S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 4, 2009

Introduced by M. of A. ORTIZ, J. RIVERA, BENEDETTO, JAFFEE, COOK, EDDINGTON, ROBINSON, CLARK, ESPAILLAT, HOOPER -- Multi-Sponsored by -- M. of A. COLTON, DESTITO, KOON, MAYERSOHN, REILLY, SWEENEY, WEISENBERG -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to protecting persons including those employed at adult entertainment establishments from becoming victims of severe forms of human trafficking

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "dance performer registration act".

S 2. Legislative findings. Although there are believed to be tens or even hundreds of thousands of trafficking victims in the United States, less than one out of a thousand have been identified since human trafficking was made a federal crime in 2000. Therefore, there is an immediate need to end human trafficking in the United States by identifying victims and monitoring places that are suspected of participating in severe forms of trafficking. Victims of sex trafficking may work at places where commercial sexual exploitation occurs. The purpose of this act is to ensure and prevent dance performers from becoming victims of involuntary servitude or prostitution.

S 3. The labor law is amended by adding a new article 4-B to read as follows:

ARTICLE 4-B

DANCE PERFORMER REGISTRATION

SECTION 156. DEFINITIONS.

157. DANCE PERFORMER PERMIT.

158. DANCE PERFORMER PERMIT REGISTRY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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159. PENALTIES.

S 156. DEFINITIONS. WHEREVER USED IN THIS ARTICLE:

1. "ADULT ENTERTAINMENT ESTABLISHMENT" SHALL MEAN ANY PERSON, CORPORATION, PARTNERSHIP, OR OTHER BUSINESS ESTABLISHMENT WITH A LICENSE TO SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES AND/OR FOOD FOR CONSUMPTION ON THE PREMISES, WHICH FEATURES DANCERS THAT ARE DISPLAYED IN SUCH MANNER OR ATTIRE AS TO EXPOSE TO VIEW ANY PORTION OF THE PUBIC AREA, ANUS, VULVA OR GENITALS, OR ANY SIMULATION THEREOF, OR PERMIT ANY FEMALE TO APPEAR IN SUCH MANNER OR ATTIRE AS TO EXPOSE TO VIEW ANY PORTION OF THE BREAST BELOW THE TOP OF THE AREOLA.

2. "SEVERE FORMS OF TRAFFICKING" MEANS EITHER SEX TRAFFICKING IN WHICH A PERSON IS FORCED TO PERFORM A COMMERCIAL SEX ACT OR THE RECRUITMENT, HARBORING, TRANSPORTATION, OR OBTAINING OF A PERSON FOR LABOR OR SERVICES, THROUGH THE USE OF FORCE, FRAUD OR COERCION FOR THE PURPOSE OF SUBJECTION TO INVOLUNTARY SERVITUDE, DEBT BONDAGE OR SLAVERY.

3. "SEX TRAFFICKING" MEANS THE RECRUITMENT, HARBORING, TRANSPORTATION OR OBTAINMENT OF A PERSON USING FORCE, FRAUD OR COERCION FOR THE PURPOSE OF A COMMERCIAL SEX ACT.

4. "COMMERCIAL SEX ACT" MEANS ANY SEXUAL CONDUCT, PERFORMANCE OR ACT CONTINGENT UPON PAYMENT.

5. "SEXUALLY ORIENTED BUSINESS" MEANS A NIGHTCLUB, BAR, RESTAURANT, OR SIMILAR COMMERCIAL ENTERPRISE THAT:

(A) PROVIDES FOR AN AUDIENCE OF TWO OR MORE INDIVIDUALS LIVE NUDE ENTERTAINMENT OR LIVE NUDE PERFORMANCES; AND

(B) AUTHORIZES ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES.

S 157. DANCE PERFORMER PERMIT. 1. ON OR BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, THE COMMISSIONER SHALL BE REQUIRED TO DEVELOP A DANCE PERFORMER PERMIT PROGRAM AND SHALL REQUIRE THE REGISTRATION OF DANCE PERFORMERS EMPLOYED BY ADULT ENTERTAINMENT ESTABLISHMENTS.

2. A DANCE PERFORMER EMPLOYED BY AN ADULT ENTERTAINMENT ESTABLISHMENT SHALL BE REQUIRED TO HAVE A DANCE PERFORMER PERMIT AS SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION.

3. A DANCE PERFORMER PERMIT SHALL BE VALID FOR THREE YEARS FROM THE DATE OF ISSUANCE. A DANCE PERFORMER PERMIT SHALL BE ACCOMPANIED BY A FEE DETERMINED BY THE COMMISSIONER IN AN AMOUNT SUFFICIENT TO DEFRAY THE DEPARTMENT'S COSTS OF ADMINISTERING THE PERMIT PROGRAM, PROVIDED, THAT SUCH FEE SHALL NOT EXCEED TWENTY-FIVE DOLLARS FOR INITIAL REGISTRATION OR FIFTEEN DOLLARS FOR RENEWAL.

4. AN APPLICATION FOR A DANCE PERFORMER PERMIT SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT, AND SHALL CONTAIN SUCH MATTERS AS THE COMMISSIONER MAY DEEM TO BE NECESSARY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

(A) THE LEGAL AND STAGE NAME, IF ANY, OF THE DANCE PERFORMER;

(B) THE DANCE PERFORMER'S SOCIAL SECURITY NUMBER;

(C) EMPLOYER INFORMATION, INCLUDING BUT NOT LIMITED TO, EMPLOYER NAME; TYPE OF BUSINESS; EMPLOYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER; PERMANENT AND MAILING ADDRESS; AND PHONE NUMBER; AND

(D) PROOF OF UNITED STATES CITIZENSHIP OR QUALIFIED ALIEN STATUS AS DEFINED IN SUBPARAGRAPH (II) OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED TWENTY-TWO OF THE SOCIAL SERVICES LAW.

S 158. DANCE PERFORMER PERMIT REGISTRY. 1. ON OR BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, THE DEPARTMENT SHALL DEVELOP A REGISTRY CONTAINING DANCE PERFORMER PERMITS FOR ADULT ENTERTAINMENT ESTABLISHMENTS FOR THE EMPLOYMENT OF DANCE PERFORMERS. NAMES OF PERMIT HOLDERS SHALL BE PURGED UPON THE EXPIRATION WITHOUT RENEWAL OF SUCH PERMIT. A PERMIT HOLDER MAY

VOLUNTARILY RELINQUISH A DANCE PERFORMER PERMIT AND MAY REQUEST THAT HIS OR HER NAME AND PERMIT INFORMATION BE REMOVED FROM THE REGISTRY.

2. AN OWNER OR SUPERVISOR OF AN ADULT ENTERTAINMENT ESTABLISHMENT SHALL KEEP ON FILE ON THE PREMISES A COPY OF ALL DANCE PERFORMER PERMITS. SUCH FILES SHALL BE AVAILABLE AT ALL TIMES TO THE DEPARTMENT, BUT SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE MADE AVAILABLE TO ANY OTHER PERSON EXCEPT PURSUANT TO A COURT ORDER. PERMITS ON FILE SHALL BE PURGED BY AN EMPLOYER THREE YEARS AFTER A PERFORMER TERMINATES EMPLOYMENT.

S 159. PENALTIES. 1. IF AN OWNER OF AN ADULT ENTERTAINMENT ESTABLISHMENT HAS BEEN CONVICTED OF VIOLATING ANY PROVISION OF THIS ARTICLE OR ANY RULE OR REGULATION PROMULGATED THEREAFTER, THE DEPARTMENT SHALL ASSESS THE OWNER A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR THE FIRST SUCH VIOLATION AND NOT MORE THAN TWO THOUSAND DOLLARS FOR A SECOND SUBSEQUENT VIOLATION. SUCH PENALTY SHALL BE PAID TO THE DEPARTMENT FOR DEPOSIT IN THE TREASURY OF THE STATE. IN ASSESSING THE AMOUNT OF THE PENALTY, THE DEPARTMENT SHALL GIVE DUE CONSIDERATION TO THE SIZE OF THE EMPLOYER'S BUSINESS, THE HISTORY OF PREVIOUS VIOLATIONS AND THE FAILURE TO COMPLY WITH RECORD-KEEPING OR OTHER REQUIREMENTS.

2. IF CONVICTED OF A VIOLATION OF THIS ARTICLE UNPERMITTED DANCE PERFORMERS SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN TWENTY DOLLARS FOR THE FIRST SUCH VIOLATION AND NOT MORE THAN FIFTY DOLLARS FOR A SECOND SUBSEQUENT VIOLATION. SUCH PENALTY SHALL BE PAID TO THE DEPARTMENT FOR DEPOSIT IN THE TREASURY OF THE STATE. UNPERMITTED DANCE PERFORMERS FOUND TO BE VICTIMS OF SEVERE FORMS OF TRAFFICKING SHALL NOT BE FINED A CIVIL PENALTY.

S 4. The department of labor shall enforce all provisions of article 4-B of the labor law, as added by section three of this act, and shall work with any state and local agencies or departments with any regulatory authority over adult entertainment establishments as defined in such article 4-B, to provide notice to such establishments of the registration and permit requirements set forth in this act.

S 5. This act shall take effect immediately.