

**BILL NUMBER:**

**SPONSOR:** RAMOS

**TITLE OF BILL:** An act to amend the labor law and the state administrative procedure act, in relation to enacting the nail salon minimum standards council act

**PURPOSE:**

Creates a Minimum Standards Council for the Nail Salon Industry in New York State.

**SUMMARY OF PROVISIONS:**

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

Section 2: Amends labor law by adding a new article 19-E to read as follows:

**Section 697.** Statement of public policy. Declares that persons employed in the nail salon industry in New York are subjected to wages and inadequate working conditions including health and safety protections. At the same time, unfair competition exists between employers who break the labor law by not following minimum wage standards and employers that follow the law. Low pricing and minimum wage violations threaten the stability of the industry, and often require that wages be supplemented by the payment of public moneys or relief or other public and private assistance.

Therefore, the commissioner shall establish a nail salon minimum standards council to investigate, recommend, and implement minimum wages and standards in the nail salon industry and convene an independent minimum pricing committee to determine a fair minimum pricing model that will provide adequate maintenance and protection for nail salon workers and consumers.

**Section 697-a.** Definitions. Provides all definitions for article 19-E of labor law.

**Section 697-b.** Nail Salon Minimum Standard Council. a) Establishes a nail salon minimum standards council with 15 voting members and 6 non voting delegate members- 6 employees, 6 employers, 3 public reps, and 3 reps each for employers and employees.

b) 60 days for the commissioner to appoint 1 nominating representative for employers and 1 nominating representative for employees to select employee and employer members.

c) 60 days for nominating representatives to nominate delegates and voting members and

the commissioner has 15 days to consider the nominations and appoint.

d) Describes geographic and demographic requirements for the composition of council's voting members.

e) Describes requirements of three non-voting worker delegate members.

f) Describe the process of nail salon employer member and delegate selections.

g) Describes geographic and demographic requirements of the composition of the council's employer voting members.

i) Permits the commissioner to appoint new representatives if a member does not serve the full term for which they are appointed.

j) Public representatives shall be chairpersons of the council.

k) First meeting shall be within 60 days of the date of appointment of the 15 voting members.

l) Members may be reimbursed for travel expenses and receive per diem for days missed from work.

2. Creates a website explaining the council, the rights of council members and the list of dates and locations of meetings and hearings.

**Section 697-c. Minimum Pricing Committee.**

1. The Commissioner shall establish an independent pricing committee to establish a fair pricing model to maintain adequate consumer and worker health and safety standards while maintaining business enterprise autonomy and a competitive marketplace.

2. Establishes composition of committee

3. The committee has authority to collect information through research and economic development. Sets the standards by which recommendations to the commissioner on fair pricing model must meet.

4. The committee shall submit a report within one year of the first meeting of the committee with recommendations.

5. The commissioner shall review the report and approve, reject, or modify pricing model recommendations.

6. Any recommendation or modification shall be published as a proposed regulation.

7. A final regulation shall be effective 30 days after a final regulation is adopted.

**Section 697-d.** Powers and duties of the council.

1. Provides for the contours of what the council will be negotiating over, including but not limited to hourly wages, scheduling requirements, gratuities, policies regarding sick days, holidays and other related leaves of absences; health and safety protections; etc.

2. The council has the power to hold hearings and subpoena witnesses.

3. Sets a quorum of at least three worker and three employer members.

4. The council shall complete making recommendations after 180 days after its first meeting.

5. Each recommendation shall be voted and accepted by a majority vote.

6. The council shall hold four hearings across the state.

7. Interpreters are allowed for members who require it.

**Section 697-e.** Powers and duties of the commissioner with respect to the council. The commissioner shall:

1. Promulgate rules and regulations governing the functioning of the council.

2. Furnish the council with adequate administrative resources, as necessary.

3. Make data available regarding the matters of the council.

4. Provide translation of all documents used or issued by the council and interpretation of all council meetings and hearings in the languages requested by worker and employer representatives.

5. Review the report and recommendations submitted by the council and approve or reject each recommendation.

6. Submit a written memorandum to the council and the legislature within thirty days of

receipt of the council's report explaining the final action of each recommendation.

7. Publish recommendations for proposed regulations in the New York state register for 30 days for public comments. After 30 days, the commissioner's adoption of the final regulation will have the force and effect of law.

8. Promote compliance with the minimum standards adopted by:

a) issuing a quarterly report to the secretary of state regarding any nail salon business determined to be liable in any action involving noncompliance with the minimum standards, and

b) publishing the report to the council's website.

**Section 697-f.** Labor protections. 1. Establishes that no nail salon owner or manager shall discharge, discriminate, or retaliate against any nail salon worker in any way because of:

a) complaints of working conditions,

b) testimony given or submitted to a council-sponsored hearing,

c) affiliation as a worker representative on the council, or

d) the employer suspects complaints have been made by employees.

2. Any nail salon worker found to be discharged, discriminated, or retaliated against 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 215 of this chapter.

**Section 697-g.** Future meetings. The council will reconvene within two years of implementation of the council's last recommendations. Current members will attest to the commissioner any changes in their employment or ownership status at nail salons three months prior to the meeting. The commissioner will fill vacant council seats with representatives nominated by the nail salon workers or employers.

**Section 697-h.** Severability. Declares that the provisions of each section of this article are severable. If any section of this article is adjudged invalid in court, it will not invalidate any other section or application of the article.

**Section 697-i.** Preemption. Declares that the law shall not preempt any state or local enactment which provides greater benefits or protections to a covered worker.

Section 3: Amends state administrative procedure act by adding a new subparagraph xv to ensure any regulation promulgated by the commissioner of labor in accordance with this article goes into effect.

Section 4: Provides an immediate effective date.

#### JUSTIFICATION:

The nail salon industry in New York State for too long has had standards set by low road employers. In New York State, employers who want to do the right thing by following the law- and treating their workers with dignity and respect- are put at a competitive disadvantage by employers breaking the law and providing low standards.

Take the minimum wage as an example. In 2020 the Department of Labor and Governor's office decided to end the tipped minimum wage for nail salon workers. However, the New York Nail Salon Workers Association in their "One Fair Wage Denied: Chasing Compliance in NY's Nail Salon Industry " reported that in April 2021 76% of workers surveyed were being paid less than the minimum wage throughout the state. Research shows that low prices and wage theft are correlated. It is no surprise that New York prices have remained stagnant for years- NYC and LI price being \$13.71.

While wages are an egregious example of low wage employers creating lower standards for workers, it is not the only example. Around health & safety, scheduling practices, and benefits for workers we see how the state allowing for low standards makes it impossible for employers who want to treat their employees with dignity to do so.

This groundbreaking bill proposes the creation of a minimum standards council for the Nail Salon Industry in pursuit of a more sustainable business model for employers and better standards for workers. The council is sat on by six voting employers, six voting employees, three non-voting representatives of both the employers and employees, and three public representatives. The council would negotiate minimum standards around health & safety, working conditions, scheduling, wages, etc. The council would make recommendations to be adopted by the labor commissioner within a two year period. At the same time, a minimum pricing committee would be established to help recommend pricing model standards to eliminate wage theft in the industry and make it harder for low road employers to break minimum wage laws and hurt employers who are following the law.

LEGISLATIVE HISTORY:

None. New bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

This act shall take effect immediately.