STATE OF NEW YORK

9951

IN SENATE

November 20, 2024

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law and the criminal procedure law, in relation to business license suspensions resulting from wage theft

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 190 of the labor law is amended by adding three new subdivisions 10, 11 and 12 to read as follows:

10. "Successor business" means an entity engaged in work that is substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

11. "Agency" means any agency, department, board, or commission of the state, or of any political subdivision of the state, that issues a license for the purposes of operating a business within the state.

12. "License" means any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and issued by any agency for the purposes of operating a business within the state. "License" shall include, but shall not be limited to:

a. a certificate of incorporation issued pursuant to section four hundred two of the business corporation law, including a certificate of incorporation for a benefit corporation issued pursuant to section one thousand seven hundred three of the business corporation law, or a certificate of authority issued pursuant to section one thousand five hundred thirty of the business corporation law;

b. articles of organization issued pursuant to section two hundred three of the limited liability company law, or a certificate of authority issued pursuant to section eight hundred five of the limited liability company law;

c. a certificate of incorporation issued pursuant to section four hundred two of the not-for-profit corporation law, or a certificate of authority issued pursuant to section one thousand three hundred four of the not-for-profit corporation law;

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

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d. a certificate of limited partnership issued pursuant to section 121-201 of the partnership law, or a certificate of authority issued pursuant to section 121-904 of the partnership law;

e. any certificate to conduct business under an assumed name or as partners filed pursuant to section one hundred thirty of the general business law that is on file in the office of the clerk of the county in which such business is conducted or transacted, or the office of the secretary of state;

f. any license, certificate, permit, or registration issued pursuant to section sixty-four of the alcoholic beverage control law, section two hundred twelve-a or article eight of the labor law, or the agriculture and markets law;

g. any license required by or issued pursuant to the general business law, including but not limited to licenses for employment agencies pursuant to article eleven of the general business law; nail specialty, natural hair styling, esthetics, and cosmetology pursuant to article twenty-seven of the general business law; or barbering pursuant to article twenty-eight of the general business law; and

h. any license issued by a municipal agency for conducting business within such municipality, including but not limited to licenses for home improvement contractors; skilled trades; construction; restaurant, catering, or other food service; and taxi, limousine, or other for-hire vehicle services.

§ 2. Subdivision 1 of section 196 of the labor law is amended by adding a new paragraph f to read as follows:

f. (i) Upon notification that an employer has been convicted of failing to pay the wages of an employee pursuant to subdivision one of section one hundred ninety-eight-a of this article, failing to pay minimum wage or overtime pay pursuant to section six hundred sixty-two of this article, or wage theft under section 155.05 of the penal law, the commissioner shall, after affording such employer notice and an opportunity to be heard pursuant to subparagraph (iv) of this paragraph, issue a written determination directing any appropriate agency to suspend one or more licenses that were issued to or filed by such employer, or such employer's successor business, for a period of time to be determined by the commissioner. The commissioner may prohibit such employer or successor business from being eligible to reapply for a license suspended pursuant to this paragraph, or any other license issued for the purpose of operating a business in the state, for a period up to but not exceeding two years.

(ii) In determining the length of a license suspension determination pursuant to subparagraph (i) of this paragraph, the commissioner shall consider the following factors:

(1) The number of employees for which the employer or successor business failed to pay required wages, benefits, taxes, or other contributions or assessments;

(2) The total amount of wages, benefits, taxes, or other contributions or assessments which the employer or successor business failed to pay;

(3) Any other harm resulting from the employer's failure to pay required wages, benefits, taxes, or other contributions or assessments;

(4) Whether the employer or successor business made good faith efforts to comply with any applicable requirements, as determined by the commissioner;

(5) The duration of the employer's or successor business's failure to pay required wages, benefits, taxes, or other contributions or assessments;

(6) The role of the directors, officers, or agents of the employer or successor business;

(7) Any prior misconduct by the employer or successor business; and

(8) Any other relevant factors, as determined by the commissioner.

(iii) Upon the conviction of an employer for failing to pay the wages of an employee pursuant to subdivision one of section one hundred ninety-eight-a of this article, failing to pay minimum wage or overtime pay pursuant to section six hundred sixty-two of this article, or wage theft under section 155.05 of the penal law, the court shall notify the commissioner of such conviction.

(iv) Prior to issuing a written determination directing any appropriate agency to suspend one or more licenses that were issued to or filed by an employer pursuant to subparagraph (i) of this paragraph, the commissioner shall notify the employer, or such employer's successor business, in writing, of the commissioner's intent to issue such determination and the reasons therefor, and shall afford such employer or successor business an opportunity to be heard in person or by counsel in reference thereto. Such notice shall notify the employer or successor business that a request for a hearing must be made within fifteen days after the issuance of such notification. If the employer requests a hearing within such fifteen-day period, such hearing shall be held at such time and place as the commissioner shall prescribe. If the employer does not request a hearing within such fifteen-day period, then such notification shall be deemed the final written determination by the commissioner. The commissioner shall have subpoena powers pursuant to the civil practice law and rules in carrying out the provisions of this paragraph. If the commissioner, after such hearing, issues a determination directing the suspension of the employer's license or licenses, the commissioner shall notify such employer, in writing, of such determination and the reasons therefor.

§ 3. Section 198-a of the labor law is amended by adding two new subdivisions 4 and 5 to read as follows:

4. The court may prohibit any employer, including any person with an ownership interest in such employer, who is charged with a criminal offense pursuant to subdivision one of this section from applying for a license to operate a business in the state under a different business name, and/or opening or operating any successor business that is engaged in the same or equivalent trade or activity, for the pendency of the criminal proceeding.

5. The court shall notify the commissioner of any employer convicted of a criminal offense pursuant to subdivision one of this section.

§ 4. Section 662 of the labor law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. The court may prohibit any employer, including any person with an ownership interest in such employer, who is charged with a criminal offense pursuant to subdivision one of this section from applying for a license to operate a business in the state under a different business name, and/or opening or operating any successor business that is engaged in the same or equivalent trade or activity, for the pendency of the criminal proceeding.

4. The court shall notify the commissioner of any employer convicted of a criminal offense pursuant to subdivision one of this section.

§ 5. The criminal procedure law is amended by adding a new section 380.98 to read as follows:

§ 380.98 Notification to the commissioner of labor of certain convictions.

Upon judgment of conviction of an employer for a criminal offense pursuant to subdivision one of section one hundred ninety-eight-a or subdivision one of section six hundred sixty-two of the labor law, or wage theft pursuant to section 155.05 of the penal law, the clerk of the court shall include notification and a copy of the written determination in a report of such conviction to the commissioner of labor.

§ 6. Subdivision 3-a of section 500.10 of the criminal procedure law is amended by adding a new paragraph (k) to read as follows:

(k) When a principal is charged with a criminal offense pursuant to subdivision one of section one hundred ninety-eight-a or subdivision one of section six hundred sixty-two of the labor law, or wage theft pursuant to section 155.05 of the penal law, the court may prohibit such principal from applying for a license to operate a business in the state under a different business name, and/or opening or operating any successor business that is engaged in the same or equivalent trade or activity, for the pendency of the criminal proceeding.

§ 7. The criminal procedure law is amended by adding a new section 530.15 to read as follows:

§ 530.15 Protection for victims of wage theft.

When a criminal action is pending involving a complaint charging an employer with a criminal offense pursuant to subdivision one of section one hundred ninety-eight-a or subdivision one of section six hundred sixty-two of the labor law, or wage theft pursuant to section 155.05 of the penal law, the court, in addition to any other powers conferred upon it by this chapter, may prohibit such employer from applying for a license to operate a business in the state under a different business name, and/or opening or operating any successor business that is engaged in the same or equivalent trade or activity, for the pendency of the criminal proceeding.

§ 8. This act shall take effect immediately.