

S.4746-B (Hoylman-Sigal)/A.4333-C (Kelles)

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BILL S.4746-B (Hoylman-Sigal)/A.4333-C (Kelles)
SUBJECT Fashion Environmental Accountability Act
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OPPOSE

This legislation would impose massive, far-reaching and open-ended compliance and remediation obligations on “fashion sellers,” defined as entities that sell “wearing apparel, footwear or fashion bags” with over \$100 million in worldwide sales that conduct any level of business in New York state. This legislation also applies to “multi-brand retailers” with more than \$100 million in apparel, footwear and fashion-bag sales.

We recognize that many businesses in many sectors are adopting enhanced environmental stewardship commitments that go beyond legal compliance, to reduce their direct environmental impacts, the impacts of businesses within their supply chain, and the impacts of the use of their products.

These efforts should be applauded, and government policies should support these efforts and encourage additional businesses to act.

However, we have serious concerns about S.4746-B/A.4333-C, with regard to both its impact on fashion industry businesses within our membership, and its precedent for additional due diligence mandates applicable to other sectors.

Key concerns include:

- It imposes obligations on “fashion sellers,” as part of a broad due diligence mandate, to “cease, prevent or mitigate” environmental risks posed by businesses within their supply chain. Fashion sellers that fail to “conduct effective due diligence” can be subject to state enforcement and subject to civil penalties up to \$15,000 per day. However, it is unclear how compliance will be determined given the bill’s due diligence continuum.

- “Due diligence” obligations imposed on “fashion sellers” also includes a requirement that they “provide for or cooperate in” the remediation of adverse impacts on “stakeholders and rights holders,” with remedies including “remediation, restitution or financial or non-financial compensations, including

establishing compensation funds for victims.” Since the fashion seller’s supply chain obligations appears to apply to businesses outside of New York or even the U.S., we believe this would impose an unachievable compliance mandate.

- Fashion sellers are obligated to meet greenhouse gas emission reduction targets based on yet-to-be adopted Department of State regulations, presumably across their supply chain. These reductions would be above and beyond those imposed by any other regulation, including New York’s pending “cap and invest” rule and CLCPA-imposed statewide GHG emissions caps. “Non-compliance” would leave the seller (but not the supply chain companies) subject to civil enforcement by the state.

- As part of its risk prevention and mitigation provisions, “due diligence” obligations require fashion sellers to incentivize improved supplier performance by mechanisms including but not limited to contract terms, durations and renewals; price premiums; and [financial and technical] assistance. However, nothing in the bill addresses whether or the extent to which a fashion seller’s obligations relative to a specific supplier are ended once its contracts are terminated, including obligations for remediation and restitution, among others.

- It requires businesses to remain in continuous compliance with guidelines adopted and updated by the Organization for Economic Co-operation and Development, which do not otherwise have the force and effect of law; affected businesses must come into compliance with any updated OECD guidelines within 12 months of their finalization.

- It places significant rulemaking obligations on the Department of State, which are beyond their current resource capacity and expertise, including regulations on greenhouse gas emission reductions, wastewater discharges, and the content of due diligence reports, all to be adopted within 180 days of the bill’s approval. The Department of State would also be required to create a process for certifying third party verification entities; establish formats for, and accept submission of, due diligence reports and review them for completeness; make enforcement referrals to the Attorney General regarding fashion sellers failing to submit due diligence report (which suggests that the Department would also have to develop a list of fashion sellers subject to this legislative mandate).

For these reasons, we strongly oppose legislative approval of S.4746-B/A.4333-C.