STATE OF NEW YORK

10042

IN ASSEMBLY

March 4, 2020

Introduced by M. of A. CRUZ, L. ROSENTHAL -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to the licensing of nail salons

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 12 to read as follows:

12. "Nail salon" means an appearance enhancement business which practices nail specialty.

§ 2. Section 404-b of the general business law, as amended by chapter 80 of the laws of 2015, is amended to read as follows:

§ 404-b. Nail specialty; owner responsibilities. **1.** In addition to any rules and regulations establishing standards for practices and operations by licensees under this article, in order to ensure the health, safety and welfare within appearance enhancement businesses, all owners and operators of appearance enhancement businesses which practice nail specialty shall make available for use, gloves and facemasks for nail [~~speciality~~] **specialty** licensees and trainees who work in such businesses.

2. a. Owners and operators of nail salons shall be provided with educational materials that contain all relevant local, state and federal laws and provisions to be followed by such owners and operators. Educational materials shall contain, but are not limited to:

(i) information on wages and payments to employees; and

(ii) information to ensure the health and safety of the public, including licensees and trainees who are working within such businesses. Such information shall include, but not be limited to, health regulations to be adhered to, information on health hazards within the workplace, a list of side effects from extended exposure to chemicals used, and proper procedures to reduce health risks if workers inhale or come into physical contact with chemicals used.

b. Written materials shall be provided in the same languages as the nail practitioner bill of rights required pursuant to 19 NYCRR 160.10,

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

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and a hard copy shall be given to every owner, manager, supervisor and employee of the business.

3. All owners and operators of nail salons shall attend a two-hour in-person professional training, approved by the department, within thirty days of notification of approval of such owner's or operator's appearance enhancement business license issued pursuant to the provisions of this article. All owners and operators of nail salons shall also attend such training prior to renewal of such license.

4. All owners and operators of nail salons shall provide a biennial two-hour in-person professional training approved by the department to managers, supervisors and employees.

5. a. The training for owners, operators, managers, supervisors and employees required pursuant to the provisions of this section shall be conducted by organizations that are approved by the department to offer the nail specialty trainee course pursuant to 19 NYCRR 163.2 and have significant experience in training nail salon workers on health and safety regulations. This training shall be provided in English and in the same languages as the nail practitioner bill of rights required pursuant to 19 NYCRR 160.10 and shall:

(i) Educate owners, operators, managers, supervisors and employees, on wage and hour laws, including minimum wage, overtime pay, and paid sick days;

(ii) Educate owners, operators, managers, supervisors and employees regarding health and safety rules and regulations in order to ensure the health, safety and welfare of the public including licensees and trainees when they are working within a nail salon, information on health hazards within the workplace, a list of side effects from extended exposure to chemicals used, and proper procedures to reduce health risks if a person inhales or comes into physical contact with chemicals used;

(iii) Educate owners, operators, managers, supervisors and employees regarding protection for employees who report a violation of a state or federal law, rule or regulation; and

(iv) Educate owners and operators of nail salons on the necessary legal and operational requirements when starting and maintaining a business, including but not limited to, the requirements imposed pursuant to this article.

b. The cost of the training required pursuant to this section shall be covered by the owner and/or operator of the nail salon and shall not be deducted from the pay of an employee.

6. The department shall consider the non-profit status, as described in section 501(c) of the Internal Revenue Code of the United States (26 U.S.C. 501(c)) when approving organizations to provide the training. The department shall promulgate rules to consider organizations without such non-profit status if:

a. No organization with non-profit status is available within fifty miles of an appearance enhancement business which practices nail specialty;

b. None have offered their services within fifty miles of an appearance enhancement business which practices nail specialty; or

c. Using a for-profit organization would alleviate significant time delays of four weeks or more in between training availabilities of existing organizations with non-profit status.

7. The secretary shall establish a training committee to prepare the written educational materials and curriculum for the training. The training committee shall also recommend qualified organizations to the

secretary to provide professional training. Such training committee shall be composed as follows:

a. A member of a health and safety organization that has significant experience in training nail specialty workers on health and safety regulations in the nail salon industry and on obtaining a nail specialty license;

b. A member of a labor union that has significant experience in training nail specialty workers on wage and hour laws;

c. A member of a business association for nail salon owners in the state of New York; and

d. A member of a community center that has significant experience working within the nail salon industry and has a membership that includes both workers and owners in New York.

8. The secretary shall convene the training committee no later than sixty days after the effective date of this subdivision. The training committee shall propose the requirements for the educational materials and training and shall recommend qualified organizations to conduct the training to the secretary no later than sixty days after the initial meeting of such committee. The secretary shall issue official materials and a list of approved training organizations no later than sixty days after receiving recommendations from the training committee. Nail salon owners shall attend a training and provide a training to the employees of such nail salon within one hundred eighty days of the secretary issuing a list of approved organizations.

9. The training committee shall meet at least quarterly the first year after their initial meeting and biannually thereafter to make any necessary changes to the curriculum and discuss issues in the industry. At least one annual meeting shall be open to other nail salon workers, advocates, and owners to provide feedback on the training and discuss other issues in the industry.

10. An approved organization shall notify the department for the purpose of updating the publicly accessible registry, pursuant to subdivision eight of section four hundred six-a of this article, within one week of a nail salon owner completing the training required pursuant to this section or a nail salon owner has provided such training for the employees of such nail salon.

§ 3. The general business law is amended by adding a new section 406-a to read as follows:

§ 406-a. Nail salon license application; procedure; requirements. 1. Any person, eighteen years of age or older, or any firm, limited liability company, partnership or corporation having at least one member eighteen years of age or older may apply to the secretary for a nail salon license.

2. It shall be unlawful for any person to operate a nail salon without a nail salon license.

3. All licenses issued pursuant to this section shall be valid for two years.

4. Each applicant applying for a nail salon license or renewal thereof shall file an application in such form and manner as prescribed by the secretary and shall pay a fee of sixty dollars for each location where such applicant's nail salon operates. The following information shall be required on an application for a license pursuant to this section:

a. If the applicant is an individual, their name, date of birth, permanent home address, and telephone number, as well as any other names by which he or she has conducted a business at any time;

b. If the applicant is a corporation, the corporate name of the applicant, its place of incorporation, addresses of all locations where the business operates, other names by which it has been known or has conducted business at any time, its telephone number, its federal employer identification number, and the names and permanent home addresses of its directors, officers and shareholders;

c. If the applicant is a partnership, its name, addresses of all locations where the business operates, other names by which it has been known or has conducted business at any time, its telephone number, its federal employer identification number, and the names and permanent home addresses of each of its partners;

d. If the applicant intends to operate in a city covered by subdivision nine of this section, such applicant shall attach an approved application to operate in such city, pursuant to the provisions of subdivision nine of this section;

e. Any judgments, injunctions, liens, administrative orders, including, but not limited to, judgments based on taxes owed, fines, and penalties assessed by any government agency during the five years prior to licensure or renewal thereof against the applicant or any person that has an ownership interest in the applicant of more than five percent;

f. Written proof of compliance with any bond requirements prescribed by the secretary;

g. Signed certification by the applicant that there are no outstanding final judgments or warrants against the applicant, in any action arising out of a violation of the provisions of this article or any rules or regulations promulgated thereunder;

h. Certificates of insurance for workers' compensation, unemployment insurance and disability insurance coverage;

i. Original or true copies of liability insurance policies or certificates of insurance for liability insurance carried by the applicant; and

j. Written proof of compliance with the training requirements, as prescribed in section four hundred four-b of this article.

5. Any application for renewal of a nail salon license shall be accompanied by a certification signed by the applicant and affirmed under penalty of perjury that such applicant is in compliance with all laws relating to the protection of workers' rights, including, but not limited to New York state labor law and New York state workers' compensation law and is in compliance with all applicable tax laws.

6. The secretary shall also consider comments from nail salon employees when deciding whether to issue or renew a license under this section. All employees under a nail salon license shall be allowed to submit comments to the secretary as part of the license renewal process. The applicant shall be given redacted copies of any comment received, with the name of the employee removed. The applicant shall provide a mitigation plan to address any issue in the comments, and shall submit the plan to the secretary. The employee and/or their organization may also submit comments regarding the mitigation plan to the secretary. Taking the comments from applicant and employees into account, the secretary may:

a. deny the request for renewal;

b. approve the request for renewal;

c. approve the request for renewal, provided that certain conditions are met; or

d. issue a temporary license until final adjudications of claims relating to the renewal of the license are reached.

7. In addition to any of the powers that may be exercised by the secretary pursuant to this section or any rules promulgated thereunder, the secretary may deny issuance or renewal of a license pursuant to this section upon a finding that:

a. the applicant has failed to satisfy any fine or civil penalty ordered against such applicant in a judicial or administrative proceeding arising out of a violation of this article or any rules promulgated thereunder;

b. a nail salon to which the applicant is a successor, as such term is described in subdivision eleven of this section, has failed to satisfy any fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this article or any rules promulgated thereunder;

c. a person or entity that is part of the ownership structure of the applicant has failed to satisfy any fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this article or any rules promulgated thereunder; or

d. the applicant or a person or entity that is part of the ownership structure of such applicant lacks good moral character. In making such determination, the secretary may consider, but is not limited to, any of the following factors:

(i) failure by such applicant to provide truthful information or documentation in connection with the application or other request for information;

(ii) findings of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; except that the secretary shall take into account mitigating factors including: (1) the passage of time since such findings of liability or other illegal acts or omissions at issue; (2) the severity of such findings of liability or other illegal acts or omissions; (3) whether any such findings or other illegal acts or omissions were resolved or are still pending; and (4) any change in circumstance that might reduce the likelihood of such findings or other illegal acts or omissions recurring during the period of licensure, including the fact that such findings or other illegal acts or omissions at issue took place prior to the effective date of this section;

(iii) a prior revocation by the secretary of a nail salon license held by the applicant; and

(iv) a finding that within the last ten years an entity to which the applicant is a successor, as such term is described in subdivision eleven of this section, has been denied the issuance or renewal of a license pursuant to this subdivision or has had a license revoked pursuant to section four hundred ten of this article.

8. The department shall maintain a publicly accessible registry of all licensed nail salons which shall be updated no less than monthly. Such registry shall identify:

a. the names of all persons that own, control and/or operate a licensed nail salon and, if applicable, the percentage of ownership interests held by such persons;

b. any judgments, injunctions, liens, or administrative orders, including, but not limited to, judgments based on taxes owed, fines, and penalties assessed by any government agency during the five years prior to licensure or renewal thereof against a licensee or any person that

has an ownership interest in the licensed nail salon of more than five percent;

c. the addresses of all locations for which a licensee is authorized to operate and the number of employees employed at each such location;

d. the most recent date that a licensee completed the requisite training, pursuant to section four hundred four-b of this article; and

e. the most recent date that a licensee provided training to the employees within the nail salon, pursuant to section four hundred four-b of this article.

9. A city with a population of one million or more is hereby authorized to adopt and amend local laws that allow for additional requirements for nail salons located within such city. Such city may implement application requirements that promote compliance with city, state, and federal laws relating to the nail salon industry and nail salon workers. If any such city adopts requirements pursuant to this subdivision, an applicant for a nail salon license pursuant to this section shall submit an application for approval to operate in such city to the regulatory authority designated by such city in a form and manner to be prescribed by such city. The secretary shall not approve a license pursuant to this section that permits operation in any such city unless the applicant has been approved by the city prior to submission of an application to the secretary.

10. All applicants who are issued a license under this section shall submit a monthly payroll record which is attested to by the applicant, or an authorized agent of the applicant within ten days of the end of each month. Such record shall be in a form prescribed by the secretary, which shall at a minimum include for each employee, such employee's name; nail specialty license number; hourly rate of pay; daily, overtime and weekly hours worked; gross pay; itemized deductions; and net pay paid to the employee.

11. An applicant shall be considered a successor to a nail salon upon a finding that such applicant satisfies two or more of the following criteria:

a. the applicant uses the same facility, facilities or workforce to offer substantially the same services as the nail salon;

b. the applicant shared in the ownership, or otherwise exercised control over, the management of the nail salon;

c. the applicant employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the affected employees of the nail salon; or

d. the applicant is an immediate family member, including a parent, step-parent, child, or step, foster or adopted child, of any owner, partner, officer, or director of the nail salon, or of any person who had a financial interest in the nail salon.

§ 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.