

5748

2015-2016 Regular Sessions

I N S E N A T E

June 2, 2015

Introduced by Sen. HOYLMAN -- 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 to authorize the secretary of state to order the cessation of unlicensed appearance enhancement activity and to register trainees in the practice of nail specialty

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

1 Section 1. Section 400 of the general business law is amended by
2 adding a new subdivision 11 to read as follows:
3 11. "TRAINEE" MEANS A PERSON PURSUING IN GOOD FAITH A COURSE OF STUDY
4 IN THE PRACTICE OF NAIL SPECIALTY UNDER THE TUTELAGE, SUPERVISION AND
5 DIRECTION OF A LICENSED NAIL PRACTITIONER AND WHO ASSISTS SUCH PRACTI-
6 TIONER IN SUCH PRACTICE.
7 S 2. Subdivision 1 of section 401 of the general business law, as
8 amended by chapter 341 of the laws of 1998, is amended to read as
9 follows:
10 1. No person shall engage in the practice of nail specialty, waxing,
11 natural hair styling, esthetics or cosmetology, as defined in section
12 four hundred of this article, without having received a license to
13 engage in such practice in the manner prescribed in this article. NO
14 PERSON SHALL ACT AS A TRAINEE OR PERFORM ANY SERVICE AS SUCH UNLESS HE
15 OR SHE HAS OBTAINED A CERTIFICATE OF REGISTRATION PURSUANT TO THIS ARTI-
16 CLE.
17 S 3. Section 404 of the general business law, as amended by chapter
18 341 of the laws of 1998, is amended to read as follows:
19 S 404. Rules and regulations. The secretary shall promulgate rules and
20 regulations which establish standards for practice and operation by
21 licensees AND TRAINEES under this article in order to ensure the health,
22 safety and welfare of the public AS WELL AS LICENSEES AND TRAINEES
23 OFFERING SERVICES. Such rules and regulations shall include, but not be
24 limited to, the sanitary conditions and procedures required to be main-

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

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1 tained, a minimum standard of training appropriate to the duties of nail
2 specialists, TRAINEES, waxers, natural hair stylists, estheticians, and
3 cosmetologists and the provision of service by nail specialists, TRAIN-
4 EES, waxers, natural hair stylists, estheticians or cosmetologists at
5 remote locations other than the licensee's home provided that such prac-
6 titioner holds an appearance enhancement business license to operate at
7 a fixed location or is employed by the holder of an appearance enhance-
8 ment business license. Regulations setting forth the educational
9 requirements for nail specialists AND TRAINEES shall include education
10 in the area of causes of infection and bacteriology. In promulgating
11 such rules and regulations the secretary shall consult with the state
12 education department, the advisory committee established pursuant to
13 this article, any other state agencies and private industry represen-
14 tatives as may be appropriate in determining minimum training require-
15 ments.

16 S 4. Section 404-b of the general business law, as added by chapter
17 489 of the laws of 2010, is amended to read as follows:

18 S 404-b. Nail specialty; owner responsibilities. In addition to any
19 rules and regulations establishing standards for practices and oper-
20 ations by licensees under this article, in order to ensure the health,
21 safety and welfare within appearance enhancement businesses, all owners
22 and operators of appearance enhancement businesses which practice nail
23 specialty shall make available[, upon request] FOR USE, gloves and face-
24 masks for nail speciality licensees AND TRAINEES who work in such busi-
25 nesses. [No owner or operator of any appearance enhancement business
26 that engages in the practice of nail speciality shall prohibit any
27 licensee practicing nail specialty from wearing a mask or gloves while
28 engaged in the practice of nail specialty at such business.]

29 S 5. Subdivision 2 of section 405 of the general business law, as
30 added by chapter 509 of the laws of 1992, is amended to read as follows:

31 2. An appearance enhancement business licensee shall file and maintain
32 during the term of the license evidence of a bond [or], liability insur-
33 ance OR A COMBINATION THEREOF, AS REQUIRED BY THE SECRETARY.

34 S 6. Subdivision 1 of section 406 of the general business law is
35 amended by adding a new paragraph f to read as follows:

36 F. NOTWITHSTANDING THE EDUCATIONAL REQUIREMENTS OF THIS SECTION, A
37 TRAINEE MAY OBTAIN A LICENSE TO PRACTICE NAIL SPECIALTY IF SUCH TRAINEE
38 PROVIDES SATISFACTORY EVIDENCE TO THE SECRETARY THAT SUCH TRAINEE HAS
39 BEEN ACTIVELY ENGAGED IN A TRAINEESHIP FOR A PERIOD OF ONE YEAR AND HAS
40 COMPLETED A COURSE OF STUDY SET FORTH BY THE SECRETARY. SUCH COURSE OF
41 STUDY MAY BE DELIVERED BY ELECTRONIC MEANS.

42 S 7. The general business law is amended by adding a new section 408-a
43 to read as follows:

44 S 408-A. TRAINEE. 1. EACH APPLICANT FOR A CERTIFICATE OF REGISTRATION
45 AS A TRAINEE SHALL MAKE AN APPLICATION WHICH SHALL INCLUDE THE PHYSI-
46 CIAN'S CERTIFICATE REQUIRED BY PARAGRAPH E OF SUBDIVISION ONE OF SECTION
47 FOUR HUNDRED SIX OF THIS ARTICLE, TWO RECENT PHOTOGRAPHS, AND SUCH OTHER
48 INFORMATION REQUIRED BY SUCH SECTION AND IN SUCH FORM AS THE SECRETARY
49 MAY PRESCRIBE.

50 2. A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL BE FOR A PERIOD OF
51 ONE YEAR AND MAY BE RENEWED ONCE.

52 3. EACH CERTIFICATE OF REGISTRATION ISSUED AS PROVIDED IN THIS SECTION
53 SHALL BE POSTED IN A CONSPICUOUS PLACE IN THE APPEARANCE ENHANCEMENT
54 BUSINESS IN WHICH THE TRAINEE IS ACTUALLY ENGAGED IN THE PRACTICE OF
55 NAIL SPECIALTY AS A TRAINEE.

1 4. THE HOLDER OF A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL NOT
2 BE ENTITLED TO AN APPEARANCE ENHANCEMENT BUSINESS LICENSE.

3 S 8. Subdivisions 3, 4, 5, 6 and 7 of section 409 of the general busi-
4 ness law are renumbered subdivisions 4, 5, 6, 7 and 8, and a new subdi-
5 vision 3 is added to read as follows:

6 3. THE FEE FOR THE REGISTRATION OR THE RENEWAL OF THE REGISTRATION OF
7 A TRAINEE SHALL BE TWENTY DOLLARS.

8 S 9. Subdivision 1 of section 410 of the general business law, as
9 added by chapter 509 of the laws of the 1992, is amended to read as
10 follows:

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

16 a. Fraud or bribery in securing a license OR REGISTRATION or permis-
17 sion to take an examination therefor.

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

21 c. Incompetence or untrustworthiness.

22 d. Failure to display the license OR REGISTRATION as provided in this
23 article.

24 e. Violation of any provision of this article, or of any rule or regu-
25 lation adopted hereunder.

26 f. Conviction of any of the following crimes subsequent to the issu-
27 ance of a license pursuant to this article: fraud pursuant to sections
28 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
29 business records pursuant to section 175.10; grand larceny pursuant to
30 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
31 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
32 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
33 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
34 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
35 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
36 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
37 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
38 of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a
39 weapon pursuant to sections 265.11 and 265.12; and sex offenses pursuant
40 to article 130 of the penal law. Provided, however, that for the
41 purposes of this article, none of the following shall be considered
42 criminal convictions or reported as such: (i) a conviction for which an
43 executive pardon has been issued pursuant to the executive law; (ii) a
44 conviction which has been vacated and replaced by a youthful offender
45 finding pursuant to article seven hundred twenty of the criminal proce-
46 dure law, or the applicable provisions of law of any other jurisdiction;
47 or (iii) a conviction the records of which have been expunged or sealed
48 pursuant to the applicable provisions of the laws of this state or of
49 any other jurisdiction; and (iv) a conviction for which other evidence
50 of successful rehabilitation to remove the disability has been issued.

51 Provided, however, a fine shall not be imposed for the causes speci-
52 fied in paragraph f of this subdivision.

53 In lieu of or in conjunction with the suspension or revocation of a
54 license, or the imposition of a fine pursuant to this section, the
55 secretary may issue a reprimand. When a license issued pursuant to this
56 article is revoked, such license shall not be reinstated or reissued

1 until after the expiration of a period of one year from the date of such
2 revocation. No license shall be issued after a second revocation.

3 S 10. Subdivision 2 of section 410 of the general business law, as
4 amended by chapter 324 of the laws of the 1998, is amended to read as
5 follows:

6 2. Unlicensed activities. a. THE CONDUCT OF ANY ACTIVITY FOR WHICH A
7 LICENSE IS REQUIRED BY THIS ARTICLE WITHOUT SUCH LICENSE, OR WITHOUT THE
8 BOND, LIABILITY INSURANCE OR COMBINATION THEREOF AS REQUIRED PURSUANT TO
9 REGULATIONS PROMULGATED BY THE SECRETARY, CONSTITUTES A THREAT TO PUBLIC
10 HEALTH, SAFETY AND WELFARE. The secretary may issue an IMMEDIATE order
11 directing the cessation of any activity for which a license is required
12 by this article [upon a determination] IF THE SECRETARY FINDS that a
13 person, [including a] partnership, a limited liability company or BUSI-
14 NESS corporation, [has engaged] IS ENGAGING in or [followed] FOLLOWING
15 the business or occupation of, or [held] HOLDING himself, HERSELF or
16 itself out as or [acted] IS ACTING, temporarily or otherwise, as a nail
17 specialist, natural hair stylist, esthetician, cosmetologist or appear-
18 ance enhancement business within this state without a valid license
19 [being in effect], OR WITHOUT THE BOND, LIABILITY INSURANCE OR COMBINA-
20 TION THEREOF AS REQUIRED PURSUANT TO REGULATIONS PROMULGATED BY THE
21 SECRETARY. [The] UPON THE ISSUANCE OF SUCH ORDER, THE department shall,
22 [before making such determination and order] UPON REQUEST, afford such
23 person, partnership, limited liability company or BUSINESS corporation
24 an opportunity to be heard in person or by counsel in reference thereto
25 in an adjudicatory proceeding [held pursuant to this article].

26 b. The SECRETARY OR attorney general, acting on behalf of the secre-
27 tary, may commence an action or proceeding in a court of competent
28 jurisdiction to obtain a judgment against such person, partnership,
29 limited liability company or BUSINESS corporation in an amount equal to
30 that assessed as a civil penalty. Said judgment shall thereafter be
31 enforceable by any means authorized by the civil practice law and rules.

32 C. WHERE AN APPEARANCE ENHANCEMENT BUSINESS OPERATOR CONTINUES TO
33 OPERATE WITHOUT A LICENSE FOLLOWING THE ISSUANCE OF AN ORDER BY THE
34 SECRETARY DIRECTING CESSATION, THE SECRETARY OR THE ATTORNEY GENERAL,
35 ACTING ON BEHALF OF THE SECRETARY, MAY COMMENCE AN ACTION OR PROCEEDING
36 IN A COURT OF COMPETENT JURISDICTION AGAINST SUCH OPERATOR TO OBTAIN AN
37 ORDER ENJOINING FURTHER OPERATION OF SUCH BUSINESS. AN APPEARANCE
38 ENHANCEMENT BUSINESS THAT HAS BEEN ORDERED TO CEASE OPERATION SHALL NOT
39 RE-OPEN WITHOUT FIRST OBTAINING A LICENSE AS REQUIRED BY THIS ARTICLE
40 AND PAYING ANY ASSESSED FINES.

41 S 11. Subdivisions 1 and 2 of section 411 of the general business law,
42 subdivision 1 as added by chapter 509 of the laws of 1992, and subdivi-
43 sion 2 as amended by chapter 134 of the laws of the 2000, are amended to
44 read as follows:

45 1. Denial of license OR REGISTRATION. The department shall, before
46 making a final determination to deny an application for a license OR
47 REGISTRATION, notify the applicant in writing of the reasons for such
48 proposed denial and shall afford the applicant an opportunity to be
49 heard in person or by counsel prior to denial of the application. Such
50 notification shall be served personally or by certified mail or in any
51 manner authorized by the civil practice law and rules for service of a
52 summons. If a hearing is requested, such hearing shall be held at such
53 time and place as the department shall prescribe. If the applicant
54 fails to make a written request for a hearing within thirty days after
55 receipt of such notification, then the notification of denial shall
56 become the final determination of the department. The department, acting

1 by such officer or person in the department as the secretary may desig-
2 nate, shall have the power to subpoena and bring before the officer or
3 person so designated any person in this state, and administer an oath to
4 and take testimony of any person or cause his deposition to be taken. A
5 subpoena issued under this section shall be regulated by the civil prac-
6 tice law and rules. If, after such hearing, the application is denied,
7 written notice of such denial shall be served upon the applicant
8 personally or by certified mail or in any manner authorized by the civil
9 practice law and rules for the service of a summons.

10 2. Revocation, suspension, reprimands, fines[; unlicensed activities].
11 The department shall, before revoking or suspending any license OR
12 REGISTRATION or imposing any fine or reprimand on the holder thereof[,
13 or before issuing any order directing the cessation of unlicensed activ-
14 ities,] and at least ten days prior to the date set for the hearing,
15 notify in writing the holder of such license[, or the person alleged to
16 have engaged in unlicensed activities,] OR REGISTRATION of any charges
17 made and shall afford such person an opportunity to be heard in person
18 or by counsel in reference thereto. Such written notice may be served
19 by delivery of same personally to the licensee OR REGISTRANT or person
20 charged, or by mailing same by certified mail to the last known business
21 or other address provided by such person to the secretary of state, or
22 by any method authorized by the civil practice law and rules for the
23 service of a summons. The hearing on such charges shall be at such time
24 and place as the department shall prescribe.

25 S 12. Section 412 of the general business law, as amended by chapter
26 341 of the laws of 1998, is amended to read as follows:

27 S 412. Civil penalties. 1. The practice of nail specialty, waxing,
28 natural hair styling, esthetics or cosmetology, or the operation of an
29 appearance enhancement business without a license or while under suspen-
30 sion or revocation, or in violation of an order directing the cessation
31 of unlicensed activity issued by the secretary pursuant to section four
32 hundred eleven of this article, is a violation and is subject to a civil
33 penalty of up to five hundred dollars for the first violation; one thou-
34 sand dollars for a second such violation; and two thousand five hundred
35 dollars for a third violation and any subsequent violation.

36 2. THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHOUT A
37 LICENSE OR WHILE UNDER SUSPENSION OR REVOCATION, OR IN VIOLATION OF AN
38 ORDER DIRECTING CESSATION OF UNLICENSED ACTIVITY ISSUED BY THE SECRETARY
39 PURSUANT TO SECTION FOUR HUNDRED ELEVEN OF THIS ARTICLE IS A VIOLATION
40 AND IS SUBJECT TO A CIVIL PENALTY OF UP TO TWO THOUSAND FIVE HUNDRED
41 DOLLARS FOR THE FIRST VIOLATION; FIVE THOUSAND DOLLARS FOR A SECOND SUCH
42 VIOLATION; AND TEN THOUSAND DOLLARS FOR A THIRD VIOLATION AND ANY SUBSE-
43 QUENT VIOLATION.

44 S 13. This act shall take effect immediately.