

GOVERNOR'S PROGRAM BILL

2015

MEMORANDUM

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

Purpose:

This bill would amend Article 27 of the General Business Law ("GBL") to authorize the Secretary of State ("Secretary") to order the cessation of unlicensed appearance enhancement activity. This bill would also authorize the Department of State ("Department") to register trainees in the practice of nail specialty.

Summary of Provisions:

Section 1 of the bill would amend GBL §400 to define a "trainee" as someone pursuing, in good faith, a course of study in the practice of nail specialty under the tutelage and supervision of a licensed nail practitioner. A trainee must also be employed by a licensed appearance enhancement business.

Section 2 of the bill would amend GBL §401 to assure that no person shall act as a trainee or perform any service without having first registered with the Department.

Section 3 of the bill would amend GBL §404 to authorize the Secretary to promulgate rules and regulations to protect the health, safety and welfare of appearance enhancement licensees and trainees.

Section 4 of the bill would amend GBL §404-b to require appearance enhancement businesses to make gloves and face masks available to nail salon employees and trainees.

Section 5 of the bill would amend GBL §406 to grant a trainee a nail specialty license after he or she has been actively engaged in an apprenticeship for a period of one year and has taken a course of study set forth by the Secretary.

Section 6 of the bill would add a new GBL §408-a to set forth requirements and restrictions related to trainee registration. A certificate for registration as a trainee shall be for one year, renewable for a second year, and may be renewed for additional terms at the Secretary's discretion.

Section 7 of the bill would amend GBL §409 to allow the Secretary to impose a fee not to exceed \$20 for trainee registration if the Secretary determines that it is in the public's best interest to do so.

Section 8 of the bill would amend GBL §410 to allow the Secretary to suspend or revoke a registration issued to a trainee. This section would also add compelling prostitution and sex trafficking to the list of crimes for which a license or registration may be suspended or revoked.

Section 9 of the bill would amend GBL §410 to authorize the Secretary to issue a notice of violation to an appearance enhancement practitioner or business operating without a valid license and subject them to an adjudicatory proceeding. Appearance enhancement businesses would be afforded an opportunity to be heard no sooner than three days from delivery of such notice of violation. Practitioners would be afforded an opportunity to be heard no sooner than ten days from delivery of such notice of violation. If documentary proof that the deficiency is cured is not provided at or before such hearing, the Secretary may issue an immediate order directing the cessation of any activity for which an appearance enhancement license is required.

Section 9 of the bill would further amend GBL §410 to subject an appearance enhancement business operating without a bond or liability insurance to an adjudicatory proceeding held pursuant to GBL §411. Enforcement may only be effectuated if the Department of Financial Services has certified in writing that such financial products are readily available.

Section 10 of the bill would amend GBL §411 to make the department's current procedure for denial of a license applicable to trainee registrations. This section would also make the department's current procedures for revocation or suspension of a license, and imposing fines or reprimands on licensees, applicable to trainee registrations.

Section 11 of the bill would amend GBL §412 to set forth new civil and criminal penalties for the unlicensed operation of an appearance enhancement business. This section would also set forth a new civil penalty for the operation of an appearance enhancement business without the required bond or liability coverage.

Section 12 of the bill would establish an immediate effective date, except that newly created GBL §410(2)(c) and §412(3) would take effect sixty days after the Department of Financial Services certifies in writing to the Secretary that any bonds or liability insurance required by the Department is readily available to businesses.

Existing Law:

Article 27 of the GBL governs the issuance of appearance enhancement licenses, but it does not provide an expedited method for the Secretary to order appearance enhancement businesses to cease and desist when operating unlicensed. Further, the operation of appearance enhancement businesses without a license is a violation of law punishable by civil penalties, and is not considered a misdemeanor. Finally, current law does not permit traineeships for appearance enhancement licensees.

Statement in Support:

Many nail salon employees endure unsafe working conditions and unfair labor practices. The unlicensed operation of appearance enhancement businesses, inadequate ventilation, wage theft, and lack of (i) personal protective equipment, (ii) workers' compensation insurance coverage, and (iii) business liability insurance, jeopardizes the health and safety of employees and patrons alike. The Secretary should be afforded the ability to act swiftly to protect nail salon employees and the public.

This bill would provide the Secretary the necessary tools to order the cessation of unlicensed or uninsured business activities and appropriately penalize unscrupulous operators. This bill would also provide a critical new path to employment through a trainee program.

Budget Implications:

Revenue derived from increased statutory compliance would offset any costs associated with this bill.

Effective Date:

This act shall take effect immediately.