

STATE OF NEW YORK

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IN SENATE

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Introduced by Sens. HOYLMAN-SIGAL, BRISPORT, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MYRIE, RIVERA, S. RYAN, SALAZAR, SEPULVEDA, SERRANO, SKOUFIS, WEBB -- 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 standards and establishing the interstate fashion environment accountability act; 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 environmental 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 environmental accountability act. 1. Definitions.
6 As used in this section, the following terms shall have the following
7 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, royalti-
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

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

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1 receipts, even if business income, shall not include the following
2 items:

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

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

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

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

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

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

13 (vii) pension reversions;

14 (viii) contributions to capital, except for sales of securities by
15 securities dealers;

16 (ix) income from discharge of indebtedness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (n) "Employee" shall mean all workers, whether full-time or part-time,
44 permanent or fixed-term, directly contracted or hired indirectly through
45 an agency or other intermediary.

46 2. Due Diligence. (a) Every fashion seller shall effectively carry out
47 environmental due diligence for the portions of their business related
48 to wearing apparel, footwear or fashion bags, including wearing apparel,
49 footwear or fashion bags produced as a private label, which shall
50 include:

51 (i) supply chain mapping:

52 (1) companies taking a risk-based approach and implementing good faith
53 efforts to map suppliers across tier one through tier four of
54 production.

1 (2) disclosure of suppliers of the production supply chain including:
2 the name, parent company and product type at each site by country, filed
3 by the following:

4 (A) Tier one suppliers shall be disclosed within twelve months of the
5 effective date of this section, and shall contain a minimum of seventy-
6 five percent of suppliers by volume.

7 (B) Tier two suppliers shall be disclosed within two years of the
8 effective date of this section, and shall contain a minimum of seventy-
9 five percent of suppliers by volume.

10 (C) Tier three suppliers shall be disclosed within three years of the
11 effective date of this section and shall contain a minimum of fifty
12 percent of suppliers by volume or dollar value.

13 (D) Tier four suppliers shall be disclosed within four years of the
14 effective date of this section and shall contain a minimum of fifty
15 percent of suppliers by volume or dollar value.

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

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

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

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

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

30 (A) incentivizing improved supplier performance on environmental
31 impact by embedding responsible purchasing practices in its supply chain
32 relationships and contracts, including but not limited to contract
33 renewals, longer term contracts, price premiums, providing reasonable
34 assistance to suppliers so that they can meet applicable environmental
35 standards including but not limited to meeting the carbon emission
36 reduction targets set out in this act, and developing pricing models
37 that account for the cost investments.

38 (B) establishing quantitative baseline and reduction targets on green-
39 house gas emissions. Greenhouse gas emissions inventory shall be
40 reported annually, starting in two thousand twenty-seven for emissions
41 in the prior fiscal year; include absolute figures; and conform with the
42 rules and regulations made by the department of state in consultation
43 with the department of environmental conservation based on the account-
44 ing and reporting requirements of the most recent Greenhouse Gas Proto-
45 col Corporate Accounting and Reporting Standard, Scope Two Guidance,
46 and, starting in two thousand twenty-eight, the most recent Corporate
47 Value Chain Scope Three accounting and reporting standard promulgated by
48 the World Resources Institute and the World Business Council for
49 Sustainable Development. Greenhouse gas emissions inventory reported in
50 the due diligence report required pursuant to subdivision three of this
51 section shall be independently verified no less than once every two
52 years. Fashion sellers shall not be subject to an administrative penalty
53 under this section for any misstatements with regard to scope three
54 emissions disclosures made with a reasonable basis and disclosed in good
55 faith. Within four years of the effective date of this section, primary
56 data shall be used to capture the fashion seller's tier two and tier

1 three inventory of its most significant suppliers contributing to green-
2 house gas emissions. Significant suppliers shall mean suppliers repres-
3 enting seventy-five percent of fabric by volume in tier two and fifty
4 percent of fabric by volume in tier three. Greenhouse gas emission
5 reduction targets must be near-term and long-term, covering scopes one,
6 two and three emissions, and align with the rules and regulations made
7 by the department of state in consultation with the department of envi-
8 ronmental conservation based on, at a minimum, Science Based Target
9 initiative's most recent target validation criteria as promulgated by
10 World Resources Institute, CDP, United Nations Global Compact and the
11 World Wildlife Fund. Compliance with the rules and regulations made by
12 the department of state shall not waive compliance requirements related
13 to greenhouse gas emissions in any other provision of law. For fashion
14 sellers with global revenue over one billion dollars, the absolute
15 contraction approach must be used to calculate scope three emissions.
16 Fashion sellers shall meet targets and report their compliance on an
17 annual basis in their due diligence report, as required pursuant to
18 subdivision three of this section. If found to be out of compliance,
19 fashion sellers shall have eighteen months to remedy their emissions and
20 return to the necessary reduction pathway to deliver on their targets.
21 In non-target years, non-compliance shall mean an increase in absolute
22 emissions in three consecutive years, for companies over a billion
23 dollars in revenue. In target years, non-compliance shall mean not
24 reaching the target;

25 (C) being in compliance with the rules and regulations made by the
26 department of state in consultation with the department of environmental
27 conservation based on, at a minimum, the Zero Discharge of Hazardous
28 Chemicals Program's most recent wastewater guidelines, fashion sellers
29 shall be required, for all significant tier two dyeing, finishing and
30 garment washing suppliers, to sample and report on wastewater chemical
31 concentrations and water usage, within two years of the effective date
32 of this section. Such reports shall be independently verified. Fashion
33 sellers shall also provide corrective action plans for their wastewater
34 treatment within thirty months of the effective date of this section.
35 After three years of the effective date of this section, fashion sellers
36 shall be considered out of compliance if their significant tier two
37 dyeing, finishing and garment suppliers have not made adequate progress
38 in remediation of wastewater pollution concentrations. Significant
39 suppliers shall mean suppliers representing seventy-five percent of
40 fabric by volume. Compliance with the rules and regulations made by the
41 department of state shall not waive compliance requirements related to
42 greenhouse gas emissions in any other provision of law;

43 (D) utilizing responsible exit or disengagement strategies;

44 (E) consulting and engaging with impacted and potentially impacted
45 stakeholders and rights holders and their representatives;

46 (5) track implementation and results;

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

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

53 (B) remedies shall include, depending on the nature and extent of the
54 adverse impact, remediation, restitution or financial or non-financial
55 compensation, including establishing compensation funds for victims or
56 for future outreach and educational programs, punitive sanctions includ-

1 ing the dismissals of staff responsible for wrongdoing, and establishing
2 and undertaking measures to prevent future adverse impacts, which may
3 include, but are not limited to the development of internal protocols,
4 practices and procedures to prevent future adverse impacts.

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

9 3. Reporting. Every fashion seller shall develop and submit to the
10 department of state annually, beginning within eighteen months of the
11 effective date of this section, a due diligence report.

12 (a) Such report, excluding the information required in clause two of
13 subparagraph (i) of paragraph (a) of subdivision two of this section,
14 shall also be made publicly available on the fashion seller's website in
15 a machine readable and reusable format, published in line with open data
16 principles through a clear and easily discoverable link to the required
17 information. In the event the fashion seller does not have an internet
18 website, the company shall provide a written disclosure to any person
19 who has requested information within thirty days of receiving a request.
20 Such report shall also include the fashion seller's annual volume of
21 material produced, including breakdown by material type.

22 (b) Such report shall contain annual activities and financial spending
23 to support supply chain due diligence.

24 (c) The department of state shall identify and notify fashion sellers
25 that have failed to file a due diligence report that they have thirty
26 days to file such report before being placed on a public non-compliant
27 list and that they may be referred to the attorney general for investi-
28 gation.

29 (d) The department of state shall review the due diligence reports for
30 completeness.

31 (e) Fashion sellers shall have twelve months from the introduction of
32 any updated guidance documents to integrate such guidance into the next
33 annual due diligence report.

34 (f) The department of state shall establish a standardized due dili-
35 gence report format model and publish such model due diligence report
36 online for use by fashion sellers in compliance with this section.

37 4. Regulations. (a) The department of state shall, in consultation
38 with the department of environmental conservation, promulgate all rules
39 and regulations necessary to implement the provisions of this section
40 within six months from the effective date of this section.

41 (b) The department of state, in consultation with the department of
42 environmental conservation, shall also develop and disseminate educa-
43 tional materials to fashion sellers, including providing alerts on time
44 sensitive issues, emerging issues, and high-risk country situations, and
45 assisting fashion sellers in improving the quality of their due dili-
46 gence processes.

47 (c) The department of state shall develop regulations regarding the
48 information required to be reported by fashion sellers in the due dili-
49 gence report in item (B) of clause four of subparagraph (ii) of para-
50 graph (a) of subdivision two of this section. Such regulations shall be
51 developed in consultation with the department of environmental conserva-
52 tion and the most recent Greenhouse Gas Protocol. Such regulations shall
53 develop methodologies to calculate data capture as laid out in item (A)
54 of clause four of subparagraph (ii) of paragraph (a) of subdivision two
55 of this section, prior to that requirement becoming effective.

1 (d) The department of state shall develop regulations regarding the
2 information required to be reported by fashion sellers in the due dili-
3 gence report in item (C) of clause four of subparagraph (ii) of para-
4 graph (a) of subdivision two of this section. Such regulations shall be
5 developed in consultation with the department of environmental conserva-
6 tion and the Zero Discharge Hazardous Chemicals Program's most recent
7 wastewater guidelines.

8 (e) The department of state shall develop regulations on reporting
9 requirements that minimize duplication of effort and allows a fashion
10 seller to submit a due diligence report to the department of state that
11 is prepared to meet other national and international reporting require-
12 ments, including any reports required by the federal government, as long
13 as such reports satisfy all of the requirements of subdivision two of
14 this section.

15 5. Verification. (a) The department of state shall, in consultation
16 with the department of environmental conservation, develop a process for
17 accrediting verification bodies authorized to provide verification
18 services for the purposes of this section, including which requirements
19 the entity is authorized to verify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) The department of state shall identify and notify fashion sellers
14 that have failed to file a complete due diligence report in accordance
15 with the rules and regulations promulgated by the department of state in
16 consultation with the department of environmental conservation. If such
17 fashion sellers fail to file a complete report, after a period of three
18 months, the department of state shall refer fashion sellers to the
19 attorney general for enforcement for failure to file a complete report.

20 (c) The department of environmental conservation shall review and
21 certify effective due diligence for environmental matters in the due
22 diligence report and identify fashion sellers for referral to the attor-
23 ney general for any failures.

24 (d) The department of state shall compile and maintain a list of non-
25 compliant fashion sellers on the department's website. The department of
26 state shall refer to the attorney general for investigation any fashion
27 seller who fails to file a due diligence report or fails to conduct
28 effective due diligence, once any grace period lapses and the fashion
29 seller remains in non-compliance.

30 (e) Fashion sellers found to have failed to conduct effective due
31 diligence pursuant to subdivision two of this section or failed to file
32 a complete due diligence report pursuant to subdivision three of this
33 section, after the attorney general, or the attorney general's desig-
34 nated administrator, as applicable, has provided notice of non-compli-
35 ance, and after a three-month period to meet obligations under this
36 section has lapsed, may be assessed a civil penalty not to exceed
37 fifteen thousand dollars per violation per day. Such fines shall be
38 deposited in the community benefit fund established by section ninety-
39 seven-ccc of the state finance law.

40 (f) The attorney general, or the attorney general's designated admin-
41 istrator shall use a risk-based approach in enforcement and shall
42 publish enforcement guidelines.

43 (g) Any person may report a violation of this section to the attorney
44 general's office.

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-ccc of
54 the general business law.

55 3. The moneys in the fund shall be expended by the comptroller for the
56 purpose of implementing one or more environmental benefit projects or

1 environmental remediation projects that directly and verifiably benefit
2 the workers and communities directly impacted, to the extent practica-
3 ble, at the location the injury has occurred.

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

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

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

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

28 § 6. The department of state, in consultation with the department of
29 environmental conservation, shall promulgate rules and regulations
30 necessary for the implementation of this act within one hundred eighty
31 days of the effective date of this act.

32 § 7. This act shall take effect immediately; provided, however, that
33 sections one through three of this act shall take effect one year after
34 they shall have become a law; provided further, however, that subdivi-
35 sion 6 of section 399-mm of the general business law as added by section
36 two of this act shall take effect one year after the attorney general
37 certifies that the office of the attorney general is prepared to execute
38 the duties assigned in such subdivision. The attorney general shall
39 notify the legislative bill drafting commission upon the occurrence of
40 such certification in order that the commission may maintain an accurate
41 and timely effective data base of the official text of the laws of the
42 state of New York in furtherance of effectuating the provisions of
43 section 44 of the legislative law and section 70-b of the public offi-
44 cers law.