

STATE OF NEW YORK

4746

2023-2024 Regular Sessions

IN SENATE

February 14, 2023

Introduced by Sens. HOYLMAN-SIGAL, BRISPORT, JACKSON, KAVANAGH, LIU, MAY, RIVERA, SALAZAR -- 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, 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Fashion sustainability and social accountability act".

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

5 § 399-mm. Fashion sustainability and social accountability act. 1.
6 Definitions. As used in this section, the following terms shall have the
7 following meanings:

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

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

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

LBD03469-02-3

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

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

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

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

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

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

11 (vii) pension reversions;

12 (viii) contributions to capital, except for sales of securities by
13 securities dealers;

14 (ix) income from discharge of indebtedness;

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

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

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

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

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

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

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

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

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

55 (i) "Risk-based approach" shall mean commensurate to the likelihood
56 and severity of the harm. The fashion seller shall prioritize the order

1 in which it takes action based on the likelihood and severity of harm.
2 Severity of impacts shall be determined according to their scale or
3 gravity, scope, and irremediable character.

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

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

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

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

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

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

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

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

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

46 (i) supply chain mapping:

47 (1) companies taking a risk-based approach and implementing good faith
48 efforts to map suppliers across tier one through tier four of
49 production. Tier one suppliers shall be mapped within twelve months of
50 the effective date of this section, and shall contain a minimum of
51 seventy-five percent of suppliers by volume. Tier two suppliers shall be
52 mapped within two years of the effective date of this section, and shall
53 contain a minimum of seventy-five percent of suppliers by volume. Tier
54 three and tier four suppliers shall be mapped within three years of the
55 effective date of this section and shall contain a minimum of fifty
56 percent of suppliers by volume or dollar value.

(2) supplier disclosure for all tiers shall include the name, address, parent company, product type and number of workers at each site by country;

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

(A) the mean wages of workers, and how this compares with local minimum wage and living wages;

(B) the percentage of unionized factories; and

(C) hours worked weekly by month and the hours and frequency of overtime by firm and country.

(ii) in carrying out effective due diligence, fashion sellers shall be in compliance with the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, requiring fashion sellers to, at a minimum:

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

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

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

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

(A) Incentivizing improved supplier performance on workers' rights and environmental impact by embedding responsible purchasing practices in its supply chain relationships and contracts, including but not limited to contract renewals, longer term contracts, price premiums, providing reasonable assistance to suppliers so that they can meet applicable human rights and environmental standards including but not limited to meeting the carbon emission reduction targets set out in this section, and developing pricing models that account for the cost of wages, benefits, and investments in suitable work, specifically as reflected in freight on board prices together with traditional pricing considerations, such as quantities being purchased, cost of materials, and skill requirements. Wages, benefits, and investments shall, at a minimum, be in line with the requirements set out in local labor laws, including minimum wage laws;

(B) Utilizing responsible exit or disengagement strategies;

(C) Consulting and engaging with impacted and potentially impacted stakeholders and rights holders and their representatives;

(D) Establishing quantitative baseline and reduction targets on greenhouse gas emissions. Greenhouse gas emissions inventory shall be reported annually, include absolute figures and conform with the accounting and reporting requirements of the most recent Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Scope Two Guidance, and the most recent Corporate Value Chain Scope Three accounting and reporting standard promulgated by the World Resources Institute and the World Business Council for Sustainable Development. Greenhouse gas emissions inventory reported in the due diligence report described in subdivision three of this section shall be independently verified no less than once every two years. Within four years of the effective date of this section, primary data shall be used to capture tier two and tier three inventory of the most significant suppliers contributing to greenhouse gas emissions. Significant suppliers shall mean suppliers repres-

1 enting seventy-five percent of fabric by volume in tier two and fifty
2 percent of fabric by volume in tier three. Greenhouse gas emission
3 reduction targets must be near-term and long-term, covering scopes one,
4 two and three emissions, and align with, at a minimum, Science Based
5 Targets initiative's most recent target validation criteria as promul-
6 gated by World Resources Institute, CDP, United Nations Global Compact
7 and the World Wildlife Fund. For fashion sellers with global revenue
8 over one billion dollars, the Absolute Contraction Approach must be used
9 to calculate scope three emissions. Fashion sellers shall meet targets
10 and report their compliance on an annual basis in their due diligence
11 report, as described in subdivision three of this section. If found to
12 be out of compliance, fashion sellers shall have eighteen months to
13 remedy their emissions and return to the necessary reduction pathway to
14 deliver on their targets. In non-target years, non-compliance shall mean
15 an increase in absolute emissions in three consecutive years, for compa-
16 nies over a billion dollars in revenue. In target years, non-compliance
17 shall mean not reaching the target.

18 (E) In compliance with, at a minimum, the Zero Discharge of Hazardous
19 Chemicals Program's most recent wastewater guidelines, fashion sellers
20 shall be required, for all significant tier two dyeing, finishing and
21 garment washing suppliers, to sample and report on wastewater chemical
22 concentrations and water usage, within two years of the effective date
23 of this section. Such reports shall be independently verified. Fashion
24 sellers shall also provide corrective action plans for their wastewater
25 treatment within thirty months of the effective date of this section.
26 After three years of the effective date of this section, fashion sellers
27 shall be considered out of compliance if their significant tier two
28 dyeing, finishing and garment suppliers have not made adequate progress
29 in remediation of wastewater pollution concentrations. Significant
30 suppliers shall mean suppliers representing seventy-five percent of
31 fabric by volume;

32 (5) track implementation and results;

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

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

39 (B) remedies shall include, depending on the nature and extent of the
40 adverse impact, apologies, restitution or rehabilitation including rein-
41 statement of dismissed workers, recognition of the trade union for the
42 purpose of collective bargaining, financial or non-financial compen-
43 sation including establishing compensation funds for victims, or for
44 future outreach and educational programs, punitive sanctions including
45 the dismissals of staff responsible for wrongdoing, and taking measures
46 to prevent future adverse impacts; and

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

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

54 3. Reporting. Every fashion seller shall develop and submit to the
55 office of the attorney general annually, beginning within eighteen
56 months of the effective date of this section, a due diligence report.

1 Such report, excluding the information required in clause three of
2 subparagraph (i) of paragraph (a) of subdivision two of this section,
3 shall also be made publicly available on the fashion seller's website in
4 a machine readable and reusable format, published in line with open data
5 principles through a clear and easily discoverable link to the required
6 information. In the event the fashion seller does not have an internet
7 website, the company shall provide a written disclosure to any person
8 who has requested information within thirty days of receiving a request.
9 Such report shall also include the fashion seller's annual volume of
10 material produced, including breakdown by material type.

11 4. Regulations. The department of state shall, in consultation with
12 the department of environmental conservation and department of labor,
13 promulgate all rules and regulations necessary to implement the
14 provisions of this section within six months from the effective date of
15 this section. The department of state, in consultation with the depart-
16 ment of environmental conservation and department of labor, shall also
17 develop and disseminate educational materials to fashion sellers,
18 including providing alerts on time sensitive issues, emerging issues,
19 and high-risk country situations, and assisting fashion sellers in
20 improving the quality of their due diligence processes.

21 5. Verification. (a) The department of state shall, in consultation
22 with the department of environmental conservation and department of
23 labor, develop a process for accrediting verification bodies authorized
24 to provide verification services for the purposes of this section,
25 including which requirements the entity is authorized to verify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) The attorney general, or the attorney general's designated admin-
17 istrator as applicable, shall annually publish and make publicly avail-
18 able a report regarding compliance with this section, listing the fash-
19 ion sellers who are known to be out of compliance with this section and
20 including an up-to-date report on the attorney general's monitoring of
21 such compliance.

22 (c) Fashion sellers found to be out of compliance with this section
23 after the attorney general, or the attorney general's designated admin-
24 istrator as applicable, has provided notice of non-compliance, and after
25 a three-month period to meet obligations under this section has lapsed,
26 may be fined up to two percent of annual revenues. Such fines shall be
27 deposited in the community benefit fund established by section ninety-
28 seven-ccc of the state finance law.

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

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

34 (f) Any fashion seller shall be held jointly and severally liable for
35 the payment of wages of the employees of its tier one suppliers. For the
36 purposes of this section, wages shall be inclusive of all moneys owed in
37 accordance with the law of the country of manufacture, including wages,
38 overtime wages, paid leave, incentives, bonuses, severance and any other
39 form of payment or compensation. For the purposes of this section,
40 employee shall include all workers, whether full-time or part-time,
41 permanent or fixed-term, directly contracted or hired indirectly through
42 an agency or other intermediary. Fashion sellers shall be liable for
43 payment of lost wages and an additional equal amount as liquidated
44 damages.

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

47 § 97-ccc. Fashion remediation fund. 1. There is hereby established in
48 the joint custody of the comptroller, the commissioner of taxation and
49 finance, the commissioner of environmental conservation, and the commis-
50 sioner of labor a special fund to be known as the fashion remediation
51 fund.

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

55 3. The moneys in the fund shall be expended by the comptroller in
56 consultation with the department of environmental conservation, the

1 department of labor and relevant stakeholders for the purpose of imple-
2 menting one or more environmental benefit projects or labor remediation
3 projects that directly and verifiably benefit the workers and communi-
4 ties directly impacted, to the extent practicable, at the location the
5 injury has occurred.

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

11 5. Moneys shall be payable from the fund on the audit and warrant of
12 the comptroller on vouchers certified and approved by the commissioner
13 of environmental conservation and the commissioner of labor, as applica-
14 ble.

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

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