registered under this article. A model management company that does not  
6 comply with the provisions of this article shall not be a registered  
7 model management company in this state.

8 § 1033. Registration process. 1. Except as otherwise provided in this  
9 section, each model management company required to be registered under  
10 this article shall provide the department with information required by  
11 the department on forms that the department specifies. At a minimum,  
12 model management companies shall provide the following information:

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

14 (b) the address of the principal place of business of the model  
15 management company and the address of each office it maintains in New  
16 York state;

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

19 (d) a list by jurisdiction of each name under which the model manage-  
20 ment company has operated in the preceding five years, including any  
21 alternative names, names of predecessors and, if known, successor busi-  
22 ness entities; and

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

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

39 3. Within two years of the initial registration or any renewal regis-  
40 tration, each registrant shall renew its registration by notifying the  
41 department of any changes in the information previously provided pursu-  
42 ant to this section.

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

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

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

16 6. Two or more model management companies that are majority owned by  
17 the same ultimate parent, entity or persons may be registered as a model  
18 management group. A model management group may satisfy any reporting and  
19 financial requirements of this article on a consolidated basis. As a  
20 condition of registration as a model management group, each company that  
21 is a member of the group shall guarantee payment of all financial obli-  
22 gations of each other member.

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

25 (a) submits a properly executed request for registration and exemption  
26 on a form provided by the department;

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

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

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

34 9. The department shall maintain a list of model management companies  
35 registered under this article and shall issue a certificate of registra-  
36 tion to each model management company duly registered.

37 10. The department may prescribe forms necessary to promote the effi-  
38 cient administration of this section.

39 § 1034. Duties of model management companies. A model management  
40 company shall:

41 1. be deemed to have a fiduciary duty to the models they represent and  
42 shall be required to act in good faith, with the utmost honesty and  
43 integrity, in the best interests of the models. This fiduciary duty  
44 shall encompass all aspects of the model management company's represen-  
45 tation, including, but not limited to, negotiations, contracts, finan-  
46 cial management, and the protection of the models' legal and financial  
47 rights;

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

54 3. use its best efforts to procure employment, engagements, enter-  
55 tainments, exhibitions or performances for a fee for models signed to  
56 the model management company;

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

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

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

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

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

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

29 10. include, in clear and legible type, the registration number of the  
30 model management company in any advertisement, including social media  
31 profiles for the model management company, for the purpose of the solici-  
32 itation of models for the model management company and in any contract  
33 with a model or client;

34 11. submit to the department a form or forms of contract to be  
35 utilized by such model management company in entering into written  
36 contracts with models for the employment or engagement of the services  
37 of such model management company by such models, and secure the approval  
38 of the department thereof, provided the department shall not withhold  
39 approval unless such proposed form of contract is unfair, unjust and  
40 oppressive to the model; and

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

45 § 1035. Prohibitions on model management companies. A model management  
46 company shall not:

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

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

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

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

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

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

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

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

15 9. take any retaliatory action against any model who files or attempts  
16 to file a complaint pursuant to this article or declines or discontinues  
17 participation in any casting or booking on account of reasonable, good  
18 faith concerns regarding an actual or potential violation of this arti-  
19 cle; or

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

23 11. create, alter, or manipulate a model's digital replica using arti-  
24 ficial intelligence without clear, conspicuous and separate written  
25 consent from the model.

26 § 1036. Power of attorney. 1. Any power of attorney agreement between  
27 a model management company and a model shall:

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

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

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

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

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

40 § 1037. Duties of clients. A client shall:

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

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

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

53 4. ensure that any employment, engagement, entertainment, exhibition  
54 or performance which requires nudity or other sexually explicit material  
55 shall comply with the requirements of subdivision three of section

1 fifty-two-c of the civil rights law, as added by chapter three hundred  
2 four of the laws of two thousand twenty;

3 5. allow the model to be accompanied by their agent, manager, chapter-  
4 one, or other representative to any employment, engagement, enter-  
5 tainment, exhibition or performance;

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

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

11 § 1038. Prohibitions on clients. A client shall not:

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

15 2. create, alter, or manipulate a model's digital replica using arti-  
16 ficial intelligence without clear and conspicuous prior written consent  
17 from the model.

18 § 1039. Violations, penalties and procedures. 1. Any model management  
19 company or person purporting to be a model management company who has  
20 failed to comply with the registration requirements of section one thou-  
21 sand thirty-two of this article shall be deemed to have violated this  
22 article.

23 2. Any model management company or person purporting to be a model  
24 management company who has failed to comply within the time specified by  
25 law with an order issued by the commissioner to comply with the regis-  
26 tration requirements of section one thousand thirty-two of this article  
27 shall be deemed to have violated this article.

28 3. Any client who enters into an agreement with a model management  
29 company or person purporting to be a model management company, who is  
30 required to register, but whom the client knows or should have known has  
31 failed to register, failed to renew its registration or had its regis-  
32 tration revoked by the commissioner shall be deemed to have violated  
33 this article.

34 4. (a) The commissioner may impose a civil penalty upon a model  
35 management company, a person purporting to be a model management compa-  
36 ny, and all persons or entities that own a five percent or greater  
37 interest in the model management company, that have been deemed to have  
38 violated this article, for no more than three thousand dollars for the  
39 initial violation, and for no more than five thousand dollars for a  
40 second or subsequent violation.

41 (b) The commissioner may impose a civil penalty upon any client  
42 described in subdivision three of this section that has been deemed to  
43 have violated this article, for no more than three thousand dollars for  
44 the initial violation, and for no more than five thousand dollars for a  
45 second or subsequent violation.

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

51 5. An order issued under this section shall be final and not subject  
52 to review by any court or agency unless a review is had pursuant to  
53 section one hundred one of this chapter. Provided that no proceeding for  
54 administrative or judicial review as provided in this chapter shall then  
55 be pending and the time for initiation of such proceeding shall have  
56 expired, the commissioner may file with the county clerk of the county

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

9 6. If any model management company or person purporting to be a model  
10 management company shall have failed to comply within twenty days of an  
11 order by the commissioner to register or renew registration, the commis-  
12 sioner may seek to enjoin such unlawful activity, pursuant to the civil  
13 practice law and rules.

14 7. A model may bring and maintain an action in a court of competent  
15 jurisdiction to enforce the provisions of this article. A model manage-  
16 ment company, person purporting to be a model management company, or  
17 client that violates this article shall be liable for actual damages to  
18 any model that has suffered damages due to such violation, reasonable  
19 attorneys' fees and costs, and, unless the employer proves a good faith  
20 basis to believe that its actions were in compliance with the law, an  
21 additional amount as liquidated damages in an amount of no more than one  
22 hundred percent of the total amount of actual damages, except such  
23 liquidated damages may be up to three hundred percent if found that the  
24 actions were willful.

25 8. The attorney general may bring and maintain an action in a court of  
26 competent jurisdiction to enforce the provisions of this article when  
27 the attorney general has determined there is reasonable cause to believe  
28 that a model management company, person purporting to be a model manage-  
29 ment company, or client has engaged in repeated fraudulent or illegal  
30 acts or otherwise demonstrates persistent fraud or illegality in the  
31 carrying on, conducting, or transacting of business.

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

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

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

40 (iii) the model's occupation;

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

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

44 (b) (i) Within twenty days of receiving a complaint alleging a  
45 violation of this article, the commissioner shall send the person or  
46 entity named in the complaint a written notice of complaint. The  
47 commissioner shall send such notice by certified mail and shall bear the  
48 cost of sending such notice.

49 (ii) The notice required by this paragraph shall:

50 (1) inform the person or entity named in the complaint that a  
51 complaint has been filed alleging violations of this article;

52 (2) detail the remedies available to a model for violations of said  
53 article by the person or entity named in the complaint;

54 (3) include a copy of the complaint; and

55 (4) inform the person or entity named in the complaint that failure to  
56 respond to the complaint will create a rebuttable presumption in any

1 civil action commenced pursuant to this article that such person or  
2 entity committed the violations alleged in the complaint.

3 (c) Within twenty days of receiving the notice of complaint, the  
4 person or entity identified in the complaint shall send the commissioner  
5 one of the following:

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

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

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

12 (1) the response;

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

14 (3) materials informing the model that the model may bring an action  
15 in a court of competent jurisdiction; and

16 (4) any other information about the status of the complaint.

17 (ii) If the commissioner receives no response from the person or enti-  
18 ty alleged to have violated this article to the notice of complaint  
19 within the time provided by this subdivision, the commissioner shall  
20 mail a notice of non-response to both the model and the person or entity  
21 named in the complaint by regular mail and shall include with such  
22 notice proof that the commissioner previously mailed the notice of  
23 complaint to the person or entity named in the complaint by certified  
24 mail. Upon satisfying the requirements of this paragraph, the commis-  
25 sioner may close the case.

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