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**SENATE BILL 5904**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Das, Nobles, Lovelett, Nguyen, Rolfes, and Saldaña

AN ACT Relating to requiring fashion retail sellers and manufacturers to disclose environmental and social due diligence policies; adding a new chapter to Title 70A RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that the fashion industry has many negative environmental and social impacts, including high levels of water use, run-off pollution from the use of agrochemicals and dyes, carbon emissions, industry waste, low wages, hazardous work environments, and other unethical labor practices.

(2) The United Nations estimates that a single pair of jeans requires a kilogram of cotton, and because cotton tends to be grown in dry environments, producing this kilogram requires about 7,500 to 10,000 liters of water, which is approximately 10 years' worth of drinking water for one person. The industry accounts for nearly 20 percent of global wastewater, with fabric dyes polluting water bodies and impacting aquatic life and drinking water. Cotton production also uses a high amount of fertilizers and pesticides, discharging toxic substances to waterways. In terms of greenhouse gases, the fashion industry accounts for about eight to 10 percent of global carbon emissions, using more energy than both aviation and shipping combined.

(3) The synthetic polymer polyester is the most common fabric used in clothing, and globally, 65 percent of the clothing that we wear is polymer-based. Around 70,000,000 barrels of oil a year are used to make polyester fibers in our clothes, from waterproof jackets to scarves. Polyester takes hundreds of years to decompose and can lead to microfibers escaping into the environment. The United States environmental protection agency estimates that in 2018, 11,300,000 tons of textiles ended up in landfills, while another 3,200,000 tons were incinerated. According to the Ellen MacArthur foundation, the average number of times a piece of clothing is worn decreased by 36 percent between 2000 and 2015, and according to the world bank, 40 percent of clothing purchased in some countries is never used.

(4) Garment workers face oppressive working conditions, cope with irregular hours, and receive low wages. The COVID-19 pandemic worsened these conditions when canceled orders and factory closures put millions of workers out of a job, leaving them unable to pay for basic needs such as food and rent. Female garment workers, who make up around 80 percent of the workforce, risk violence and sexual harassment. The international labor organization estimates that 160,000,000 children are engaged in child labor, with many working within the fashion supply chain, making textiles and garments. Farmworkers who work to produce cotton are exposed to high levels of pesticides.

(5) The legislature recognizes that some companies have committed to mitigation measures, such as the use of the science-based targets initiative, a tool for reducing carbon emissions. Additionally, legislation regarding due diligence is being considered in New York and the European Union, and Germany, France, Britain, and Australia have laws requiring due diligence when it comes to human rights and slavery. Therefore, the legislature also intends to address the negative environmental and social impacts of the fashion industry, by requiring companies to map a minimum of 50 percent of their supply chain, disclose where in that chain they have the greatest social and environmental impact when it comes to low wages, energy, greenhouse gas emissions, water, and chemical management, and make plans to reduce those numbers. By doing so, the legislature intends for Washington to serve as a leader in mitigating the environmental and social impact of the fashion industry.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(2) "Doing business in the state" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) "Due diligence" means the process companies should carry out to identify, prevent, mitigate, and account for how they address actual and potential adverse impacts in their own operations, their supply chain, and other business relationships, as recommended in the organization for economic cooperation and development guidelines for multinational enterprises, the organization for economic cooperation and development due diligence guidance for responsible business conduct, and United Nations guiding principles of business and human rights.

(4) "Fashion manufacturer" means a business entity that lists manufacturing as its principal business activity in the state of Washington, as reported on the entity's state business and occupation tax return, and primarily manufactures articles of wearing apparel or footwear.

(5) "Fashion retail seller" means a business entity that lists retail trade as its principal business activity in the state of Washington, as reported on the entity's state business and occupation tax return, and primarily sells articles of wearing apparel or footwear.

(6) "Footwear" means any covering worn or intended to be worn on the foot.

(7) "Gross receipts" means the gross amounts realized, otherwise known as the sum of money and the fair market value of other property or services received, on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized, or would be recognized if the transaction were in the United States, under the United States Internal Revenue Code, as applicable for purposes of this section. Amounts realized on the sale or exchange of property must not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income, must not include the following items:

(a) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument;

(b) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(c) Proceeds from the issuance of the taxpayer's own stock or from sale of treasury stock;

(d) Damages and other amounts received as the result of litigation;

(e) Property acquired by an agent on behalf of another;

(f) Tax refunds and other tax benefit recoveries;

(g) Pension reversions;

(h) Contributions to capital, except for sales of securities by securities dealers;

(i) Income from discharge of indebtedness;

(j) Amounts realized from exchanges of inventory that are not recognized under the United States Internal Revenue Code;

(k) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's unitary business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets; and

(l)(i) Amounts received from hedging transactions involving intangible assets.

(ii) For the purposes of this subsection, a "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

NEW SECTION. **Sec.**  (1) Every fashion retail seller and fashion manufacturer doing business in the state and having annual worldwide gross receipts that exceed $100,000,000 must disclose, as set forth in subsection (3) of this section, its environmental and social due diligence policies, processes, and outcomes, including significant real or potential adverse environmental and social impacts and disclose targets for prevention and improvement.

(2) The disclosure described in subsection (1) of this section must be published on the fashion retail seller's or fashion manufacturer's website with a clear and easily understood link to the required information placed on the fashion retail seller's or fashion manufacturer's homepage within 12 months of the enactment of the policies, processes, and outcomes, except as otherwise provided in this chapter. In the event the fashion retail seller or fashion manufacturer does not have an internet website, consumers must be provided a written disclosure within 30 days of receiving a written request for the disclosure from a consumer.

(3) The disclosure required pursuant to subsection (1) of this section must include, at a minimum:

(a) Supply chain mapping and disclosure, including:

(i) Taking a risk-based approach, using good faith efforts to map suppliers across all tiers of production, from raw material to final production. A minimum of 50 percent of suppliers by volume across all tiers of production must be mapped; and

(ii) Using good faith efforts to map the suppliers and associated supply chains relevant to the prioritized risk, and obtain and disclose the names of prioritized suppliers;

(b) Impact and due diligence disclosure, including a social and environmental sustainability report, to include externally relevant information on due diligence policies, processes, and activities conducted to identify, prevent, mitigate, and account for potential adverse impacts, including the findings and outcomes of those activities. Such a report must include, in line with the United Nations guiding principles on business and human rights, the international labor organization declaration on fundamental principles and rights at work, the organization for economic cooperation and development guidelines for multinational enterprises, and the organization for economic cooperation and development due diligence guidance for responsible business conduct. The impact and due diligence disclosure must also include:

(i) A link on the fashion retail seller's or fashion manufacturer's website to relevant policies on responsible business conduct;

(ii) Information on measures taken to embed responsible business conduct into policies and management systems;

(iii) The fashion retail seller's or fashion manufacturer's identified areas of significant risks in the contexts of its own activities and business relationships, such as supply chains;

(iv) The significant adverse impacts on risks identified, prioritized, and assessed in the context of its own activities and business relationships, such as supply chain;

(v) The prioritization criteria;

(vi) The actions taken to prevent or mitigate those risks, such as corrective action plans, to be cited where available, including estimated timelines, targets, and benchmarks for improvement and their outcomes;

(vii) Measures to track implementation and results; and

(viii) The fashion retail seller's or fashion manufacturer's provision of or cooperation in any remediation;

(c) Impact disclosure on prioritized adverse environmental and social impacts within 18 months after enactment of the policies, processes, and outcomes, including:

(i) A quantitative baseline and reduction targets on energy and greenhouse gas emissions, water, and chemical management. Greenhouse gas reporting must be independently verified, include absolute figures, and conform with the greenhouse gas protocol corporate account and reporting standard and the greenhouse gas protocol corporate value chain scope three standard promulgated by the world resources institute;

(ii) Annual volume of material produced, including breakdown by material type, which must be independently verified;

(iii) How much production has been displaced with recycled materials as compared to growth targets, which must be independently verified;

(iv) The median wages of workers of prioritized suppliers and how this compares with local minimum wage and living wages; and

(v) The company's approach for incentivizing supplier performance on workers' rights, stating any key performance indicators or performance incentives used, and describing the incentives used to reward suppliers and encourage good performance. Examples may include contract renewals, price premiums, and the offer of longer-term contracts; and

(d) What targets fashion retail sellers and fashion manufacturers have for impact reductions, and for tracking due diligence implementation and results including, where possible, estimated timelines and benchmarks for improvement. Climate change targets must be absolute targets, align with the apparel and footwear sector science-based targets guidance promulgated by the world resources institute and include all scopes of production. Fashion retail sellers and fashion manufacturers must meet targets and report their compliance on an annual basis.

NEW SECTION. **Sec.**  (1)(a) The requirements imposed on fashion retail sellers and fashion manufacturers by this chapter may be enforced by the attorney general or an administrator designated by the attorney general bringing civil proceedings for an injunction, monetary damages, or civil performance of a statutory duty.

(b) The attorney general, or the attorney general's designated administrator as applicable, must annually publish and make publicly available a report regarding compliance with this chapter, listing the fashion retail sellers and fashion manufacturers who are known to be out of compliance with this chapter and including an up-to-date report on the attorney general's monitoring of compliance.

(c) Fashion retail sellers and fashion manufacturers found to be out of compliance with this chapter after the attorney general, or the attorney general's designated administrator as applicable, has provided notice of noncompliance, and after a three-month period to meet obligations under this chapter has lapsed, may be fined up to two percent of annual revenues of up to $450,000,000 or more. The fines must be deposited in the community benefit account created in section 5 of this act.

(2)(a) Any citizen may commence a civil action against any person who is alleged to have violated or to be in violation of this chapter or an order by the attorney general, or the attorney general's designated administrator as applicable, with respect to the standards and requirements set forth in this chapter, including:

(i) Washington state;

(ii) A governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the United States Constitution; and

(iii) Any business.

(b) Any citizen may commence a civil action to compel the attorney general, or the attorney general's designated administrator as applicable, to investigate an entity's compliance with this chapter, to enforce compliance with this chapter, or to apply the prohibitions set forth in this chapter to any business operating within this state.

(c) Any citizen may commence a civil action against the attorney general, or the attorney general's designated administrator as applicable, where there is an alleged failure of the attorney general or the attorney general's designated administrator to perform any act or duty under this chapter that is not discretionary with the attorney general, or the attorney general's designated administrator as applicable.

NEW SECTION. **Sec.**  (1) The community benefit account is created in the custody of the state treasurer. All receipts from fines imposed under section 4 of this act must be deposited into the account. Expenditures from the account may be used only for the purpose of implementing one or more environmental benefit projects that directly and verifiably benefit overburdened communities and vulnerable populations as defined in RCW 70A.02.010. Only the director of the department of ecology or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The department of ecology must consult with the environmental justice council established in RCW 70A.02.110 in making expenditures under this section.

(3) For the purposes of this section, "environmental benefit" has the same meaning as "environmental benefits" defined in RCW 70A.02.010.

NEW SECTION. **Sec.**  This chapter may be known and cited as the Washington fashion sustainability and social accountability act.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 70A RCW.

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