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 adoption of the accompanying bill:

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 J. 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

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

In the Year Two Thousand Thirteen

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:

1 SECTION 1. Section 17 of chapter 149 of the General Laws, as appearing in the 2010 2 Official Edition, is hereby amended by striking out, in lines 4-6, the following words:-3 "other than places of employment of persons engaged in domestic service in the home of 4 the employer". 5 SECTION 2. Section 105D of chapter 149, is hereby further amended by inserting after 6 the word "fifty-one B", in line 39, the following words:-7 "and section 189 of this chapter". 8 SECTION 3. Section 150 of chapter 149, is hereby further amended by inserting after 9 the word "159C", in line 21, the following word:-10 ", 189". 11 SECTION 4. Chapter 149 is hereby further amended by inserting after section 188 the 12 following sections:-13 Section 189 (a) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:-14 15 "Domestic worker", any individual or employee who is paid by a household, family or 16 any person to perform work of a domestic nature, including, but not limited to, housekeeping,

- 17 house cleaning, home management, nanny services including childcare and child monitoring,
- 18 caretaking of individuals in the home including sick, convalescing and elderly individuals,
- 19 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 months of full-time work or after every 310 hours of work, whichever comes sooner. Days or 61 62 periods of rest whether paid or unpaid shall be job-protected leave from employment.

(d) When a domestic worker who does not reside on the employer's premises is on duty
for less than 24 consecutive hours, the employer shall pay the domestic worker for all hours as
working time even if the domestic worker is permitted to sleep or engage in other personal
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 working time for each 24-hour period, provided that the employer provides adequate sleeping 70 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.

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

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

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

(b) The provisions of paragraph (a) shall be enforced by the Massachusetts commissionagainst 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.

SECTION 5. Section 19 (3) of chapter 151 of the General Laws, as appearing in the
 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 home163 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 chapter171 149, and".

SECTION 9. Section 1 of chapter 151B of the General Laws, as appearing in the 2010
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 by176 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.