

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2539**

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**Introduced by Assembly Member Levine**

February 19, 2016

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An act to add Chapter 6 (commencing with Section 1707) to Part 6 of Division 2 of the Labor Code, relating to modeling agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as amended, Levine. Modeling agencies: licensure: models: employees.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime. Existing law establishes the Department of Industrial Relations to, among other things, foster, promote, and develop the welfare of the wage earners, to improve their working conditions, and to advance their opportunities for profitable employment.

Existing law provides for the licensure and regulation of talent agencies, as defined, by the Labor Commissioner. Existing law requires moneys collected for licenses and fines collected for violations of these provisions to be paid into the State Treasury and credited to the General Fund.

This bill would require a person engaging in the occupation of a modeling agency, as defined, to be licensed by the Labor Commissioner. *Commissioner under the licensing provisions that apply to talent agencies.* The bill would require a model, as defined, to be classified as an employee of a modeling agency and require a model to obtain a specified health certification from a licensed physician before being

~~employed as a model. The bill would require a modeling agency to obtain that health certification before hiring a model, to post in a conspicuous place in its office a health advisory relating to eating disorders and sexual harassment or assault, and to maintain specified records relating to its employment of models. The bill would provide that a violation of the certification requirement by a modeling agency is a crime. By creating a new crime, the bill would impose a state-mandated local program: *the person for whom the model’s services are directly provided.* The bill would require the Occupational Safety and Health Standards Board and the State Department of Public Health to draft regulations relating to the modeling profession, as provided: *to, no later than December 1, 2017, and in consultation with accredited specialists in the prevention and treatment of eating disorders, adopt an occupational safety and health standard for models, as specified.* The bill would impose specified license fees upon modeling agencies to be deposited into the State Treasury and credited to the General Fund: *exempt a person covered by certain wage orders by the Industrial Welfare Commission from these provisions.* The bill would define various terms for its purposes and would make related findings.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: *yes-no.*

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 6 (commencing with Section 1707) is
- 2 added to Part 6 of Division 2 of the Labor Code, to read:
- 3
- 4 CHAPTER 6. MODELING AGENCIES
- 5
- 6 1707. The Legislature finds and declares all of the following:
- 7 (a) Professional fashion models face pervasive and hazardous
- 8 occupational demands to maintain extreme and unhealthy thinness.
- 9 These occupational pressures create a dangerous work environment.
- 10 Models experience a substantially elevated risk of eating disorders
- 11 and other severe health problems associated with starvation.

1 (b) The majority of models enter the industry as minors, making  
2 them especially vulnerable to mistreatment and to the physical and  
3 psychological damage caused by eating disorders. Women working  
4 as professional fashion models are more likely to have a diagnosis  
5 of anorexia nervosa, dangerously low body mass index, and  
6 amenorrhea, which is a serious medical indicator of hormonal  
7 dysregulation that can have negative health consequences for life.

8 (c) As with all workers, professional fashion models are entitled  
9 to safe working conditions. The time, place, and means of the  
10 services provided by professional models are typically controlled  
11 by the company paying their compensation. ~~Therefore, professional~~  
12 ~~models are typically required to be classified as employees rather~~  
13 ~~than~~ *Many models, including minors, are wrongly treated as*  
14 *independent contractors according to existing federal and state*  
15 *law, and currently do not receive workplace protections.* Clarifying  
16 their classification as employees *of the companies paying their*  
17 *compensation* will enhance ~~their~~ workplace protections.

18 (d) The impact of the fashion industry on health reaches far  
19 beyond the hazardous occupational conditions that professional  
20 models endure. Through its dominant presence in the mass media  
21 and pervasive influence on setting cultural standards for apparel,  
22 particularly for girls and young women, the fashion industry helps  
23 to define, transmit, and reinforce an unrealistic standard of thinness,  
24 a well-documented risk factor for eating disorders.

25 (e) Scientific research has shown that viewing media images of  
26 extremely thin models leads to body dissatisfaction in adolescent  
27 girls and young women, especially those who already have  
28 heightened vulnerability to eating disorders. In addition, scientific  
29 studies have shown that body dissatisfaction in adolescence is a  
30 strong indicator that a young person may develop an eating  
31 disorder.

32 (f) Improving working conditions to reduce excessive thinness  
33 among professional models is likely to lead to healthier images of  
34 models' weight. This change in media portrayals of models' weight  
35 may help to achieve a larger societal value in making media images  
36 more healthful and less damaging to girls' and young women's  
37 body image, ultimately reducing their risk for eating disorders.

38 1707.1. For purposes of this chapter, the following definitions  
39 shall apply:

- 1 (a) “License” means a license issued by the Labor Commissioner  
 2 *as a talent agency* to carry on the business of a modeling agency  
 3 ~~under this chapter. Chapter 4 (commencing with Section 1700).~~
- 4 (b) “Licensee” means a modeling agency that holds a valid  
 5 license *as a talent agency* ~~under this chapter. Chapter 4~~  
 6 *(commencing with Section 1700).*
- 7 (c) “Model” means an ~~individual~~ *artist under Section 1701*  
 8 *covered under Wage Order 4 of the Industrial Welfare Commission*  
 9 who, in the course of his or her occupation, performs modeling  
 10 services for, or who consents in writing to the transfer of his or  
 11 her ~~exclusive~~ legal right to the use of his or her name, portrait,  
 12 picture, or image for advertising purposes or for the purposes of  
 13 trade directly to, a retail store, a manufacturer, an advertising  
 14 agency, a photographer, a publishing company, or a modeling  
 15 agency.
- 16 (d) “Modeling agency” means a person that ~~compensates a~~  
 17 ~~model and that dictates the assignments, hours of work, or~~  
 18 ~~performance locations of the model. facilitates an employment~~  
 19 *opportunity as defined in Section 1701 for a model and that holds*  
 20 *a valid license under Chapter 4 (commencing with Section 1700).*
- 21 (e) “Modeling services” means the appearance by a model in  
 22 photographic sessions or the engagement of a model in runway,  
 23 live, filmed, or taped performances requiring him or her to pose,  
 24 provide an example or standard of artistic expression, or to be a  
 25 representation to show the construction or appearance of some  
 26 thing or place for purposes of display or advertising.
- 27 (f) “Person” ~~means any individual, company, society, firm,~~  
 28 ~~partnership, association, corporation, limited liability company,~~  
 29 ~~manager, or their agents or employees.~~
- 30 1707.2. ~~(a) A model shall be classified as an employee of a~~  
 31 ~~modeling agency. the person for whom the model’s services are~~  
 32 ~~directly provided.~~
- 33 ~~(b) (1) A modeling agency shall not hire a model without first~~  
 34 ~~obtaining the health certification described in Section 1707.4.~~
- 35 ~~(2) Any modeling agency that does not obtain the certification~~  
 36 ~~described in subdivision (a) of Section 1707.4 is guilty of a~~  
 37 ~~misdemeanor and subject to a fine not to exceed five thousand~~  
 38 ~~dollars (\$5,000).~~
- 39 1707.3. ~~(a) A person shall not engage in or carry on the~~  
 40 ~~occupation of a modeling agency without first procuring a license~~

1 therefor from the Labor Commissioner. The license shall be posted  
2 in a conspicuous place in the office of the licensee. The license  
3 number shall be referred to in any advertisement for the purpose  
4 of the solicitation of a model for the modeling agency. ~~under~~  
5 *Chapter 4 (commencing with Section 1700).*

6 ~~(b) A filing fee of twenty-five dollars (\$25) shall be paid to the~~  
7 ~~Labor Commissioner at the time the application for issuance of a~~  
8 ~~modeling agency license is filed.~~

9 ~~(c) In addition to the filing fee required for application for~~  
10 ~~issuance of a modeling agency license, every modeling agency~~  
11 ~~shall pay to the Labor Commissioner annually at the time a license~~  
12 ~~is issued or renewed the following:~~

13 ~~(1) A license fee of two hundred and twenty-five dollars (\$225).~~

14 ~~(2) Fifty dollars (\$50) for each branch office maintained by the~~  
15 ~~modeling agency in this state.~~

16 1707.4. ~~(a) A model shall obtain written certification from a~~  
17 ~~licensed physician that he or she is in healthy physical condition~~  
18 ~~and submit this certification to a modeling agency before being~~  
19 ~~hired by a modeling agency. A model shall make his or her medical~~  
20 ~~records available to the physician, and the physician shall review~~  
21 ~~the model's medical records as part of the certification of the~~  
22 ~~model's physical condition.~~

23 ~~(b) Every modeling agency shall keep records, in a form~~  
24 ~~approved by the Labor Commissioner, that include all of the~~  
25 ~~following:~~

26 ~~(1) A copy of the certification described in subdivision (a) for~~  
27 ~~each model it employs.~~

28 ~~(2) The dates of employment and the amount of compensation~~  
29 ~~paid for each model.~~

30 ~~(c) (1) Every modeling agency shall post in a conspicuous place~~  
31 ~~in its office a health advisory relating to eating disorders that~~  
32 ~~includes a phone number to the Occupational Safety and Health~~  
33 ~~Standards Board, a phone number to an entity where a model can~~  
34 ~~report sexual harassment or assault, and any other information that~~  
35 ~~may specified by the Labor Commissioner.~~

36 ~~(2) Any modeling agency that violates the requirements of~~  
37 ~~paragraph (1) shall be subject to a fine not to exceed five hundred~~  
38 ~~dollars (\$500) per day that those requirements are violated.~~

39 *This chapter shall not apply to persons covered by Wage Order*  
40 *11, regulating the Broadcasting Industry, or Wage Order 12,*

1 *regulating the Motion Picture Industry, of the Industrial Welfare*  
 2 *Commission.*

3 1707.5. (a) ~~The Occupational Safety and Health Standards~~  
 4 ~~Board and the State Department of Public Health shall draft~~  
 5 ~~regulations, in consultation with physicians and other health~~  
 6 ~~professionals with expertise in eating disorders, that do all of the~~  
 7 ~~following: shall, no later than December 1, 2017, and in~~  
 8 ~~consultation with accredited specialists in the prevention and~~  
 9 ~~treatment of eating disorders, adopt an occupational safety and~~  
 10 ~~health standard for models, with an operative date of September~~  
 11 ~~1, 2018, to be fully complied with by December 31, 2018 . The~~  
 12 ~~standard shall apply to services provided in California by models~~  
 13 ~~under this chapter and Chapter 4 (commencing with Section 1700).~~  
 14 ~~The Occupational Safety and Health Standards Board may update~~  
 15 ~~these standards from time to time as it deems necessary.~~

16 ~~(1) Include detailed requirements of the certification and record~~  
 17 ~~retention requirements described in Section 1707.4.~~

18 ~~(2) Require no less than three medical check-ups per year by~~  
 19 ~~models.~~

20 ~~(3) Require a model to obtain a nutrition consultation with a~~  
 21 ~~qualified health professional.~~

22 ~~(4) Address any medical testing that should be done by a model~~  
 23 ~~to determine his or her fitness to perform his or her job duties and~~  
 24 ~~provide a model with information about the privacy of these test~~  
 25 ~~results.~~

26 ~~(b) The regulations standard shall be adopted in accordance~~  
 27 ~~with the rulemaking provisions of the Administrative Procedure~~  
 28 ~~Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
 29 ~~Division 3 of Title 2 of the Government Code). address issues~~  
 30 ~~including, but not limited to, all of the following:~~

31 ~~(1) Protection of the model's rights to health care privacy under~~  
 32 ~~the Health Insurance Portability and Accountability Act of 1996~~  
 33 ~~(Public Law 104-191) and all other provisions of law.~~

34 ~~(2) Workplace safety, especially for minors, including protection~~  
 35 ~~from sexual exploitation and sexual predators.~~

36 ~~(3) Prevention and treatment of eating disorders.~~

37 1707.6. ~~(a) All books, records, and other papers kept pursuant~~  
 38 ~~to this chapter by a modeling agency shall be open at all reasonable~~  
 39 ~~hours to the inspection of the Labor Commissioner and his agents.~~  
 40 ~~Every modeling agency shall furnish to the Labor Commissioner~~

1 upon request a true copy of these books, records, and papers or  
2 any portion thereof.

3 (b) Every modeling agency that violates subdivision (a) shall  
4 be subject to a fine of five hundred dollars (\$500).

5 1707.7. All moneys collected for licenses and all fines collected  
6 for violations of this chapter shall be paid into the State Treasury  
7 and credited to the General Fund.

8 SEC. 2. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.