

MEMORANDUM OF OPPOSITION

S.8638-A (HOYLMAN) / A.9762-A (REYES)

The Artist Management Association (AMA) opposes S.8638-A/A.9762-A, as currently drafted, because it would create a costly and complex framework around the relationship between “creative management company” and the “creatives” with whom they work. While the AMA supports reasonable worker protections, this “one-size fits all” approach to an entire sector that goes well beyond *fashion workers*, will disproportionately impact small businesses, many of them woman-owned, and irrevocably harm New York’s artistic economy.

The Artist Management Association (AMA) is a trade association acting on behalf of companies representing photographers, artists, directors, creative directors, stylists and other creative talent who work in the fashion industry. Our member companies are predominantly small, independent businesses that provide extensive representation services to our individual artists. As artist's agents, managers, and representatives, we actively promote artists' work and abilities; seek out and utilize relationships; negotiate rates and protect artist copyrights, define the scope of projects, create estimates and negotiate service agreements; produce, or engage producers to carry out photo shoots, events, and shows; advocate for a healthy and safe work environment on set, especially in the time of COVID-19; create and manage artists' portfolios; oversee execution and post-production of photo shoots; manage all final billing, and follow up on overdue invoices.

This bill purports to apply only to the fashion industry, but its definitions would extend to the advertising industry generally, affecting a hallmark New York industry that likely has not been consulted about its impacts. The fashion industry is a historical New York industry, and it is a significant economic driver - employing over 180,000 people in New York City alone, including 16,000 manufacturing jobs, paying approximately \$11 billion in wages, and generating almost \$2 billion in tax revenue each year. The advertising industry is even more significant, with advertising spending supporting 1,978,738 jobs across New York in 2020; a number that is expected to grow to 2,164,376 jobs by 2026 - a roughly 9% increase. Such spending supported 1 in 5 of all New York jobs in 2020, and is estimated to continue supporting a largely similar proportion of jobs by 2026. Legislation which raises costs, restricts competition or creates new expenses and liabilities for this industry must be carefully considered and tailored to ensure it does not undermine the tremendous benefits the fashion and advertising industry provides to New York and its people.

A chief concern with this bill is that it would squeeze AMA’s businesses by capping commissions for artist managers regardless of competitive market rates, while adding substantial new costs. Specifically, the bill would limit the commission for our work on behalf of photographers to no more than 20 percent instead of negotiated rates in a competitive market. Artist managers provide a broad range of comprehensive services as business manager, producer, sales consultant, and advisor, and depend on the freedom to charge commissions that reflect the time commitment, quality and , scope of their services like in other competitive

markets. By forcing all managers, whatever skill, time commitment or quality of service, to limit their commissions to the same amount, the proposed legislation eliminates other benefits to artists of freely competitive markets, including incentives for managers to expend time and resources to provide the highest quality services to benefit their clients.

While the 20 percent cap would also apply to models, different professionals often provide – *and separately charge* - for each of the services that we provide inclusively for photographers. Comparatively, there would be a nominal impact upon the commissions and charges for work associated with models, while our members' commission would be reduced by up to one-third.

At the same time, the bill would add substantial new costs. The bill would require that we render payment to creatives no later than 45 days after completion of services. However, clients often do not remit payment to our businesses within that time frame; which would result in our businesses having to “float” those costs while we await payment by the clients. This represents thousands of dollars in payments that many of our businesses simply do not have the resources to make on a routine basis. While the bill would require clients to provide payments within 30 days of the end of the engagement, there is no penalty for noncompliance - making the requirement meaningless. The bill would also appear to reclassify creatives as hourly wage workers, entitled to overtime and other mandates, even though most are independent contractors. This reclassification adds further costs and administrative obligations. The bill would add other costs, including the purchase of a \$50,000 surety bond, registration costs (presumably including agency administrative fees), and being compelled to enter into contracts with creatives every year.

These costs and mandates would render our operations unsustainable and force many of our businesses to close or consider relocating. It would increase costs for advertising and brands, likely compelling them to also look to other states for advertising work – a more accepted option in our progressively mobile work environment.

For these reasons, we oppose this legislation and we urge the Legislature to reject S.8638-A/A.9762-A. If you have any questions about the information in this memo, please contact Jim Walsh at jwalsh@manatt.com or (518) 431-6717.