

Legislative Bill Drafting Commission
12013-01-5

§. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

GENEBULA

(Relates 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)

Gen Bus L. unlicensed nail person

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:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal:

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Kleih	s54 Nozzolo	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Sezino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Pancipinto	s51 Soward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skolos
s38 Carlucci	s22 Golden	s01 LaVaillo	s13 Perolta	s26 Squadron
s14 Comito	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofner	s35 Stewart-Cousins
s50 DeFrancisco	s06 Hanlon	s05 Marcellino	s48 Ritchie	s53 Valesky
s32 Diaz	s36 Hassell-	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dillon	Thompson	s07 Matinus	s56 Robach	s08 Venditto
s31 Espallat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbato	a053 Davila	a077 Joyner	a133 Nojay	a140 Schumminger
a092 Abinanti	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a084 Arroyo	a054 Dillon	a094 Katz	a130 Oaks	a087 Sepulveda
a035 Aubry	a081 Dinovitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a120 Barelay	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Smanowitz
a106 Barrett	a115 Duproy	a040 Kim	a091 Otis	a052 Simon
a060 Barron	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a082 Benedetto	a109 Fahy	a105 Lalor	a002 Palumbo	a104 Skartados
a042 Blachotte	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skoufitt
a079 Blake	a126 Pinch	a134 Lawrence	a141 Peoples-Stokes	a022 Solages
a117 Blankenbush	a008 Fitzpatrick	a050 Lentol		a114 Steo
a062 Borelli	a124 Friend	a125 Liron	a058 Perry	a110 Steek
a098 Bradence	a095 Galof	a072 Linares	a059 Persaud	a127 Stirps
a026 Braunstein	a137 Gant	a102 Lopez	a086 Pichardo	a112 Tedesco
a044 Brennan	a007 Garbarino	a123 Lupardo	a089 Prolow	a101 Teaney
a119 Brindisi	a148 Olgilo	a010 Lupiaacoli	a073 Quant	a001 Thiele
a138 Bronson	a080 Ojona	a121 Magco	a019 Ra	a061 Titone
a046 Brook-Krasny	a066 Gilck	a129 Magnarelli	a012 Rain	a031 Tibus
a093 Buchwald	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a118 Butler	a150 Goodell	a030 Markey	a043 Richardson	a146 Walter
a103 Cahill	a075 Gottfried	a090 Mayer	a078 Rivera	a041 Weinstein
a145 Carretto	a005 Gmf	a108 McDonald	a128 Roberts	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a056 Robinson	a113 Woerner
a047 Colton	a139 Hawley	a017 McKovitt	a068 Rodriguez	a143 Wozniak
a032 Cook	a083 Heasite	a107 McLaughlin	a067 Rosenthal	a070 Wright
a144 Corvini	a028 Hayes	a038 Miller	a025 Rozic	a096 Zebrowski
a085 Crespo	a048 Hinkind	a015 Montesano	a116 Russell	a029
a122 Crouch	a018 Hooper	a136 Morelle	a149 Ryan	
a021 Curran	a097 Joffe	a057 Mosley	a009 Saladuo	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a111 Santabarbara	
a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel	

1) Single House Bill (introduced and printed separately in either or both houses), Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill),

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

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. *such trainee shall be employed by a licensed appearance enhancement business.*

7 § 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 § 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 § 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*
23 *they are working within such establishments* ~~as well as licensees and trainees~~
24 ~~offering services.~~ Such rules and regulations shall include, but not be
25 limited to, the sanitary conditions and procedures required to be main-
26 tained, a minimum standard of training appropriate to the duties of nail
27 specialists, trainees, waxers, natural hair stylists, estheticians, and
28 ees, waxers, natural hair stylists, estheticians or cosmetologists at

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

12 § 4. Section 404-b of the general business law, as added by chapter
13 489 of the laws of 2010, is amended to read as follows:

14 § 404-b. Nail specialty; owner responsibilities. In addition to any
15 rules and regulations establishing standards for practices and oper-
16 ations by licensees under this article, in order to ensure the health,
17 safety and welfare within appearance enhancement businesses, all owners
18 and operators of appearance enhancement businesses which practice nail
19 specialty shall make available[, upon request] for use, gloves and face-
20 masks for nail speciality licensees and trainees who work in such busi-
21 nesses. [No owner or operator of any appearance enhancement business
22 that engages in the practice of nail speciality shall prohibit any
23 licensee practicing nail speciality from wearing a mask or gloves while
24 engaged in the practice of nail speciality at such business.]

25 ~~§ 5. Subdivision 2 of section 405 of the general business law, as~~
26 ~~added by chapter 509 of the laws of 1992, is amended to read as follows:~~

1 2. An appearance enhancement business licensee shall file and maintain
2 during the term of the license evidence of a bond [or], liability insur-
3 ance or a combination thereof, as required by the secretary.

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

6 f. Notwithstanding the educational requirements of this section, a
7 trainee may obtain a license to practice nail specialty if such trainee
8 provides satisfactory evidence to the secretary that such trainee has
9 been actively engaged in a traineeship for a period of one year and has
10 completed a course of study set forth by the secretary. Such course of
11 study may be delivered by electronic means.

12 § 7. The general business law is amended by adding a new section 408-a
13 to read as follows:

14 § 408-a. Trainee. 1. Each applicant for a certificate of registration
15 as a trainee shall make an application which shall include the physi-
16 cian's certificate required by paragraph e of subdivision one of section
17 four hundred six of this article, two recent photographs, and such other
18 information required by such section and in such form as the secretary
19 may prescribe.

20 2. A certificate of registration as a trainee shall be for a period of
21 one year, and may be renewed once, renewable for a second year, and may be renewed for additional
terms within the discretion of the secretary

22 3. Each certificate of registration issued as provided in this section
23 shall be posted in a conspicuous place in the appearance enhancement
24 business in which the trainee is actually engaged in the practice of
25 nail specialty as a trainee.

26 4. The holder of a certificate of registration as a trainee shall not
27 be entitled to an appearance enhancement business license.

1 § 8. 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. The fee for the registration or the renewal of the registration of~~
 5 ~~a trainee shall be twenty dollars.~~
 6 *upon a determination that it is in the best public interest to do so, the secretary may promulgate rules imposing fees not to exceed twenty dollars for the registration and renewal of the registration of a trainee.*

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

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

15 a. Fraud or bribery in securing a license or registration or permis-
 16 sion to take an examination therefor.

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

20 c. Incompetence or untrustworthiness.

21 d. Failure to display the license or registration as provided in this
 22 article.

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

25 f. Conviction of any of the following crimes subsequent to the issu-
 26 ance of a license or registration pursuant to this article: fraud pursuant to sections
 27 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
 28 business records pursuant to section 175.10; grand larceny pursuant to
 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,

Compelling prostitution pursuant to section 230.33; sex trafficking pursuant to section 230.34

1 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
 2 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
 3 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
 4 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
 5 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impris-
 6 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
 7 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
 8 of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a
 9 weapon pursuant to sections 265.11 and 265.12; and sex offenses pursuant
 10 to article 130 of the penal law. Provided, however, that for the
 11 purposes of this article, none of the following shall be considered
 12 criminal convictions or reported as such: (i) a conviction for which an
 13 executive pardon has been issued pursuant to the executive law; (ii) a
 14 conviction which has been vacated and replaced by a youthful offender
 15 finding pursuant to article seven hundred twenty of the criminal proce-
 16 dure law, or the applicable provisions of law of any other jurisdiction;
 17 or (iii) a conviction the records of which have been expunged or sealed
 18 pursuant to the applicable provisions of the laws of this state or of
 19 any other jurisdiction; and (iv) a conviction for which other evidence
 20 of successful rehabilitation to remove the disability has been issued.

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

23 In lieu of or in conjunction with the suspension or revocation of a
 24 license, ~~or the imposition of a fine~~ ^{or a registration} pursuant to this section, the
 25 secretary may issue a reprimand. When a license ^{or registration} issued pursuant to this
 26 article is revoked, such license ^{or registration} shall not be reinstated or reissued
 27 until after the expiration of a period of one year from the date of such
 28 revocation. No license ^{or registration} shall be issued after a second revocation.

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

4 2. Unlicensed activities. a. The conduct of any activity for which a
5 license is required by this article without such license, or without the
6 bond, liability insurance or combination thereof as required pursuant to
7 regulations promulgated by the secretary, constitutes a threat to public
8 health, safety and welfare. The secretary may issue an immediate order
9 directing the cessation of any activity for which a license is required
10 by this article [upon a determination] if the secretary finds that a
11 person, [including a] partnership, a limited liability company or busi-
12 ness corporation, [has engaged] is engaging in or [followed] following
13 the business or occupation of, or [held] holding himself, herself or
14 itself out as or [acted] is acting, temporarily or otherwise, as a nail
15 specialist, natural hair stylist, esthetician, cosmetologist or appear-
16 ance enhancement business within this state without a valid license
17 [being in effect], or without the bond, liability insurance or combina-
18 tion thereof as required pursuant to regulations promulgated by the
19 secretary. [The] Upon the issuance of such order, the department shall,
20 [before making such determination and order] upon request, afford such
21 person, partnership, limited liability company or business corporation
22 an opportunity to be heard in person or by counsel in reference thereto
23 in an adjudicatory proceeding [held pursuant to this article].

Insert
A

24 b. ~~The secretary or~~ attorney general, acting on behalf of the secre-
25 tary, may commence an action or proceeding in a court of competent
26 jurisdiction to obtain a judgment against such person, partnership,
27 limited liability company or business corporation in an amount equal to

1 that assessed as a civil penalty. Said judgment shall thereafter be
2 enforceable by any means authorized by the civil practice law and rules.

e. 3 d. Where an appearance enhancement business operator continues to
4 operate without a license following the issuance of an order by the
5 secretary directing cessation, ~~the secretary or the attorney general,~~
6 acting on behalf of the secretary, may commence an action or proceeding
7 in a court of competent jurisdiction against such operator to obtain an
8 order enjoining further operation of such business. An appearance
9 enhancement business that has been ordered to cease operation shall not
10 re-open without first obtaining a license as required by this article
11 and paying any assessed fines.

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

16 1. Denial of license or registration. The department shall, before
17 making a final determination to deny an application for a license or
18 registration, notify the applicant in writing of the reasons for such
19 proposed denial and shall afford the applicant an opportunity to be
20 heard in person or by counsel prior to denial of the application. Such
21 notification shall be served personally or by certified mail or in any
22 manner authorized by the civil practice law and rules for service of a
23 summons. If a hearing is requested, such hearing shall be held at such
24 time and place as the department shall prescribe. If the applicant
25 fails to make a written request for a hearing within thirty days after
26 receipt of such notification, then the notification of denial shall
27 become the final determination of the department. The department, acting
28 by such officer or person in the department as the secretary may desig-

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

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

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

~~26 § 412. Civil penalties. 1. The practice of nail specialty, waxing,
27 natural hair styling, esthetics or cosmetology, or the operation of an
28 appearance enhancement business] without a license or while under suspen-~~

→ Insert
B-1
and B-2

1 sion or revocation, or in violation of an order directing the cessation
2 of unlicensed activity issued by the secretary pursuant to section four
3 hundred ^{ten} eleven of this article, is a violation and is subject to a civil
4 penalty of up to five hundred dollars for the first violation; one thou-
5 sand dollars for a second such violation; and two thousand five hundred
6 dollars for a third violation and any subsequent violation.

7 2. The operation of an appearance enhancement business without a
8 license or while under suspension or revocation, or in violation of an
9 order directing cessation of unlicensed activity issued by the secretary
10 pursuant to section four hundred ^{ten} eleven of this article is a violation
11 and is subject to a civil penalty of up to two thousand five hundred
12 dollars for the first violation; five thousand dollars for a second such
13 violation; and ten thousand dollars for a third violation and any subse-
14 quent violation.

15 § 13. This act shall take effect immediately.

Insert C

Insert A

Section 410, subdivision 2, new paragraphs b and c, re-reference current paragraph b to new paragraph d

2. Unlicensed activities. a. The secretary may issue an order directing the cessation of any activity related to nail specialty, waxing, natural hair styling, esthetics or cosmetology for which a license is required by this article upon a determination that a person, [including a] partnership, [a] limited liability company or business corporation, [has engaged] engaging in [or followed] the business or occupation of, or [held] holding himself, herself or itself out as or acted, temporarily or otherwise, as a nail specialist, natural hair stylist, esthetician[,] or cosmetologist [or appearance enhancement business] within this state without a valid license being in effect. The ~~department~~ shall, before making such determination and order, afford such person, partnership, limited liability company or business corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to [this article] section 411 of this chapter as applicable. → secretary

b. Notwithstanding any provision to the contrary, if the secretary finds that a person, partnership, limited liability company or business corporation, is engaging in the business or occupation of, or holding himself, herself or itself out as or is acting, temporarily or otherwise, as an appearance enhancement business within this state without a valid license, the secretary shall provide the person, partnership, limited liability company or business corporation with a written notice of violation and complaint, and shall afford an opportunity to be heard, either in person or by counsel, before an administrative law judge no sooner than three days from delivery of such notice of violation. If documentary proof that the deficiency has been cured is not provided to the secretary at or before such hearing, then following a hearing determination that unlicensed activities have occurred, the secretary may issue an immediate order directing the cessation of any activity for which an appearance enhancement license is required. → DAS

c. The secretary may issue an order directing the cessation of any activity if the secretary finds that a person, including a partnership, a limited liability company or corporation is engaging in the business or occupation of, or holding himself, herself or itself out as or is acting, temporarily or otherwise, as an appearance enhancement business within this state without a (i) bond or (ii) liability insurance or liability coverage which is covered through a bond. The department shall, before making such determination and order, afford such person, partnership, limited liability company or corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to section 411 of this chapter. The enforcement of this provision shall require the Department of Financial Services to certify in writing that any bonds or liability insurance that is required by the Department of State is readily available and accessible to appearance enhancement businesses from the market place. → DAS
→ business
→ secretary

d. The attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such person, partnership, limited liability company or corporation in an amount equal to that assessed as a civil penalty. Said judgment shall thereafter be enforceable by any means authorized by the civil practice law and rules.

Insert B-1

§ 412. [Civil p]Penalties. 1. The practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology [or the operation of an appearance enhancement business] without a license or while under suspension or revocation, or in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section four hundred [eleven] ten of this article, is a violation and is subject to a civil penalty of up to five hundred dollars for the first violation; one thousand dollars for a second such violation; and two thousand five hundred dollars for a third violation and any subsequent violation.

Insert B-2

~~2. The operation of an appearance enhancement business without a license or while under suspension or revocation, or in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section four hundred [eleven] ten of this article, or the direct or indirect employment or other authorization of an unlicensed person to engage in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology, or the direct or indirect employment or other authorization of an unregistered trainee to act as a trainee, or without the bond, liability insurance, or combination thereof as required pursuant to regulations promulgated by the secretary is a misdemeanor and, upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of up to two thousand five hundred dollars or by both such fine and imprisonment. Each such violation shall be deemed a separate offense.~~

Insert B-2

Section 412, new subdivisions 2 and 3:

2. The following violations shall be deemed separate offenses and be deemed a misdemeanor, and upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of up to two thousand five hundred dollars or by both such fine and imprisonment:

(a) the operation of an appearance enhancement business without a license or when such license has been suspended or revoked;

(b) the operation of an appearance enhancement business in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section four hundred ten of this article;

(c) the employment or other authorization of an unlicensed person to engage in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology; or

(d) the employment or other authorization of an unregistered trainee to act as a trainee.

3. The operation of an appearance enhancement business without a (i) bond or (ii) liability insurance or liability coverage which is covered through a bond shall be punishable by a civil penalty of up to two thousand five hundred dollars. The enforcement of this provision shall require the Department of Financial Services to certify in writing that any bonds or liability insurance that is required by the Department of State is readily available and accessible to appearance enhancement businesses from the market place.

Insert C

The provisions set forth in section 410(2)(c) and section 412(3) shall ~~have an effective date of January 1, 2016 provided that~~ the Department of Financial Services has certified in writing that any bonds or liability insurance that is required by the Department of State is readily available and accessible to the businesses from the market place.

take effect sixty days after