STATE OF NEW YORK

378

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. BRONSON, CLARK, DICKENS, DINOWITZ, GALLAGHER, HEVESI, L. ROSENTHAL, STECK, GONZALEZ-ROJAS, REYES, MAMDANI, SEAWRIGHT, SIMON, COLTON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the state administrative procedure act, in relation to enacting the nail salon minimum standards council act

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

Section 1. This act shall be known and may be cited as the "nail salon minimum standards council act".

§ 2. The labor law is amended by adding a new article 19-E to read as follows:

ARTICLE 19-E

NAIL SALON MINIMUM STANDARDS COUNCIL ACT

Section 697. Statement of public policy.

697-a. Definitions.

697-b. Nail salon minimum standards council.

697-c. Minimum pricing committee.

697-d. Powers and duties of the council.

697-e. Powers and duties of the commissioner with respect to the council.

697-f. Labor protections.

697-g. Future meetings.

697-h. Severability.

697-i. Preemption.

§ 697. Statement of public policy. The legislature hereby finds and declares that there are persons employed in the nail salon industry in the state of New York at wages and standards insufficient to provide adequate maintenance and adequate health protections for themselves and their families. Such employment: impairs the health, efficiency, and

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

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well-being of such workers; constitutes unfair competition against other employers and their workers; threatens the stability of the industry; reduces the purchasing power of workers; and requires, in many instances, that wages be supplemented by the payment of public moneys for relief or other public and private assistance. Documented inappropriate working conditions include the following: exposure to known carcinogens that have been found to cause cancer, asthma, and reproductive health issues for nail salon workers; long hours in poorly ventilated areas; unpredictable work schedules that adversely affect nail salon workers' ability to act as caregivers to their dependents; nonstandard procedures for obtaining certifications; inconsistent standards and criteria for work performed by trainees; and high rates of wage theft. The current system of relying exclusively on individual complaints to the department has not been effective at creating industry-wide compliance with regulations now in effect. Intense competition on price has driven down standards to the detriment of workers, consumers, and employers themselves. Data has shown that there is a strong correlation between prices and wage violations: the lower the prices, the higher the rates of wage violations that occur in nail salons. Due to slim profit margins and intense industry competition, even small businesses wishing to increase pay and improve working conditions are unable to do so. It is imperative that such market conditions be corrected and regulated by the state of New York.

The purpose of this article is to install a mechanism to raise industry standards for nail salon workers, owners, and customers through a participatory and accessible process and to set the foundation for a thriving, stable, and sustainable nail salon industry in New York.

Accordingly, it is the declared policy of the state of New York that inappropriate conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power. To this end, the commissioner shall establish a nail salon minimum standards council pursuant to section six hundred ninety-seven-b of this article, to investigate and recommend minimum wages and standards in the nail salon industry, and the commissioner shall establish and implement and maintain such wages and standards. Furthermore, the commissioner shall convene an independent minimum pricing committee pursuant to section six hundred ninety-seven-c of this article to determine a fair minimum pricing model that will provide adequate maintenance for nail salon workers and protect consumer and worker health and safety standards while maintaining business enterprise autonomy and a competitive marketplace.

The commissioner and the nail salon minimum standards council established pursuant to section six hundred ninety-seven-b of this article shall have the power to investigate the wages and standards for workers in the nail salon industry to ascertain whether the minimum wages and standards established in accordance with the provisions of this article are sufficient to provide adequate maintenance and adequate health protections for nail salon workers, consumers, and the general public. The legislature understands that provisions of this article may have anti-competitive effects, and enacts this article with full knowledge of its possible anti-competitive effects and with the specific intention that all conduct authorized by this article receive immunity from federal antitrust laws to the fullest extent possible.

§ 697-a. Definitions. As used in this article: 1. "Council" means the nail salon minimum standards council established pursuant to section six hundred ninety-seven-b of this article.

2. "Member" means a member of the nail salon minimum standards council established pursuant to section six hundred ninety-seven-b of this article.

3. "Standards" means any requirements applicable to nail salon workplaces for which the council may provide recommendations as per section six hundred ninety-seven-d of this article.

4. "Nail salon" and "nail firm" mean an appearance enhancement business which practices nail specialty, as that term is defined in section four hundred of the general business law.

5. "Nail salon worker" means any person engaged in whole or in part in the practice of nail specialty as defined in section four hundred of the general business law.

6. "Nail salon employer" means an owner or operator of an appearance enhancement business that specializes in the practice of nail specialty as defined in section four hundred of the general business law.

7. "Trainee" means a person who works as a trainee as defined in section four hundred of the general business law.

8. "Delegate" means a non-voting member on the nail salon minimum standards council established pursuant to section six hundred ninety-seven-b of this article.

9. "Nominating representative" means a person or entity appointed by the commissioner to nominate members of the council.

§ 697-b. Nail salon minimum standards council. 1. (a) There is hereby established the nail salon minimum standards council, which shall consist of fifteen voting members plus six non-voting delegate members. The voting members shall consist of six nail salon workers, six nail salon employers, and three public representative members. Three of the non-voting delegate members shall be nail salon worker delegates and the other three non-voting delegate members shall be nail salon employer delegates. The commissioner shall appoint the public representatives. In addition, the commissioner shall appoint one nominating representative with a demonstrated history of representing the interests of workers in New York state who shall nominate at least six worker members and at least three non-voting delegate members to the council. The commissioner shall also appoint one nominating representative with a demonstrated history of representing the interests of nail salon employers who shall nominate at least six employer members and at least three non-voting delegate members to the council. The public representatives shall consist of the following: one member from the department; one member from the department of health, with expertise in occupational safety and health; and one member at the discretion of the commissioner. The public representative members shall have no financial ties to the nail salon industry, including campaign contributions within five years of such representatives' appointment to the council, and shall not have had complete or partial ownership of a nail salon at present or within five years of such representatives' appointment to the council. No public representative member shall have lobbied on behalf of nail salon workers or nail salon employers within five years of such representative's appointment to the council.

(b) The commissioner shall appoint the nominating representative for nail salon workers, the nominating representative for nail salon employers, and the three public representatives within sixty days of the effective date of this article.

(c) Within sixty days of being appointed, the nominating representative for nail salon workers shall submit to the commissioner the names of the nail salon workers and non-voting worker delegates to be consid-

ered for appointment to the council. Within fifteen days of receipt of these nominations, the commissioner shall consider the nominations and appoint six nail salon worker members and three nail salon worker delegates.

(d) Of the six nail salon worker members:

(i) Four nail salon worker members shall be employed at the time of appointment at nail salons located in the city of New York, one nail salon worker member shall be employed at the time of appointment at a nail salon located in Westchester county, Nassau county or Suffolk county, and one nail salon worker member shall be employed at the time of appointment at a nail salon in any county of the state except for the city of New York, Westchester county, Nassau county or Suffolk county.

(ii) The nominating representative for nail salon workers shall endeavor to nominate members who reflect the demographic and cultural background of the population of nail salon workers in the counties in which they work and have language facility in one or more of the languages specified in paragraph (b) of subdivision two of this section.

(iii) Preference shall be given to nail salon workers with significant experience in the nail salon industry, as measured by time spent in the industry.

(e) The three non-voting worker delegate members shall have demonstrated experience in working directly with nail salon workers in areas pertaining to or are organizations related to:

(i) labor relations;

(ii) occupational health and safety standards and compliance with those standards; or

(iii) a community center focused on the nail salon industry and has a membership that includes both workers and owners in New York.

(f) Within sixty days of being appointed, the nominating representative for nail salon employers shall submit to the commissioner the names of nail salon employers and non-voting employer delegates. Within fifteen days of receipt of these nominations, the commissioner shall consider the nominations and appoint six nail salon employer members and three nail salon employer delegates.

(g) Of the six nail salon employer members:

(i) Four nail salon employer members shall at the time of the appointment be nail salon employers at nail salons located in the city of New York, one nail salon employer member shall at the time of the appointment be a nail salon employer at a nail salon located in Westchester county, Nassau county or Suffolk county, and one nail salon employer member shall at the time of appointment be a nail salon employer at a nail salon in any county of the state except for the city of New York, Westchester county, Nassau county or Suffolk county.

(ii) The nominating representative for nail salon employers shall endeavor to nominate members who reflect the demographic and cultural background of the population of nail salon employers in the counties in which their nail salons operate and have language facility in one or more of the languages specified in paragraph (b) of subdivision two of this section.

(iii) Preference shall be given to nail salon employers that have a higher than average minimum wage for their nail salon workers and that do not have any judgments, injunctions, liens, or administrative orders against them; no nail salon employer shall be appointed a member or a delegate who has an unsatisfied judgment, lien, or administrative order pending against them or an injunction in effect against them that arises out of a violation of state labor laws or federal wage and hour laws.

(h) The non-voting employer delegate members shall have demonstrated experience in working directly with nail salon employers in areas pertaining to:

(i) labor and government relations;

(ii) compliance and advocacy related to occupational health and safety standards; or

(iii) general business practices and operations.

(i) Council members shall serve the full term for which they have been appointed. A member who does not serve the full term for which they were appointed shall be replaced by a new member by appointment of the commissioner following the commissioner's receipt of nominations from the nominating representative. Nominations shall be submitted to the commissioner within thirty days of such vacancy arising.

(j) The public representative members shall be the chairpersons of the council. The chairpersons shall conduct the meetings of the council, take attendance at council meetings and act as the primary point persons between the commissioner and the council.

(k) The council shall convene its first meeting within sixty days of the date of appointment of the fifteen members.

(l) Members may submit to the department expenses incurred for travel to and from council meetings and hearings for reimbursement. Members shall also receive a per diem of one hundred twenty dollars for each day of council meetings and hearings the member was in attendance.

2. (a) The commissioner shall establish and maintain an active website explaining the role of the council, the members of the council, and non-retaliation protections of this article within sixty days of the effective date of this article. The website shall also include a current list of dates and locations of council meetings and hearings.

(b) The website shall be accessible in at least each of the following languages: Bengali, Burmese, Chinese, English, Haitian-Creole, Italian, Korean, Nepali, Polish, Russian, Spanish, Tibetan, Khmer, and Vietnamese.

§ 697-c. Minimum pricing committee. 1. The commissioner shall establish an independent committee of the council which shall: examine profit margins in the nail salon industry; evaluate New York's nail service prices; and recommend a fair minimum pricing model for all nail industry services to maintain adequate consumer and worker health and safety standards while maintaining business enterprise autonomy and a competitive marketplace.

2. (a) The committee established pursuant to subdivision one of this section shall consist of three members: one recommended by the nominating representative for workers, one recommended by the nominating representative for employers, and one selected by the commissioner. Each member shall be from a different organization and shall have demonstrated experience and expertise in economic research on the nail salon industry in the state or on similar low-wage industries in the state. At least fifteen days before final approval of the three committee members, the commissioner shall apprise members and delegates of the council of the individuals the commissioner is considering for appointment and forward to the members and delegates all of the materials submitted by each individual under consideration in support of the application. The commissioner shall provide the members and delegates of the council an opportunity to submit comments on each individual under consideration, and shall take account of such comments in making a final decision. The commissioner shall approve the committee members within ninety days of the effective date of this article.

(b) The commissioner shall establish a member application which shall ask, at a minimum, the following information of the applicant: (i) the name, phone number, and email address of the applicant; (ii) the occupation and job title of the applicant; (iii) the firm name and address which the applicant works for or is associated with; (iv) a description of the applicant's experience and expertise in economic research on the nail salon industry in the state or on similar low-wage industries in the state; and (v) a list of research reports on topics relevant to the tasks of the committee which were written by the applicant or for which the applicant provided information.

(c) Delegate members of the council shall periodically participate in committee meetings to help provide industry background information. The non-voting members shall not have any role in the actual work and report.

3. The committee shall hold its first meeting within thirty days of appointment. The committee shall have the authority to collect information through research and economic analysis and shall compile a report making recommendations to the commissioner on a fair pricing model sufficient to cover: (a) the remuneration required by law to be paid to a nail specialty practitioner who administers nail services; (b) the ordinary incidents of overhead costs incurred by a licensee at the location in which the nail services are provided, including the cost of rent, utilities, and supplies; (c) the costs associated with ensuring a safe environment for workers and consumers; and (d) a reasonable return on investment. The committee may recommend a pricing model that varies by geographic area to account for variations in overhead costs in such areas, provided that the price applied within such area shall be uniform for all nail salons operating within such area.

4. The committee shall submit the report required pursuant to subdivision two of this section to the commissioner within one year of the first meeting of the committee; provided however, that the committee has duly and sufficiently considered all recommendations of the council accepted by the commissioner pursuant to section six hundred ninety-seven-e of this article prior to submitting the report. If the committee requires more time to consider the recommendations of the council accepted by the commissioner, the committee may submit a request for an extension of the report for no more than ninety days.

5. The commissioner shall review the report submitted by the committee and within thirty days of receipt thereof shall approve, reject, or modify pricing model recommendations. Any modification to a minimum pricing recommendation shall ensure a reasonable and sufficient rate of pay and price for service to prevent wage theft and other violations of federal and state wage laws and applicable regulations.

(a) If a recommendation is modified by the commissioner, the commissioner shall issue an explanation for the modification which shall state: (i) why the proposed recommendation by the committee is insufficient to meet the health, safety, and well-being of the industry and workers; and (ii) why the modified recommendation provides businesses with a reasonable return on investment while ensuring their ability to meet wage requirements and other standards sufficient to provide adequate maintenance for persons employed in the nail salon industry.

(b) If a recommendation is rejected by the commissioner, the memorandum shall state: (i) why the proposed recommendation by the committee is insufficient to meet the health, safety, and well-being of the industry and its workers; and (ii) why modification of such recommendation was not reasonably feasible.

6. Any recommendation or modification thereof accepted by the commissioner shall be published as a proposed regulation in the New York state register for a period of thirty days, and the public shall be permitted to submit comments on the matter to the commissioner during that period. At the conclusion of that thirty-day period, the commissioner shall either adopt the proposal as a final regulation, or publish in the New York state register a revised proposed regulation. In the event the commissioner publishes a revised proposed regulation, the public shall be permitted to submit comments on the matter to the commissioner during that period. Upon the commissioner's adoption of a final regulation, the regulation shall have the force and effect of law.

7. A regulation adopted by the commissioner pursuant to this section shall be effective thirty days following the commissioner's adoption of a final regulation.

§ 697-d. Powers and duties of the council. 1. In addition to the functions, powers and duties otherwise provided by this article, the council shall have the following powers and duties:

(a) to investigate the wages and standards for workers in the nail salon industry to ascertain whether the minimum wages and standards established in accordance with the provisions of this article are sufficient to provide adequate maintenance and to protect the health of nail salon workers, consumers, and the general public;

(b) to make recommendations to the commissioner on minimum wages, regulations and minimum standards governing working conditions for nail salon workers, and to make other recommendations to promote employer compliance with minimum wages, regulations and minimum standards governing working conditions for nail salon workers. Such recommendations shall take into consideration the minimum wage sufficient to provide adequate maintenance and to protect the health and safety of nail salon workers, the value of the work or classification of work performed by nail salon workers, and the wages paid in the state for work of like or comparable character;

(c) to consult with employers and workers in the nail salon industry and with such other persons, including the commissioner and experts in economics, health and labor standards, and other relevant fields;

(d) to collect information through hearings, testimonies, and written submissions on the following subjects as they pertain to the nail salon industry:

(i) the adequacy of minimum hourly wages, minimum weekly wages, and piece rates in the three zones in section six hundred fifty-two of this chapter;

(ii) gratuities;

(iii) minimum weekly hours, differentiated for part-time, full-time, and trainee workers;

(iv) scheduling requirements and advance notice for schedule changes (predictable scheduling);

(v) policies regarding sick days, holidays, and other related leaves of absence;

(vi) policies regarding disciplinary actions and termination;

(vii) health and safety protections for consumers;

(viii) enforcement of anti-discrimination laws;

(ix) trainings, trainees, and certifications;

(x) job descriptions and duties; and

(xi) other employment benefits that may be necessary for the protection of the health and safety of the workers.

2. The council shall have the power, subject to the provisions of section seventy-three of the civil rights law, to hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in furtherance of its duties; provided, however, that no subpoena shall issue except upon the affirmative vote of a majority of the whole membership of the council. The council may request and shall receive from all agencies such assistance and data as will enable it to properly perform its powers and duties pursuant to this section.

3. A quorum of at least three worker members, three employer members, and three public representative members shall be required at each council meeting and hearing. In the event that a member is not in attendance for three consecutive meetings and/or hearings, such member's seat shall be considered vacant and shall be replaced pursuant to paragraph (i) of subdivision one of section six hundred ninety-seven-b of this article.

4. The council shall complete its duties and the chairpersons shall submit the report required pursuant to this article to the commissioner within one hundred eighty days of the first meeting of the council. The report shall contain evidence, either from testimony or written submissions, for the basis of each recommendation contained therein.

5. Each recommendation shall be voted and accepted by a majority vote of the council at the final meeting of the council. Only the votes of those in attendance shall be counted; provided, however, that all of the votes of the worker members shall be counted as one vote (the majority of the votes of the worker members in attendance shall be determinative of that one vote), all of the votes of the employer members in attendance shall be counted as one vote (the majority of the votes of the employer members in attendance shall be determinative of that one vote), and all of the votes of the public representative members in attendance shall count as one vote (the majority of the votes of the public representative members in attendance shall be determinative of that one vote). However, if quorum cannot be achieved at the final meeting on the first date scheduled by the council, then the council shall postpone the meeting and set a second date for the final meeting which shall occur within the next thirty days and if quorum cannot be achieved by the second date scheduled by the council, the members in attendance shall take a vote on each of the recommendations and provide an opportunity for remaining members to vote via electronic mail to the three public representatives within forty-eight hours.

6. The council shall hold at least four hearings, at least two of which shall take place in the city of New York, and one in each of the other two regions as described in section six hundred ninety-seven-b of this article. The council shall provide notice of each hearing at least four weeks prior to such hearing. Such notice shall be provided through a means which shall be determined before each hearing and shall disclose the time, place, and format of the hearing; provided, however, that each hearing shall be scheduled, to the best extent practicable, at a time convenient for workers and owners of nail salons and the council.

7. Members of the council may bring individuals serving in the capacity of interpreter to council meetings, or they may request that the department provide them with an interpreter for meetings and hearings. Member requests that an interpreter of a certain language be available for a hearing shall be made no less than one week prior to the hearing and the department shall provide such interpretation services for all members making such requests.

§ 697-e. Powers and duties of the commissioner with respect to the council. In addition to the functions, powers and duties otherwise provided by this article, and notwithstanding any other provisions of law, the commissioner shall:

1. promulgate rules and regulations governing the manner in which the council shall function and perform its duties under this article, including procedures to be followed by the committee, to ensure that the actions of the council are consistent with the goals as described in the statement of public policy;

2. furnish the council and the committee with adequate legal, stenographic, clerical, linguistic, and other assistance as deemed needed, including, but not limited to, administrative resources and meeting facilitators;

3. submit data which is available to the commissioner to the council on the matters within the scope of the powers and duties of the council;

4. provide translation of all documents and forms used by or issued to members of the council. Such translation shall be made available in the languages as requested by worker and employer representatives. The commissioner shall direct the department to provide interpretation services to members and hearing attendees at all council meetings and hearings;

5. review the report and recommendations submitted by the council and, upon review, approve or reject each recommendation. If a recommendation is rejected by the commissioner, the council shall not be precluded in considering the same recommendation when the council reconvenes for future meetings;

6. submit a written memorandum to the council and the legislature within thirty days of receipt of the report submitted by the council. Such memorandum shall explain the final action regarding each recommendation included in the report, including an explanation and reason for the rejection of any recommendations;

7. publish any recommendation accepted by the commissioner as a proposed regulation in the New York state register for a period of thirty days, and the public shall be permitted to submit comments on the matter to the commissioner during that period. At the conclusion of the thirty-day period, the commissioner shall either adopt the proposal as a final regulation or reject it. In the event the commissioner rejects the proposed regulation, the commissioner shall state the reasons for the rejection, and such rejection of the proposed regulation shall not preclude the council from considering the same recommendation when the council reconvenes for future meetings. Upon the commissioner's adoption of a final regulation, the regulation shall have the force and effect of law; and

8. promote compliance with the minimum standards as adopted by the commissioner pursuant to this section by: (a) issuing to the secretary of state a quarterly report on any nail salon business determined to be liable in a civil, criminal, or administrative action involving egregious or repeated noncompliance with the minimum standards adopted by the commissioner which shall include the name of the business and specify the violation or violations, the dates of occurrence, and any fines, penalties, and judgments rendered; and (b) publishing such report on the website described in paragraph (a) of subdivision two of section six hundred ninety-seven-b of this article.

§ 697-f. Labor protections. 1. No nail salon owner or manager shall discharge or in any manner discriminate or retaliate against any nail salon worker because: (a) the worker has made any complaint or disclosed

any information to the council regarding working conditions, health measures, or rates of pay; (b) the worker has testified or submitted testimony at a hearing sponsored by the council; (c) the worker has participated as a worker representative on the council or applied to be a worker representative; or (d) the employer believes that the worker has made a complaint to his or her employer, the commissioner or his or her authorized representative, or the attorney general.

2. Any nail salon worker discharged or otherwise discriminated or retaliated against in the terms and conditions of employment in violation of subdivision one of this section shall be entitled to reinstatement, triple any lost wages and work benefits caused by such violation, and any reasonably incurred attorneys' fees and costs in accordance with section two hundred fifteen of this chapter.

§ 697-g. Future meetings. The council shall reconvene no later than two years after the implementation of the council's last recommendations. Three months prior to such meeting, the commissioner shall contact the current members, who shall attest to any changes in their employment or ownership status at nail salons. If a member of the council steps down, the commissioner shall appoint new members to the council chosen by the nominating representatives of the nail salon workers or nail salon employers in accordance with the provisions of section six hundred ninety-seven-b of this article.

§ 697-h. Severability. If any section of this article or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of the article are hereby declared to be severable.

§ 697-i. Preemption. This law shall not preempt any state or local enactment which provides greater benefits or protections to a covered worker.

§ 3. Subparagraph (xiv) of paragraph b of subdivision 2 of section 102 of the state administrative procedure act, as added by chapter 493 of the laws of 2010, is amended and a new subparagraph (xv) is added to read as follows:

(xiv) any regulation comprised solely of one or more additions to the list of nonprescription drugs reimbursable under the medicaid program pursuant to paragraph (a) of subdivision four of section three hundred sixty-five-a of the social services law[~~.~~]; or

(xv) any regulation promulgated by the commissioner of labor in accordance with article nineteen-E of the labor law.

§ 4. This act shall take effect immediately.