

STATE OF NEW YORK

4631--B

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IN ASSEMBLY

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Introduced by M. of A. KELLES, EPSTEIN, SIMON, HEVESI, GONZALEZ-ROJAS, FORREST, WEPRIN, REYES, STECK, SEAWRIGHT, MITAYNES, GALLAGHER, RAGA, SIMONE, SHRESTHA, CUNNINGHAM, BORES, OTIS, LEVENBERG, R. CARROLL, STERN, ROSENTHAL, RAJKUMAR, KIM, ANDERSON, GLICK, LUNSFORD, BARRETT, MAMDANI, DINOWITZ, SANTABARBARA, JACOBSON, TAYLOR, CLARK, PAULIN, BICHOTTE HERMELYN, LAVINE, SLATER, EACHUS, DE LOS SANTOS, CONRAD, CRUZ, BENEDETTO, JACKSON, STIRPE, MEEKS, LUPARDO, McMAHON, LEE, BURDICK, COLTON, ALVAREZ, DAVILA, BENDETT, K. BROWN, BLUMENCRANZ, BEEPHAN, ROMERO, VALDEZ -- 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 -- again reported from said committee with amendments, 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 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

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

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1 services received, on the sale or exchange of property, the performance
2 of services, or the use of property or capital, including rents, royal-
3 ties, interest, and dividends, in a transaction that produces business
4 income, in which the income, gain, or loss is recognized, or would be
5 recognized if the transaction were in the United States, under the
6 Internal Revenue Code, as applicable for purposes of this section.
7 Amounts realized on the sale or exchange of property shall not be
8 reduced by the cost of goods sold or the basis of property sold. Gross
9 receipts, even if business income, shall not include the following
10 items:

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

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

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

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

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

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

21 (vii) pension reversions;

22 (viii) contributions to capital, except for sales of securities by
23 securities dealers;

24 (ix) income from discharge of indebtedness;

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

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

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

37 (c) "Fashion seller" shall mean a business entity which sells articles
38 of wearing apparel, footwear, or fashion bags that together exceed one
39 hundred million dollars in annual gross receipts, but shall not include
40 the sale of used wearing apparel, footwear, or fashion bags, nor shall
41 it include multi-brand retailers, except where:

42 (i) the apparel, footwear, and fashion bag private labels of those
43 companies together exceed one hundred million dollars in global revenue;
44 or

45 (ii) the business primarily operates as an online platform or market-
46 place facilitating the sale of third-party goods in the categories of
47 apparel, footwear, or fashion bags, and at least fifty percent of the
48 platform's total sales volume comes from these categories, even if the
49 platform itself does not own the brands.

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

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

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

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

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

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

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

(i) "Tier one" shall mean suppliers who produce finished goods for fashion sellers, including suppliers' subcontractors, who provide the following services, including but not limited to sewing and embroidering;

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

(iii) "Tier three" shall mean suppliers to tier two suppliers, including subcontractors, who process raw materials, such as spinning; and

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

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

(l) "Open data principles" shall mean data that can be freely used, reused and redistributed by anyone. Such data shall be findable or easily discoverable on a website or within a database, accessible or available in a machine readable, convenient, modifiable form and published as a whole, complete dataset, interoperable or able to be mixed with different datasets, and reusable or provided under an open license that permits reuse and redistribution, including the intermixing with other datasets.

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

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

(i) supply chain mapping:

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

4 (2) disclosure of suppliers of the production supply chain including:
5 the name, parent company and product type, filed by the following:

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

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

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

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

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

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

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

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

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

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

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

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

21 (C) in accordance with internationally recognized methodologies for
22 chemical management and wastewater testing, requiring fashion sellers
23 within two years of the effective date of this section, for all signif-
24 icant tier two dyeing, finishing, printing and garment washing suppli-
25 ers, to: sample and report on wastewater chemical concentrations and
26 water usage; report on chemical inventory; and provide evidence that the
27 supplier is in compliance with local chemical management laws. For
28 significant suppliers that use indirect wastewater management, fashion
29 sellers shall report the chemical concentrations of the wastewater
30 treatment facilities report on the percentage of significant suppliers
31 that have chemical remediation plans in place and what the fashion sell-
32 er is doing to remediate. Reports required pursuant to this item shall
33 be independently verified. Three years after the effective date of this
34 section, fashion sellers shall be considered out of compliance if their
35 significant tier two dyeing, finishing, printing and garment suppliers
36 have not made adequate progress in remediation of wastewater pollution
37 concentrations and chemical management. For the purposes of this item,
38 "significant suppliers" shall mean suppliers representing seventy-five
39 percent of fabric by volume;

40 (D) utilizing responsible exit or disengagement strategies;

41 (E) consulting and engaging with impacted and potentially impacted
42 stakeholders and rights holders and their representatives;

43 (5) track implementation and results;

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

46 (A) remedies shall seek to restore the affected locations, places or
47 person or persons, where practicable, to the situation they would have
48 been in had the adverse impact not occurred and shall enable remediation
49 that is proportionate to the significance and scale of the adverse
50 impact; and

51 (B) remedies shall include, depending on the nature and extent of the
52 adverse impact, remediation, restitution or financial or non-financial
53 compensation, including establishing compensation funds for victims or
54 for future outreach and educational programs, punitive sanctions includ-
55 ing the dismissals of staff responsible for wrongdoing, and establishing
56 and undertaking measures to prevent future adverse impacts, which may

1 include, but are not limited to the development of internal protocols,
2 practices and procedures to prevent future adverse impacts.

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

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

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

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

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

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

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

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

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

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

45 (c) The department of state shall develop regulations regarding the
46 information required to be reported by fashion sellers in the due dili-
47 gence report in item (C) of clause four of subparagraph (ii) of para-
48 graph (a) of subdivision two of this section. Such regulations shall be
49 developed in consultation with the department of environmental conserva-
50 tion.

51 (d) The department of state shall develop regulations on reporting
52 requirements that minimize duplication of effort and allows a fashion
53 seller to submit a due diligence report to the department of state that
54 is prepared to meet other national and international reporting require-
55 ments, including any reports required by the federal government, as long

1 as such reports satisfy all of the requirements of subdivision two of
2 this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (b) The department of state shall identify and notify fashion sellers
56 that have failed to file a complete due diligence report in accordance

1 with the rules and regulations promulgated by the department of state in
2 consultation with the department of environmental conservation. If such
3 fashion sellers fail to file a complete report, after a period of three
4 months, the department of state shall refer fashion sellers to the
5 attorney general for enforcement for failure to file a complete report.

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

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

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

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

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

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

33 § 97-ccc. Fashion remediation fund. 1. There is hereby established in
34 the joint custody of the comptroller, the commissioner of taxation and
35 finance, and the commissioner of environmental conservation a special
36 fund to be known as the fashion remediation fund.

37 2. Such fund shall consist of all moneys deposited pursuant to para-
38 graph (e) of subdivision six of section three hundred ninety-nine-mm of
39 the general business law.

40 3. The moneys in the fund shall be expended by the comptroller for the
41 purpose of implementing one or more environmental benefit projects or
42 environmental remediation projects that directly and verifiably benefit
43 the workers and communities directly impacted, to the extent practica-
44 ble, at the location the injury has occurred.

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

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

53 § 4. The attorney general shall certify to the governor that the
54 office of the attorney general is prepared to execute the duties
55 assigned in subdivision 6 of section 399-mm of the general business law
56 within one year following the effective date of this act. If, after the

1 expiration of one year, the attorney general requires more time to
2 certify that the office of the attorney general is prepared to execute
3 such duties, the attorney general may, for good cause shown, apply to
4 the governor for an extension of time. The governor may grant or deny an
5 extension of up to one year according to their discretion.

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

13 § 6. The department of state, in consultation with the department of
14 environmental conservation, shall promulgate rules and regulations
15 necessary for the implementation of this act within one hundred eighty
16 days of the effective date of this act.

17 § 7. This act shall take effect immediately; provided, however, that
18 sections one through three of this act shall take effect one year after
19 they shall have become a law; provided further, however, that subdivi-
20 sion 6 of section 399-mm of the general business law as added by section
21 two of this act shall take effect one year after the attorney general
22 certifies that the office of the attorney general is prepared to execute
23 the duties assigned in such subdivision. The attorney general shall
24 notify the legislative bill drafting commission upon the occurrence of
25 such certification in order that the commission may maintain an accurate
26 and timely effective data base of the official text of the laws of the
27 state of New York in furtherance of effectuating the provisions of
28 section 44 of the legislative law and section 70-b of the public offi-
29 cers law.