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

6177

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the civil practice law and rules, in relation to licensing of appearance enhancement businesses

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

Section 1. Section 400 of the general business law is amended by adding a new subdivision 11 to read as follows:

11. "RELATED PERSON" MEANS A "RELATED PERSON" AS SUCH TERM IS DESCRIBED PURSUANT TO SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE.

S 2. Subdivision 1 of section 410 of the general business law, as added by chapter 509 of the laws of 1992, is amended to read as follows:

1. Suspension and revocation of licenses; fines; reprimands. A license issued pursuant to this article may be suspended or revoked, or a fine not exceeding five hundred dollars payable to the department may be imposed for any one or more of the following causes:

a. Fraud or bribery in securing a license or permission to take an examination therefor.

b. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

c. Incompetence or untrustworthiness.

d. Failure to display the license as provided in this article.

e. Violation of any provision of this article, or of any rule or regulation adopted hereunder.

f. Conviction of any of the following crimes subsequent to the issuance of a license pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article 155; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to

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

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sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article 160; homicide pursuant to sections 125.25 and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; PROSTITUTION OFFENSES PURSUANT TO ARTICLE 230 OF THE PENAL LAW; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a weapon pursuant to sections 265.11 and 265.12; and sex offenses pursuant to article 130 of the penal law. Provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

[Provided, however, a fine shall not be imposed for the] EXCEPT IN THE CASE OF causes specified in paragraph f of this subdivision[. In], IN lieu of or in conjunction with the suspension or revocation of a license, or the imposition of a fine pursuant to this section, the secretary may issue a reprimand. When a license issued pursuant to this article is revoked, such license shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation. No license shall be issued after a second revocation. IN ADDITION TO THE FORGOING ONE YEAR REVOCATION, WHEN A LICENSE FOR AN APPEARANCE ENHANCEMENT BUSINESS IS REVOKED, A LICENSE SHALL NOT BE REINSTATED OR REISSUED TO THE ORIGINAL LICENSEE, OR TO ANY RELATED PERSON, AS DEFINED IN THIS ARTICLE FOR A PERIOD OF FIVE YEARS FOR OPERATION AT AN ADDRESS WITHIN THE SAME COUNTY AS THE ORIGINAL PLACE OF BUSINESS LISTED ON OR FOR THE LICENSE, AND NO LICENSE SHALL BE ISSUED AFTER A SECOND REVOCATION.

S 3. The general business law is amended by adding a new section 412-a to read as follows:

S 412-A. ADDITIONAL PROVISIONS WITH RESPECT TO AN APPEARANCE ENHANCEMENT BUSINESS. 1. ANY OTHER PROVISIONS OF THIS ARTICLE TO THE CONTRARY NOTWITHSTANDING:

A. ANY LICENSE OR RENEWAL THEREOF ISSUED FOR AN APPEARANCE ENHANCEMENT BUSINESS PURSUANT TO THIS ARTICLE MAY BE REVOKED, CANCELLED, SUSPENDED, AND/OR SUBJECTED TO THE IMPOSITION OF A CIVIL PENALTY FOR CAUSE OR VIOLATIONS OCCURRING DURING THE LICENSE PERIOD AND/OR THE PERIOD IMMEDIATELY PRECEDING THE ISSUANCE OF SUCH LICENSE OR RENEWAL, AND MUST BE REVOKED UPON CONVICTION OF THE LICENSEE UPON ANY FELONY OFFENSE LISTED IN PARAGRAPH F OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE. AS USED IN THIS SECTION, THE TERM "FOR CAUSE" MEANS AND INCLUDES THE EXISTENCE OF A SUSTAINED AND CONTINUING PATTERN OF NOISE, DISTURBANCE, MISCONDUCT, OR DISORDER ON OR ABOUT THE LICENSED PREMISES, RELATED TO THE OPERATION OF THE PREMISES OR THE CONDUCT OF ITS PATRONS, WHICH ADVERSELY AFFECTS THE HEALTH, WELFARE, OR SAFETY OF THE INHABITANTS OF THE AREA IN WHICH SUCH LICENSED PREMISES ARE LOCATED. THE EXISTENCE OF A SUSTAINED AND CONTINUING PATTERN OF NOISE, DISTURBANCE, MISCONDUCT, OR DISORDER ON OR ABOUT THE LICENSED PREMISES, RELATED TO THE OPERATION OF THE PREMISES OR THE CONDUCT OF ITS PATRONS, WILL BE PRESUMED UPON THE FOURTH INCIDENT REPORTED TO A LAW ENFORCEMENT AGENCY

OF NOISE OR DISTURBANCE OR MISCONDUCT OR DISORDER ON OR ABOUT THE LICENSED PREMISES OR RELATED TO THE OPERATION OF THE PREMISES OR THE CONDUCT OF ITS PATRONS, IN ANY ONE HUNDRED EIGHTY DAY PERIOD, ABSENT CLEAR AND CONVINCING EVIDENCE OF EITHER FRAUDULENT INTENT ON THE PART OF ANY COMPLAINANT OR A FACTUAL ERROR WITH RESPECT TO THE CONTENT OF ANY REPORT CONCERNING SUCH COMPLAINT RELIED UPON BY THE SECRETARY.

B. A PERSON WHO OPERATES AN APPEARANCE ENHANCEMENT BUSINESS WITHIN THIS STATE WITHOUT A VALID LICENSE BEING IN EFFECT SHALL HAVE UP TO ONE MONTH AFTER NOTIFICATION TO APPLY FOR SUCH LICENSE AND UP TO ONE YEAR TO OBTAIN SUCH LICENSE. OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHIN THIS STATE WITHOUT A VALID LICENSE BEING IN EFFECT OR WITHOUT PROOF THAT APPLICATION HAS BEEN MADE FOR A VALID LICENSE WITHIN THREE MONTHS OF NOTIFICATION, SHALL RESULT IN INELIGIBILITY FOR A LICENSE UNDER THIS ARTICLE FOR A PERIOD OF FIVE YEARS FOR THE PERSON OR PERSONS, INCLUDING A PARTNERSHIP, A LIMITED LIABILITY COMPANY OR CORPORATION, AND RELATED PERSON AS DEFINED IN THIS ARTICLE.

C. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, TWO OR MORE CONVICTIONS OF ANY PERSON OR PERSONS, WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLE TWO HUNDRED THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT ENGAGED IN AT THE BUSINESS LOCATION OF AN APPEARANCE ENHANCEMENT BUSINESS SHALL BE PRESUMPTIVE EVIDENCE OF CONDUCT CONSTITUTING USE OF THE PREMISES FOR PURPOSES OF PROSTITUTION, AND SUCH BUSINESS LOCATION SHALL BE SUBJECT TO ANY AND ALL OF THE ACTIONS, JURISDICTION, REMEDIES, AND OTHER PROVISIONS PROVIDED FOR IN TITLE TWO OF ARTICLE TWENTY-THREE OF THE PUBLIC HEALTH LAW.

2. AN APPEARANCE ENHANCEMENT BUSINESS MAY NOT BE OPERATED BETWEEN THE HOURS OF MIDNIGHT AND FIVE A.M., EXCEPT THE CASE OF AN APPEARANCE ENHANCEMENT BUSINESS LOCATED ON THE PREMISES OF A HEALTH CARE FACILITY LICENSED OR PERMITTED BY THE STATE; A HOTEL, MOTEL, OR BED AND BREAKFAST INN; A TIMESHARE PROPERTY; A PUBLIC AIRPORT; OR A PARI-MUTUEL FACILITY; OR DURING A SPECIAL EVENT IF THE COUNTY OR MUNICIPALITY IN WHICH THE ESTABLISHMENT OPERATES HAS APPROVED SUCH OPERATION DURING THE SPECIAL EVENT; PROVIDED HOWEVER THAT ANY PROCEDURE PERFORMED BETWEEN THE HOURS OF MIDNIGHT AND FIVE A.M. IN ANY OF THE PRECEDING EXCEPTIONS SHALL BE PERFORMED ONLY BY AN INDIVIDUAL LICENSED TO PERFORM SUCH PROCEDURE UNDER THIS ARTICLE. A PERSON VIOLATING THE PROVISIONS OF THIS SUBDIVISION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE PUNISHED BY IMPRISONMENT FOR SIX MONTHS OR BY A FINE OF FIVE HUNDRED DOLLARS OR BOTH. A SECOND OR SUBSEQUENT VIOLATION OF THIS SUBDIVISION WITHIN A FIVE YEAR PERIOD SHALL BE DEEMED A CLASS E FELONY.

3. AN APPEARANCE ENHANCEMENT BUSINESS WHICH DOES NOT OFFER ALL OF THE FOLLOWING SERVICES REQUIRED TO BE LICENSED PURSUANT TO THIS ARTICLE SHALL BE REQUIRED TO POST THE TOLL-FREE NUMBER, ADDRESS AND OTHER PERTINENT INFORMATION AS DETERMINED AND REQUIRED BY THE SECRETARY OF THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER IN AN AREA EASILY OBSERVABLE TO PATRONS, EMPLOYEES, AND VISITORS: NAIL SPECIALTY, WAXING, NATURAL HAIR STYLING, ESTHETICS OR COSMETOLOGY, AS DEFINED IN SECTION FOUR HUNDRED OF THIS ARTICLE.

4. RESTRAINT OF UNLAWFUL ACTS BY APPEARANCE ENHANCEMENT BUSINESSES. WHERE A VIOLATION OF THIS TITLE IS ALLEGED TO HAVE OCCURRED BY OR AT A LICENSED APPEARANCE ENHANCEMENT BUSINESS OR BY A PERSON OR PERSONS, INCLUDING A PARTNERSHIP, A LIMITED LIABILITY COMPANY OR CORPORATION, WHO HAVE ENGAGED IN OR FOLLOWED THE BUSINESS OR OCCUPATION OF, OR HELD HIMSELF, HERSELF OR ITSELF OUT AS OR ACTED, TEMPORARILY OR OTHERWISE, AS AN APPEARANCE ENHANCEMENT BUSINESS IN CITIES HAVING A POPULATION OF ONE MILLION OR MORE, IN ADDITION TO THE ATTORNEY GENERAL OR THE DEPARTMENT,

THE CORPORATION COUNSEL MAY APPLY TO THE SUPREME COURT WITHIN THE JUDICIAL DISTRICT IN WHICH SUCH VIOLATION IS ALLEGED TO HAVE OCCURRED FOR AN ORDER ENJOINING OR RESTRAINING COMMISSION OR CONTINUANCE OF THE UNLAWFUL ACTS COMPLAINED OF. THE REMEDY PROVIDED IN THIS SECTION SHALL BE IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW OR TO THE PROCEEDINGS COMMENCED AGAINST A LICENSEE UNDER THIS TITLE.

S 4. Subdivisions 4-b and 6 of section 1310 of the civil practice law and rules, subdivision 4-b as added by chapter 655 of the laws of 1990 and subdivision 6 as added by chapter 669 of the laws of 1984, are amended to read as follows:

4-b. "Specified felony offense" means:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, [or] 220.43, 230.34 OR 135.35 of the penal law, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or

(b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43 [or], 221.55, 230.34 OR 135.35 of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 [or], 220.39, 230.34 OR 135.35 of the penal law, or a conviction of a criminal defendant for a violation of section 221.30 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances or where the conviction is for a violation of section 221.30 of the penal law, marijuana, as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance or where the conviction is for a violation of section 221.30 of the penal law, marijuana, that such possession was with the intent to sell it.

6. "Pre-conviction forfeiture crime" means only a felony defined in article two hundred twenty or section 221.30 [or], 221.55, 230.34 OR 135.35 of the penal law.

S 5. This act shall take effect immediately.