

Alert | Environmental/Retail



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Environmental Sustainability Is Fashionable, But New Bill Presents Hurdles to Industry

On the heels of Gov. Kathy Hochul’s State of the State address, in which she endorsed a suite of progressive environmental policies including product stewardship laws governing the paper and packaging industry, the New York Legislature has introduced a bill targeting environmental sustainability disclosures in the fashion and apparel industry. The Fashion Sustainability and Social Accountability Act (A.8352/S.7428) would require fashion retailers and manufacturers to disclose environmental and social due diligence policies and allows citizen lawsuits to enforce the terms of the proposed legislation.

Environmental, Social and Governance (ESG) measures have become *au courant* in a wide range of industries, and “greenwashing” – the conveyance of a false impression of environmental sustainability practices – poses risk to businesses and the public. As the 2022 legislative session moves into full swing, lawmakers have targeted ESG practices in the apparel industry with the Fashion Sustainability and Social Accountability Act, which would require fashion retailers to disclose the environmental and social impacts of their business practices. Specifically, every fashion retailer or manufacturer operating in New York and having worldwide gross receipts exceeding \$100 million would be required to disclose their environmental and social “due diligence” policies throughout the supply chain. “Due diligence” policies refer to the mitigation strategies to address adverse impacts recommended by the Organisation for Economic Co-operation and Development and the United Nations guiding principles for business and human rights. Covered retailers would be required to disclose their due diligence practices on their website within a year of enactment of the policies.

As ESG practices have proliferated over the past several years, environmental sustainability has become a cornerstone of manufacturer and retailer marketing efforts. The bill would require that covered retailers identify greenhouse gas emission, water, and chemical management reduction targets within 18 months of enactment of the due diligence policies.

In addition, retailers would have to account for the use of recycled materials in their products and disclose how median wages for prioritized suppliers compare to local minimum wage and living wages. The bill would further require fashion retailers and manufacturers to map at least 50% of their supply chains, from raw materials to vendor and shipping information. Annual volume of material type produced – for example, polyester, cotton, or leather – and median worker wages would also be required. All of that information would be made available online. Two major concerns for fashion companies would be the onerous reporting requirements and the typically confidential supply chain information which, the language of the bill suggests, would be publicly available without any exemption for confidential information or trade secret protection.

Both the attorney general and citizens would be able to enforce the proposed law. The attorney general would be able to seek up to 2% of revenues of \$450 million or more from companies that violate the law, and any citizen would be able to file suit against a noncompliant retailer or seek to compel the attorney general to investigate noncompliance and enforce the proposed law. The fines would be deposited into a community benefit fund to be used towards projects benefiting environmental justice communities.

Similar laws have proven problematic in states such as California, where citizen enforcement has given rise to an industry of plaintiffs' attorneys and litigation over environmental disclosures has become commonplace. At the same time, the rise of ESG policies without regulation poses risks to consumers and market participants. Whether this bill strikes the policy balance that New York lawmakers want remains to be seen. The fashion, apparel, and retail industry should keep a close eye on this bill during the 2022 legislative session, given the litigation and business risks it poses, including potential supply chain disruptions and disclosure of confidential trade secrets.

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