CLIENT ALERTS & INSIGHTS

Greener Pastures Ahead? California's Fashion Environmental Accountability Act of 2025

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Fashion-related environmental legislation is, well, in fashion. And, as with many consumer-related issues, California continues to be a trendsetter.

On February 4, 2025, the California State Assembly introduced the Fashion Environmental Accountability Act of 2025, AB 405 ("The Fashion Act"), which, if enacted, would become the first law in the country to require retailers to engage in "environmental due diligence" concerning their products and supply chains. In this alert, we provide an overview of the new bill, and the status of similar legislative efforts in other states.

Overview of California's Fashion Act

The Fashion Act applies to "fashion sellers," defined to mean entities selling apparel and footwear in California, whose annual gross receipts for the sale of private label items exceeds $100 million. It does not apply to retailers selling used fashion goods.

The Fashion Act requires fashion sellers to carry out effective "environmental due diligence," defined as the process to "identify, cease, prevent, mitigate, account for, and remediate actual and potential adverse impacts to the environment in their own operations and supply chain."

Specifically, the Fashion Act would require fashion sellers to:

- Disclose their supply chain greenhouse emissions and decrease them in line with target levels outlined in the Paris Agreement.

- Comply with the international standards outlined in the Organisation for Economic Co-operation and Development ("OECD") Guidelines for Multinational Enterprises on Responsible Business Conduct and the most recent OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector by incorporating responsible conduct in the fashion seller's policies and management systems to identify and prioritize mitigation of environmental harm.

- Develop and submit an Environmental Due Diligence Report to the California Department of Toxic Substances Control detailing the fashion seller's efforts to engage in environmental due diligence in their own operations and supply chain. The fashion seller must submit this report annually and make it publicly available.

- Work with suppliers to manage their chemical use and conduct yearly wastewater testing of chemical concentrations and water usage. Fashion sellers must include the results of this testing in its Environmental Due Diligence Report.

The Fashion Act empowers the California Department of Toxic Substances and Control to place noncompliant fashion sellers on a public list and assess civil penalties of up to 2 percent of the fashion seller's annual revenues if the fashion seller fails to remedy any compliance issues after a three-month cure period. Accordingly, a fashion seller with sales of $100 million (the minimum to be subject to the Act) that fails to meet the Fashion Act's requirements could face $2 million in penalties. The statute, as written, does not carry a private right of action.

Related Environmental Legislation

The Fashion Act bill follows California's September 28, 2024 enactment of the Responsible Textile Recovery Act (SB 707)-a first-of-its-kind textile recycling initiative that requires clothing producers to join a Producer Responsibility Organization ("PRO") and implement a program to reduce clothing waste through repairing, reusing, and recycling textiles by 2026. SB 707 authorizes the State's recycling agency, CalRecycle, to impose up to $10,000 in civil penalties per day for violations of the program's requirements and $50,000 per day for intentional or knowing violations. Legislators in Washington state recently proposed a similar law, after similar efforts failed last year (H. 1420).

The Fashion Act also appears inspired by similar environmental due diligence bills in Massachusetts and New York-neither of which has passed. The Massachusetts bill, referred to as the "Act to establish fashion sustainability and social accountability in the commonwealth" (H. 420), failed on December 31, 2024. The New York version, the Fashion Environmental Accountability Act, failed in 2022, was reintroduced and failed again in 2023 (S. 4746B), and is currently under consideration for a third time; if enacted, it would create standardized environmental due diligence programs and reporting requirements for fashion sellers. *See* AB 4631.

Another environmental bill worth watching is Washington state's House Bill 1107, which would require the producers of certain footwear and apparel to disclose to the Washington State Department of Ecology information regarding: the presence of certain chemicals in their products; descriptions of terms used in marketing or labeling, including terms like "sustainable," "green," or "environmentally friendly" and how producers define or measure those terms; how the producers address excess product; and the producer's current activities aimed at reducing the environmental impact of their business. Violators of this bill would be subject up to $5,000 in penalties for first-time violations and up to $10,000 for repeat offenses. The bill is currently under consideration in the Washington House Committee on Environment and Energy.

Finally, federal legislators have introduced bills to encourage fashion producers to voluntarily label their products with green house emission data and recycling information (H. 8978) and provide funding to American retailers to facilitate more onshore apparel manufacturing (S. 3878).

Conclusion

Sustainability is a constantly evolving area of law, with serious costs for non-compliance. Retailers should stay abreast of new legislation, and any litigation that may arise from it. Benesch's Retail & E-Commerce industry team regularly advises retailers in this space and is prepared to help.

For more information, please contact a member of Benesch's **Retail & E-Commerce** industry team, along with our **Litigation Practice Group**:

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