

5966

2015-2016 Regular Sessions

I N S E N A T E

June 14, 2015

Introduced by Sen. VENDITTO -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to authorizing 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. SUCH TRAINEE SHALL BE
6 EMPLOYED BY A LICENSED APPEARANCE ENHANCEMENT BUSINESS.
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 INCLUDING LICENSEES AND TRAINEES WHEN

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

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1 THEY ARE WORKING WITHIN SUCH ESTABLISHMENTS. Such rules and regulations
2 shall include, but not be limited to, the sanitary conditions and proce-
3 dures required to be maintained, a minimum standard of training appro-
4 priate to the duties of nail specialists, TRAINEES, waxers, natural hair
5 stylists, estheticians, and cosmetologists and the provision of service
6 by nail specialists, TRAINEES, waxers, natural hair stylists, estheti-
7 cians or cosmetologists at remote locations other than the licensee's
8 home provided that such practitioner holds an appearance enhancement
9 business license to operate at a fixed location or is employed by the
10 holder of an appearance enhancement business license. Regulations
11 setting forth the educational requirements for nail specialists AND
12 TRAINEES shall include education in the area of causes of infection and
13 bacteriology. In promulgating such rules and regulations the secretary
14 shall consult with the state education department, the advisory commit-
15 tee established pursuant to this article, any other state agencies and
16 private industry representatives as may be appropriate in determining
17 minimum training requirements.

18 S 4. Section 404-b of the general business law, as added by chapter
19 489 of the laws of 2010, is amended to read as follows:

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

31 S 5. Subdivision 1 of section 406 of the general business law is
32 amended by adding a new paragraph f to read as follows:

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

39 S 6. The general business law is amended by adding a new section 408-a
40 to read as follows:

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

47 2. A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL BE FOR A PERIOD OF
48 ONE YEAR, RENEWABLE FOR A SECOND YEAR, AND MAY BE RENEWED FOR ADDITIONAL
49 TERMS WITHIN THE DISCRETION OF THE SECRETARY.

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

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

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

4 3. UPON A DETERMINATION THAT IT IS IN THE BEST PUBLIC INTEREST TO DO
5 SO, THE SECRETARY MAY PROMULGATE RULES IMPOSING FEES NOT TO EXCEED TWEN-
6 TY DOLLARS FOR THE REGISTRATION AND RENEWAL OF THE REGISTRATION OF A
7 TRAINEE.

8 S 8. 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 OR REGISTRATION pursuant to this article: fraud
28 pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and
29 190.65; falsifying business records pursuant to section 175.10; grand
30 larceny pursuant to article 155; bribery pursuant to sections 180.03,
31 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12,
32 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40;
33 assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery
34 pursuant to article 160; homicide pursuant to sections 125.25 and
35 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping
36 and unlawful imprisonment pursuant to sections 135.10, 135.20 and
37 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03
38 and 265.04; criminal use of a weapon pursuant to sections 265.08 and
39 265.09; criminal sale of a weapon pursuant to sections 265.11 and
40 265.12; COMPELLING PROSTITUTION PURSUANT TO SECTION 230.33; SEX TRAF-
41 FICKING PURSUANT TO SECTION 230.34; and sex offenses pursuant to article
42 130 of the penal law. Provided, however, that for the purposes of this
43 article, none of the following shall be considered criminal convictions
44 or reported as such: (i) a conviction for which an executive pardon has
45 been issued pursuant to the executive law; (ii) a conviction which has
46 been vacated and replaced by a youthful offender finding pursuant to
47 article seven hundred twenty of the criminal procedure law, or the
48 applicable provisions of law of any other jurisdiction; or (iii) a
49 conviction the records of which have been expunged or sealed pursuant to
50 the applicable provisions of the laws of this state or of any other
51 jurisdiction; and (iv) a conviction for which other evidence of success-
52 ful rehabilitation to remove the disability has been issued.

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

55 In lieu of or in conjunction with the suspension or revocation of a
56 license OR REGISTRATION, or the imposition of a fine pursuant to this

1 section, the secretary may issue a reprimand. When a license OR REGIS-
2 TRATION issued pursuant to this article is revoked, such license OR
3 REGISTRATION shall not be reinstated or reissued until after the expira-
4 tion of a period of one year from the date of such revocation. No
5 license OR REGISTRATION shall be issued after a second revocation.

6 S 9. Subdivision 2 of section 410 of the general business law, as
7 amended by chapter 324 of the laws of the 1998, is amended to read as
8 follows:

9 2. Unlicensed activities. a. The secretary may issue an order direct-
10 ing the cessation of any activity RELATED TO NAIL SPECIALTY, WAXING,
11 NATURAL HAIR STYLING, ESTHETICS OR COSMETOLOGY for which a license is
12 required by this article upon a determination that a person, [including
13 a] partnership, [a] limited liability company or BUSINESS corporation,
14 [has engaged] ENGAGING in [or followed] the business or occupation of,
15 or [held] HOLDING himself, HERSELF or itself out as or acted, temporar-
16 ily or otherwise, as a nail specialist, natural hair stylist, estheti-
17 cian[,] OR cosmetologist [or appearance enhancement business] within
18 this state without a valid license being in effect. The [department]
19 SECRETARY shall, before making such determination and order, afford such
20 person, partnership, limited liability company or BUSINESS corporation
21 an opportunity to be heard in person or by counsel in reference thereto
22 in an adjudicatory proceeding held pursuant to [this article] SECTION
23 FOUR HUNDRED ELEVEN OF THIS ARTICLE AS APPLICABLE.

24 b. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IF THE SECRETARY
25 FINDS THAT A PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS
26 CORPORATION, IS HOLDING HIMSELF, HERSELF OR ITSELF OUT AS OR IS ACTING
27 AS, TEMPORARILY OR OTHERWISE, AN APPEARANCE ENHANCEMENT BUSINESS WITHIN
28 THIS STATE WITHOUT A VALID LICENSE, THE SECRETARY SHALL PROVIDE THE
29 PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION
30 WITH A WRITTEN NOTICE OF VIOLATION AND COMPLAINT, AND SHALL AFFORD AN
31 OPPORTUNITY TO BE HEARD, EITHER IN PERSON OR BY COUNSEL, BEFORE AN
32 ADMINISTRATIVE LAW JUDGE NO SOONER THAN THREE DAYS FROM DELIVERY OF SUCH
33 NOTICE OF VIOLATION. IF DOCUMENTARY PROOF THAT THE DEFICIENCY HAS BEEN
34 CURED IS NOT PROVIDED TO THE SECRETARY AT OR BEFORE SUCH HEARING,
35 FOLLOWING A HEARING DETERMINATION THAT UNLICENSED ACTIVITIES HAVE
36 OCCURRED, THE SECRETARY MAY ISSUE AN IMMEDIATE ORDER DIRECTING THE
37 CESSATION OF ANY ACTIVITY FOR WHICH AN APPEARANCE ENHANCEMENT LICENSE IS
38 REQUIRED.

39 c. THE SECRETARY MAY ISSUE AN ORDER DIRECTING THE CESSATION OF ANY
40 ACTIVITY IF THE SECRETARY FINDS THAT A PERSON, INCLUDING A PARTNERSHIP,
41 A LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION, IS HOLDING HIMSELF,
42 HERSELF OR ITSELF OUT AS OR IS ACTING AS, TEMPORARILY OR OTHERWISE, AN
43 APPEARANCE ENHANCEMENT BUSINESS WITHIN THE STATE WITHOUT A (I) BOND OR
44 (II) LIABILITY INSURANCE OR LIABILITY COVERAGE WHICH IS COVERED THROUGH
45 A BOND. THE SECRETARY SHALL, BEFORE MAKING SUCH DETERMINATION AND ORDER,
46 AFFORD SUCH PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS
47 CORPORATION AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFER-
48 ENCE THERETO IN AN ADJUDICATORY PROCEEDING HELD PURSUANT TO SECTION FOUR
49 HUNDRED ELEVEN OF THIS ARTICLE. THE ENFORCEMENT OF THIS PROVISION SHALL
50 REQUIRE THE DEPARTMENT OF FINANCIAL SERVICES TO CERTIFY IN WRITING TO
51 THE SECRETARY THAT ANY BONDS OR LIABILITY INSURANCE THAT IS REQUIRED BY
52 THE DEPARTMENT IS READILY AVAILABLE TO APPEARANCE ENHANCEMENT BUSINESSES
53 FROM THE MARKET PLACE.

54 d. The attorney general, acting on behalf of the secretary, may
55 commence an action or proceeding in a court of competent jurisdiction to
56 obtain a judgment against such person, partnership, limited liability

1 company or BUSINESS corporation in an amount equal to that assessed as a
2 civil penalty. Said judgment shall thereafter be enforceable by any
3 means authorized by the civil practice law and rules.

4 E. WHERE AN APPEARANCE ENHANCEMENT BUSINESS OPERATOR CONTINUES TO
5 OPERATE WITHOUT A LICENSE FOLLOWING THE ISSUANCE OF AN ORDER BY THE
6 SECRETARY DIRECTING CESSATION, THE ATTORNEY GENERAL, ACTING ON BEHALF OF
7 THE SECRETARY, MAY COMMENCE AN ACTION OR PROCEEDING IN A COURT OF COMPE-
8 TENT JURISDICTION AGAINST SUCH OPERATOR TO OBTAIN AN ORDER ENJOINING
9 FURTHER OPERATION OF SUCH BUSINESS. AN APPEARANCE ENHANCEMENT BUSINESS
10 THAT HAS BEEN ORDERED TO CEASE OPERATION SHALL NOT RE-OPEN WITHOUT FIRST
11 OBTAINING A LICENSE AS REQUIRED BY THIS ARTICLE AND PAYING ANY ASSESSED
12 FINES.

13 S 10. Subdivisions 1 and 2 of section 411 of the general business law,
14 subdivision 1 as added by chapter 509 of the laws of 1992, and subdivi-
15 sion 2 as amended by chapter 134 of the laws of the 2000, are amended to
16 read as follows:

17 1. Denial of license OR REGISTRATION. The department shall, before
18 making a final determination to deny an application for a license OR
19 REGISTRATION, notify the applicant in writing of the reasons for such
20 proposed denial and shall afford the applicant an opportunity to be
21 heard in person or by counsel prior to denial of the application. Such
22 notification shall be served personally or by certified mail or in any
23 manner authorized by the civil practice law and rules for service of a
24 summons. If a hearing is requested, such hearing shall be held at such
25 time and place as the department shall prescribe. If the applicant
26 fails to make a written request for a hearing within thirty days after
27 receipt of such notification, then the notification of denial shall
28 become the final determination of the department. The department, acting
29 by such officer or person in the department as the secretary may desig-
30 nate, shall have the power to subpoena and bring before the officer or
31 person so designated any person in this state, and administer an oath to
32 and take testimony of any person or cause his deposition to be taken. A
33 subpoena issued under this section shall be regulated by the civil prac-
34 tice law and rules. If, after such hearing, the application is denied,
35 written notice of such denial shall be served upon the applicant
36 personally or by certified mail or in any manner authorized by the civil
37 practice law and rules for the service of a summons.

38 2. Revocation, suspension, reprimands, fines; unlicensed activities.
39 The department shall, before revoking or suspending any license OR
40 REGISTRATION or imposing any fine or reprimand on the holder thereof, or
41 before issuing any order directing the cessation of unlicensed activ-
42 ities, and at least ten days prior to the date set for the hearing,
43 notify in writing the holder of such license OR REGISTRATION, or the
44 person alleged to have engaged in unlicensed OR UNREGISTERED activities,
45 of any charges made and shall afford such person an opportunity to be
46 heard in person or by counsel in reference thereto. Such written notice
47 may be served by delivery of same personally to the licensee OR REGIS-
48 TRANT or person charged, or by mailing same by certified mail to the
49 last known business or other address provided by such person to the
50 secretary of state, or by any method authorized by the civil practice
51 law and rules for the service of a summons. The hearing on such charges
52 shall be at such time and place as the department shall prescribe.

53 S 11. Section 412 of the general business law, as amended by chapter
54 341 of the laws of 1998, is amended to read as follows:

55 S 412. [Civil penalties] PENALTIES. 1. The practice of nail special-
56 ty, waxing, natural hair styling, esthetics or cosmetology[, or the

1 operation of an appearance enhancement business] without a license or
2 while under suspension or revocation, or in violation of an order
3 directing the cessation of unlicensed activity issued by the secretary
4 pursuant to section FOUR HUNDRED TEN OR four hundred eleven of this
5 article, is a violation and is subject to a civil penalty of up to five
6 hundred dollars for the first violation; one thousand dollars for a
7 second such violation; and two thousand five hundred dollars for a third
8 violation and any subsequent violation.

9 2. THE FOLLOWING VIOLATIONS SHALL BE DEEMED SEPARATE OFFENSES AND BE
10 DEEMED A MISDEMEANOR, AND UPON CONVICTION, SHALL BE PUNISHABLE BY IMPRI-
11 SONMENT FOR NOT MORE THAN SIX MONTHS, OR BY A FINE OF UP TO TWO THOUSAND
12 FIVE HUNDRED DOLLARS OR BY BOTH SUCH FINE AND IMPRISONMENT:

13 (A) THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHOUT A
14 LICENSE OR WHEN SUCH LICENSE HAS BEEN SUSPENDED OR REVOKED; OR

15 (B) THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS IN VIOLATION
16 OF AN ORDER DIRECTING THE CESSATION OF UNLICENSED ACTIVITY ISSUED BY THE
17 SECRETARY PURSUANT TO SECTION FOUR HUNDRED TEN OF THIS ARTICLE.

18 3. THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHOUT A (A)
19 BOND OR (B) LIABILITY INSURANCE OR LIABILITY COVERAGE WHICH IS COVERED
20 THROUGH A BOND SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO TWO THOU-
21 SAND FIVE HUNDRED DOLLARS. THE ENFORCEMENT OF THIS PROVISION SHALL
22 REQUIRE THE DEPARTMENT OF FINANCIAL SERVICES TO CERTIFY IN WRITING TO
23 THE SECRETARY THAT ANY BONDS OR LIABILITY INSURANCE THAT IS REQUIRED BY
24 THE DEPARTMENT IS READILY AVAILABLE TO APPEARANCE ENHANCEMENT BUSINESSES
25 FROM THE MARKET PLACE.

26 S 12. This act shall take effect immediately; provided, however that
27 the provisions set forth in paragraph (c) of subdivision 2 of section
28 410 of the general business law as added by section nine of this act and
29 subdivision 3 of section 412 of the general business law as added by
30 section eleven of this act shall take effect on the sixtieth day after
31 the department of financial services has certified in writing to the
32 secretary of state that any bonds or liability insurance that is
33 required by the department of state is readily available to the busi-
34 nesses from the market place.