SENATE DOCKET, NO. 488 FILED ON: 1/16/2013

SENATE . . . . . No. 882

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony W. Petruccelli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act establishing the domestic workers bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anthony W. Petruccelli	*First Suffolk and Middlesex*
Katherine M. Clark	*Fifth Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
William N. Brownsberger	*Second Suffolk and Middlesex*
Marc R. Pacheco	*First Plymouth and Bristol*
James B. Eldridge	*Middlesex and Worcester*
Daniel A. Wolf	*Cape and Islands*
Brian A. Joyce	*Norfolk, Bristol and Plymouth*
Thomas M. McGee	*Third Essex*
Michael J. Rodrigues	*First Bristol and Plymouth*
Danielle W. Gregoire	*4th Middlesex*
Frank I. Smizik	*15th Norfolk*
Martha M. Walz	*8th Suffolk*
John F. Keenan	*Norfolk and Plymouth*
Kenneth J. Donnelly	*Fourth Middlesex*
Michael F. Rush	*Norfolk and Suffolk*
Patricia D. Jehlen	*Second Middlesex*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and*

	Hampden
Michael Barrett	*Third Middlesex*
Mary S. Keefe	*15th Worcester*
John P. Fresolo	*16th Worcester*
Marcos A. Devers	*16th Essex*
Timothy J. Toomey, Jr.	*26th Middlesex*
Sean Garballey	*23rd Middlesex*
Michael O. Moore	*Second Worcester*
Gale D. Candaras	*First Hampden and Hampshire*
Thomas M. Stanley	*9th Middlesex*
Thomas P. Kennedy	*Second Plymouth and Bristol*

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By Mr. Petruccelli, a petition (accompanied by bill, Senate, No. 882) of Anthony W. Petruccelli, Katherine M. Clark, Sal N. DiDomenico, William N. Brownsberger and other members of the General Court for legislation to establish a domestic workers bill of rights. Labor and Workforce Development.

The Commonwealth of Massachusetts

An Act establishing the domestic workers bill of rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 17 of chapter 149 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 4 – 6, the following words:-

"other than places of employment of persons engaged in domestic service in the home of the employer".

SECTION 2. Section 105D of chapter 149, is hereby further amended by inserting after the word "fifty-one B", in line 39, the following words:-

"and section 189 of this chapter".

SECTION 3. Section 150 of chapter 149, is hereby further amended by inserting after the word "159C", in line 21, the following word:-

", 189".

SECTION 4. Chapter 149 is hereby further amended by inserting after section 188 the following sections:-

Section 189 (a) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:-

"Domestic worker", any individual or employee who is paid by a household, family or any person to perform work of a domestic nature, including, but not limited to, housekeeping, house cleaning, home management, nanny services including childcare and child monitoring, caretaking of individuals in the home including sick, convalescing and elderly individuals, laundering, cooking, home companion services and other household services for members of

20 households or their guests in or about private homes. The term "domestic worker" does not
21 include an individual whose services for the employer primarily consist of childcare on an
22 intermittent and irregular basis, do not exceed 5 hours a week in the aggregate for one or more
23 family or household members and whose vocation is not childcare.

24 "Earned sick time", the time that is provided by an employer to a domestic worker to: (1)
25 care for the domestic worker's child, spouse, parent or parent of spouse who is suffering from a
26 physical or mental illness, injury or medical condition that requires home care, professional
27 medical diagnosis or care, or preventative medical care, or who is suffering from a condition
28 covered under the federal act; or (2) care for the domestic worker's own physical or mental
29 illness, injury or medical condition that requires home care, professional medical diagnosis or
30 care, or preventative medical care, or that is a condition covered under the federal act; or (3)
31 attend a routine medical appointment or a routine medical appointment for the domestic worker's
32 child, spouse, parent or parent of spouse; or (4) address the psychological, physical or legal
33 effects of domestic violence as defined in subsection (g 1/2) of section 1 of chapter 151A.

34 "Employer", any person who suffers or permits a domestic worker to work. An
35 employer shall not include a staffing agency licensed or registered under chapter 140.

36 "Federal act", the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to
37 2654, inclusive, as it may be amended.

38 "Rest" or "period of rest", a period of time with complete freedom from all duties and
39 during which a domestic worker may either leave the employer's premises or stay on the
40 employer's premises for purely personal pursuits.

41 "Person", one or more individuals, partnerships, associations, corporations, legal
42 representatives, trustees, trustees in bankruptcy or receivers.

43 "Working time", compensable time that includes all time during which a domestic
44 worker is required to be on the employer's premises or to be on duty and any time worked before
45 or beyond the end of the normal scheduled shift to complete work. Working time includes meal
46 periods, rest periods and sleeping periods unless a domestic worker is free to leave the
47 employer's premises and use the time for the domestic worker's sole use and benefit and is
48 completely relieved of all work-related duties.

49 (b) An employer of a domestic worker shall be required to provide a maximum of 40
50 hours of earned job-protected sick time during a calendar year. Earned sick time shall accrue at
51 the rate of 1 hour for every 30 hours worked, commencing with the date of hire.

52 (c) An employer who employs a domestic worker for 40 hours a week or more shall
53 provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48
54 consecutive hours during each calendar month, and where possible, this time shall allow time for

55 religious worship. The domestic worker may voluntarily agree to work on a day of rest;
56 provided that the agreement is in writing and the domestic worker is compensated at the
57 overtime rate for all hours worked on that day. After a year of full-time service or 1250 hours of
58 work with an employer, whichever comes sooner, a domestic worker is entitled to 5 days of rest
59 paid at the regular rate of compensation, and thereafter, in addition to the annual 5 paid days of
60 rest shall be entitled to a paid day of rest at the regular rate of compensation after every three
61 months of full-time work or after every 310 hours of work, whichever comes sooner. Days or
62 periods of rest whether paid or unpaid shall be job-protected leave from employment.

63 (d) When a domestic worker who does not reside on the employer's premises is on duty
64 for less than 24 consecutive hours, the employer shall pay the domestic worker for all hours as
65 working time even if the domestic worker is permitted to sleep or engage in other personal
66 activities when not engaged in domestic work.

67 (e) When a domestic worker is required to be on duty for a period of 24 consecutive
68 hours or more, the employer and the domestic worker may agree in writing prior to performance
69 of the work to exclude a regularly scheduled sleeping period of not more than 8 hours from
70 working time for each 24-hour period, provided that the employer provides adequate sleeping
71 quarters and the domestic worker can enjoy 8 hours of uninterrupted sleep. If the sleeping period
72 is interrupted by a call to duty, the entire period must be counted as working time. If no prior
73 written agreement is made, all meal periods, rest periods and sleeping periods shall constitute
74 working time.

75 (f) A domestic worker shall pay for food or beverages only if it is voluntarily and freely
76 chosen and actually consumed. Payments shall not be unreasonable or exceed the actual cost to
77 the employer for the food or beverages and shall not be accepted by the employer unless (1) the
78 employer has given the domestic worker prior written notice setting forth the actual costs of the
79 food or beverages to be charged to the domestic worker and that acceptance of the food or
80 beverages is done voluntarily and freely; and (2) the domestic worker has provided voluntary and
81 uncoerced written acceptance of the food or beverages and charges. If a domestic worker cannot
82 easily bring or prepare meals on premises, the employer shall not accept any payments for food
83 or beverages.

84 (g) A domestic worker shall pay for lodging only if it is voluntarily and freely accepted,
85 desired and actually used by the domestic worker; if the employer has given prior written notice
86 that describes the lodging and the amount to be charged for the lodging and that informs the
87 domestic worker that acceptance of the lodging is voluntary and freely chosen or rejected; and if
88 the domestic worker has provided voluntary and uncoerced written acceptance of the lodging and
89 charges. Payments for lodging shall not be allowed if the employer requires that a domestic
90 worker reside on the employer's premises or a particular location or if the payments result in
91 earnings less than the basic minimum wage plus applicable overtime pay. Payments for lodging
92 shall not be unreasonable and shall not exceed the lesser of: 1) the reasonable market rent of the

93 lodging; 2) the actual cost incurred by the employer for lodging the domestic worker. Whether
94 or not a domestic worker makes any payments for lodging, the lodging shall meet the standards
95 for safe and sanitary housing established by law.

96 (h) An employer shall respect a domestic worker's right to privacy. An employer shall
97 not restrict or interfere with a domestic worker's means of private communication or monitor a
98 domestic worker's private communications. An employer of a domestic worker who resides on
99 the employer's premises shall not enter the domestic worker's designated living areas without
100 voluntary and uncoerced consent and shall not search the domestic worker's personal
101 belongings. An employer shall not use any camera, videotape, photo-optical, photo-electric or
102 any other image recording device for the purpose of observing, viewing, photographing, filming
103 or videotaping the domestic worker in the bathrooms of the employer's premises; in any other
104 areas of the employer's premises without written consent of the domestic worker given
105 voluntarily and uncoerced; or, where the domestic worker resides on the employer's premises, in
106 the domestic worker's designated living areas, with or without consent.

107 (i) Upon termination of employment, an employer shall provide at least 14 days written
108 notice or severance pay in an amount equivalent to the average earnings during a week of
109 employment. If a domestic worker resides in the employer's household, and the employer is
110 terminating employment, the employer shall provide at least 30 days written notice for the
111 domestic worker to vacate the premises, and may then only evict the domestic worker through
112 summary process under the uniform summary process rules. This eviction shall be regarded as
113 being without the fault of the domestic worker for the purposes of sections 9 to 13 of chapter
114 239.

115 (j) Any employer who employs a domestic worker for 16 hours or more a week shall
116 provide the domestic worker the following information in writing at the beginning of
117 employment, including but not limited to: the rate of pay including overtime and additional
118 compensation for added duties or multilingual skills; working hours including meal breaks and
119 other time off; and where applicable, the provisions for days of rest, earned sick days, vacation
120 days, personal days, holidays, transportation, health insurance, severance, yearly raises, and
121 whether or not earned, sick days, vacation days, personal days, holidays, severance,
122 transportation costs and health insurance are paid or reimbursed; any fees or other costs
123 including costs for meals and lodging; the responsibilities associated with the job; the process for
124 raising and addressing grievances and additional compensation if new duties are added; the right
125 to collect workers compensation if injured; the required notice of employment termination by
126 either party; and any other rights or benefits afforded to the domestic worker. An employer who
127 employs a domestic worker for less than 16 hours a week shall provide all information required
128 by law.

129 (k) An employer shall keep a copy of all written notices and agreements described in this
130 section. An employer shall keep these records for at least 2 years after their creation and for the
131 duration of the domestic worker's employment.

132 (l) Nothing in this section shall be construed to affect any policies or practices of an
133 employer which provides for greater, additional or more generous wages, benefits or working
134 conditions to a domestic worker than those required under this section.

135 (m) The attorney general shall enforce this section, shall promulgate rules and
136 regulations necessary for the enforcement of this section, and may obtain injunctive or
137 declaratory relief for this purpose. Violation of this section shall be subject to sections 27C and
138 150.

139 Section 190 (a) It shall be an unlawful discriminatory practice for an employer to: (1)
140 engage in unwelcome sexual advances, requests for sexual favors or other verbal or physical
141 conduct of a sexual nature to a domestic worker when: (i) submission to such conduct is made
142 either explicitly or implicitly a term or condition of an individual's employment; (ii) submission
143 to or rejection of such conduct by an individual is used as the basis for employment decisions
144 affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably
145 interfering with an individual's work performance by creating an intimidating, hostile or
146 offensive working environment; (2) subject a domestic worker to unwelcome harassment based
147 on sex, race, religion, national origin or disability where such harassment has the purpose or
148 effect of unreasonably interfering with an individual's work performance by creating an
149 intimidating, hostile or offensive working environment; (3) refuse job-protected leave for the
150 birth or adoption of a child by the domestic worker or his or her spouse under section 105D; or
151 (4) engage in any discriminatory practices that are unlawful under section 4 of chapter 151B.

152 (b) The provisions of paragraph (a) shall be enforced by the Massachusetts commission
153 against discrimination under chapter 151B.

154 Section 191. Sections 189 through 191 may be cited as "The Domestic Workers' Bill of
155 Rights" and shall be liberally construed in aid of its purpose which is to establish industry
156 specific protections and labor standards that protect domestic workers' basic workplace rights
157 affording domestic workers dignity, respect and fairness and thereby ensuring their employers
158 high quality care of their families and homes and encouraging respectful communication
159 between domestic workers and their employers.

160 SECTION 5. Section 19 (3) of chapter 151 of the General Laws, as appearing in the
161 2010 Official Edition, is hereby amended by striking out, in lines 43 – 44, the words:-

162 "other than a place of employment of a person engaged in domestic service in the home
163 of the employer,"

164 SECTION 6. Section 4A of chapter 151A of the General Laws, is hereby amended by
165 inserting after the word "unit", in line 23, the words:-

166 "or domestic service performed by one of more individuals."

167 SECTION 7. Section 6 (b) of chapter 151A of the General Laws, is hereby repealed.

168 SECTION 8. Section 1 of chapter 151B of the General Laws, as appearing in the 2010
169 Official Edition, is hereby amended by inserting after the word "include", in line 18, the words:-

170 "an employer of domestic workers including those covered under section 189 of chapter
171 149, and".

172 SECTION 9. Section 1 of chapter 151B of the General Laws, as appearing in the 2010
173 Official Edition, is hereby amended by striking out, in line 32, the words:-

174 "or in the domestic service of any person."

175 SECTION 10. Section 1 of chapter 153 of the General Laws, is hereby amended by
176 striking out, in line 33, the words:-

177 "domestic servants".

178 SECTION 11. (a) Within one year of the effective date of this act, the executive office
179 of labor and workforce development, in consultation with the attorney general and the office of
180 access and opportunity, shall develop and implement a multilingual outreach and training
181 program to inform domestic workers and employers about their rights and responsibilities. This
182 program shall include the distribution of know your rights information, model employment
183 agreements, educational materials for employers on their human resources duties in employing
184 domestic workers, including information on benefits, tax and insurance laws, and a professional
185 development training program for domestic workers on safe care-giving and housekeeping
186 practices, including the use of nontoxic household cleaning products and protection from
187 injuries, illness and disease.

188 (b) Within one year of the effective date of this act, the executive office of labor and
189 workforce development shall report to the governor and to the senate president, the speaker of
190 the house and the joint committee of labor and workforce development on: (1) developing a
191 framework within the unique domestic work context for the collective bargaining rights of
192 domestic workers under section 3A of chapter 150A; (2) developing a state supported mediation
193 program to address disputes between domestic workers and their employers; (3) developing
194 occupational safeguards and standards for domestic workers; and (4) providing a domestic
195 worker health care and retirement fund. This report shall be prepared in consultation with
196 domestic workers and their representatives, the Massachusetts AFL-CIO, 1199SEIU United

197 Health Care Workers East, SEIU 615, employers of domestic workers, the department of labor
198 relations and other interested state and federal agencies.