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I N A S S E M B L Y

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Introduced by M. of A. WRIGHT, CLARK, COLTON, FARRELL, McENENY, PERRY, ROBINSON, TOWNS, ROSENTHAL, ORTIZ, KAVANAGH, V. LOPEZ, O'DONNELL, SCHIMEL, LANCMAN, ALESSI, ZEBROWSKI, CAMARA, MAYERSOHN, SCARBOROUGH, JEFFRIES, RAMOS, CASTRO, ESPAILLAT, P. RIVERA, COOK, BROOK-KRASNY, JAFFEE, POWELL, AUBRY, BARRON, PRETLOW, PEOPLES-STOKES, M. MILLER, PAULIN -- Multi-Sponsored by -- M. of A. BENJAMIN, BOYLAND, BRENNAN, DenDEKKER, GLICK, HEASTIE, HOOPER, JACOBS, KELLNER, LAVINE, LENTOL, LUPARDO, MARKEY, MENG, MILLMAN, PHEFFER, REILLY, N. RIVERA, SWEENEY, THIELE, TITUS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the labor law, the executive law and the workers' compensation law, in relation to establishing regulations regarding employment of domestic workers including hours of labor, wages and employment contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and intent. Many thousands of domestic
2 workers are employed in New York state as housekeepers, nannies, and
3 companions to the elderly. The labor of domestic workers is central to
4 the ongoing prosperity that the state enjoys, and yet, despite the value
5 of their work, domestic workers do not receive the same protection of
6 many state laws as do workers in other industries. Domestic workers
7 often labor under harsh conditions, work long hours for low wages with-
8 out benefits or job security, are isolated in their workplaces, and are
9 endangered by sexual harassment and assault, as well as verbal,
10 emotional and psychological abuse. Moreover, many domestic workers in

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

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1 the state of New York are women of color who, because of race and sex
2 discrimination, are particularly vulnerable to unfair labor practices.
3 Additionally, domestic workers are not afforded by law the right to
4 organize labor unions for the purpose of collective bargaining.

5 The legislature finds that because domestic workers care for the most
6 important elements of their employers' lives, their families and homes,
7 it is in the interest of employees, employers, and the people of the
8 state of New York to ensure that the rights of domestic workers are
9 respected, protected, and enforced.

10 S 2. Section 2 of the labor law is amended by adding a new subdivision
11 16 to read as follows:

12 16. "DOMESTIC WORKER" SHALL MEAN A PERSON EMPLOYED IN A HOME OR RESI-
13 DENCE FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION FOR
14 A SICK, CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER
15 DOMESTIC SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDI-
16 VIDUAL (A) WORKING ON A CASUAL BASIS, (B) WHO IS ENGAGED IN PROVIDING
17 COMPANIONSHIP SERVICES, AS DEFINED IN PARAGRAPH FIFTEEN OF SUBDIVISION
18 (A) OF SECTION 213 OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS
19 EMPLOYED BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD
20 USING HIS OR HER SERVICES, OR (C) WHO IS A RELATIVE THROUGH BLOOD,
21 MARRIAGE OR ADOPTION OF: (1) THE EMPLOYER; OR (2) THE PERSON FOR WHOM
22 THE WORKER IS DELIVERING SERVICES UNDER A PROGRAM FUNDED OR ADMINISTERED
23 BY FEDERAL, STATE OR LOCAL GOVERNMENT.

24 S 3. The executive law is amended by adding a new section 296-b to
25 read as follows:

26 S 296-B. UNLAWFUL DISCRIMINATORY PRACTICES RELATING TO DOMESTIC WORK-
27 ERS. 1. FOR THE PURPOSES OF THIS SECTION: "DOMESTIC WORKERS" SHALL HAVE
28 THE MEANING SET FORTH IN SECTION TWO OF THE LABOR LAW.

29 2. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO:

30 (A) ENGAGE IN UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS,
31 OR OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE TO A DOMESTIC
32 WORKER WHEN: (I) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR
33 IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT; (II)
34 SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS
35 THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR (III)
36 SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH
37 AN INDIVIDUAL'S WORK PERFORMANCE BY CREATING AN INTIMIDATING, HOSTILE,
38 OR OFFENSIVE WORKING ENVIRONMENT.

39 (B) SUBJECT A DOMESTIC WORKER TO UNWELCOME HARASSMENT BASED ON GENDER,
40 RACE, RELIGION OR NATIONAL ORIGIN, WHERE SUCH HARASSMENT HAS THE PURPOSE
41 OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORM-
42 ANCE BY CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRON-
43 MENT.

44 S 4. Subdivisions 5 and 6 of section 292 of the executive law, subdi-
45 vision 5 as amended by chapter 851 of the laws of 1965 and subdivision 6
46 as amended by chapter 166 of the laws of 2000, are amended to read as
47 follows:

48 5. The term "employer" does not include any employer with fewer than
49 four persons in his OR HER employ EXCEPT AS SET FORTH IN SECTION TWO
50 HUNDRED NINETY-SIX-B OF THIS TITLE.

51 6. The term "employee" in this article does not include any individual
52 employed by his or her parents, spouse or child, or in the domestic
53 service of any person EXCEPT AS SET FORTH IN SECTION TWO HUNDRED NINE-
54 TY-SIX-B OF THIS TITLE.

55 S 5. Subdivision 3 of section 160 of the labor law is amended to read
56 as follows:

1 3. For all other employees, except those engaged in farm [or domestic
2 service] WORK and those affected by subdivision four of section two
3 hundred [and] twenty OF THIS CHAPTER, eight hours.

4 S 6. The labor law is amended by adding a new section 170 to read as
5 follows:

6 S 170. HOURS OF LABOR FOR DOMESTIC WORKERS. NO PERSON OR CORPORATION
7 EMPLOYING A DOMESTIC WORKER AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION
8 TWO OF THIS CHAPTER, SHALL REQUIRE ANY DOMESTIC WORKER TO WORK MORE THAN
9 FORTY HOURS IN A WEEK, OR FORTY-FOUR HOURS IN A WEEK FOR DOMESTIC WORK-
10 ERS WHO RESIDE IN THE HOME OF THEIR EMPLOYER; UNLESS THEY RECEIVE
11 COMPENSATION FOR OVERTIME WORK AT A RATE WHICH IS AT LEAST ONE AND ONE-
12 HALF TIMES THE WORKER'S NORMAL WAGE RATE.

13 S 7. Subdivision 1 of section 161 of the labor law is amended by
14 adding a new undesignated paragraph to read as follows:

15 EVERY PERSON EMPLOYED AS A DOMESTIC WORKER AS DEFINED IN SUBDIVISION
16 SIXTEEN OF SECTION TWO OF THIS CHAPTER, SHALL BE ALLOWED AT LEAST TWEN-
17 TY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. NO
18 PROVISION OF THIS PARAGRAPH SHALL PROHIBIT A DOMESTIC WORKER FROM VOLUN-
19 TARILY AGREEING TO WORK ON SUCH DAY OF REST REQUIRED BY THIS PARAGRAPH,
20 PROVIDED THAT THE WORKER IS COMPENSATED AT THE OVERTIME RATE FOR ALL
21 HOURS WORKED ON SUCH DAY OF REST. THE DAY OF REST AUTHORIZED UNDER THIS
22 SUBDIVISION SHOULD, WHENEVER POSSIBLE, COINCIDE WITH THE TRADITIONAL DAY
23 RESERVED BY THE DOMESTIC WORKER FOR RELIGIOUS WORSHIP. IN ADDITION,
24 AFTER ONE YEAR OF WORK WITH THE SAME EMPLOYER A DOMESTIC WORKER SHALL BE
25 ENTITLED TO AT LEAST THREE DAYS OF REST IN EACH CALENDAR YEAR AT THE
26 REGULAR RATE OF COMPENSATION.

27 S 8. Subdivision 5 of section 651 of the labor law, as amended by
28 chapter 640 of the laws of 2005, is amended to read as follows:

29 5. "Employee" includes any individual employed or permitted to work by
30 an employer in any occupation, but shall not include any individual who
31 is employed or permitted to work: (a) ON A CASUAL BASIS in service as a
32 part time baby sitter in the home of the employer[; or someone who lives
33 in the home of an employer for the purpose of serving as a companion to
34 a sick, convalescing or elderly person, and whose principal duties do
35 not include housekeeping]; (b) in labor on a farm; (c) in a bona fide
36 executive, administrative, or professional capacity; (d) as an outside
37 salesman; (e) as a driver engaged in operating a taxicab; (f) as a
38 volunteer, learner or apprentice by a corporation, unincorporated asso-
39 ciation, community chest, fund or foundation organized and operated
40 exclusively for religious, charitable or educational purposes, no part
41 of the net earnings of which inures to the benefit of any private share-
42 holder or individual; (g) as a member of a religious order, or as a duly
43 ordained, commissioned or licensed minister, priest or rabbi, or as a
44 sexton, or as a christian science reader; (h) in or for such a religious
45 or charitable institution, which work is incidental to or in return for
46 charitable aid conferred upon such individual and not under any express
47 contract of hire; (i) in or for such a religious, educational or chari-
48 table institution if such individual is a student; (j) in or for such a
49 religious, educational or charitable institution if the earning capacity
50 of such individual is impaired by age or by physical or mental deficien-
51 cy or injury; (k) in or for a summer camp or conference of such a reli-
52 gious, educational or charitable institution for not more than three
53 months annually; (l) as a staff counselor in a children's camp; (m) in
54 or for a college or university fraternity, sorority, student association
55 or faculty association, no part of the net earnings of which inures to
56 the benefit of any private shareholder or individual, and which is

1 recognized by such college or university, if such individual is a
2 student; (n) by a federal, state or municipal government or political
3 subdivision thereof. The exclusions from the term "employee" contained
4 in this subdivision shall be as defined by regulations of the commis-
5 sioner; or (o) as a volunteer at a recreational or amusement event run
6 by a business that operates such events, provided that no single such
7 event lasts longer than eight consecutive days and no more than one such
8 event concerning substantially the same subject matter occurs in any
9 calendar year. Any such volunteer shall be at least eighteen years of
10 age. A business seeking coverage under this paragraph shall notify every
11 volunteer in writing, in language acceptable to the commissioner, that
12 by volunteering his or her services, such volunteer is waiving his or
13 her right to receive the minimum wage pursuant to this article. Such
14 notice shall be signed and dated by a representative of the business and
15 the volunteer and kept on file by the business for thirty-six months.

16 "Employee" also includes any individual employed or permitted to work
17 in any non-teaching capacity by a school district or board of cooper-
18 ative educational services except that the provisions of sections six
19 hundred fifty-three through six hundred fifty-nine of this article shall
20 not be applicable in any such case.

21 S 9. The opening paragraph of subdivision 5 and the opening paragraph
22 of paragraph A of subdivision 6 of section 201 of the workers' compen-
23 sation law, the opening paragraph of subdivision 5 as amended by chapter
24 205 of the laws of 1993 and the opening paragraph of paragraph A of
25 subdivision 6 as amended by chapter 903 of the laws of 1986, are amended
26 to read as follows:

27 "Employee" means a person engaged in the service of an employer in any
28 employment defined in subdivision six of this section, except a minor
29 child of the employer, [except a domestic or personal worker in a
30 private home who is employed for less than forty hours per week by any
31 one employer, and] except a duly ordained, commissioned, or licensed
32 minister, priest or rabbi, a sexton, a christian science reader, or
33 member of a religious order, or an executive officer of a corporation
34 who at all times during the period involved owns all of the issued and
35 outstanding stock of the corporation and holds all of the offices pursu-
36 ant to paragraph (e) of section seven hundred fifteen of the business
37 corporation law or two executive officers of a corporation who at all
38 times during the period involved between them own all of the issued and
39 outstanding stock of such corporation and hold all such offices
40 provided, however, that each officer must own at least one share of
41 stock, except as provided in section two hundred twelve of this article,
42 or an executive officer of an incorporated religious, charitable or
43 educational institution, or persons engaged in a professional or teach-
44 ing capacity in or for a religious, charitable or educational institu-
45 tion, or volunteers in or for a religious, charitable or educational
46 institution, or persons participating in and receiving rehabilitative
47 services in a sheltered workshop operated by a religious, charitable or
48 educational institution under a certificate issued by the United States
49 department of labor, or recipients of charitable aid from a religious or
50 charitable institution who perform work in or for the institution which
51 is incidental to or in return for the aid conferred, and not under an
52 express contract of hire. The terms "religious, charitable or educa-
53 tional institution" mean a corporation, unincorporated association,
54 community chest, fund or foundation organized and operated exclusively
55 for religious, charitable or educational purposes, no part of the net

1 earnings of which inure to the benefit of any private shareholder or
2 individual.

3 "Employment" means employment in any trade, business or occupation
4 carried on by an employer, except that the following shall not be deemed
5 employment under this article: services performed for the state, a
6 municipal corporation, local governmental agency, other political subdi-
7 vision or public authority; employment subject to the federal railroad
8 unemployment insurance act; service performed on or as an officer or
9 member of the crew of a vessel on the navigable water of the United
10 States or outside the United States; service as farm laborers; casual
11 employment and the first forty-five days of extra employment of employ-
12 ees not regularly in employment as otherwise defined herein; service as
13 golf caddies; and service during all or any part of the school year or
14 regular vacation periods as a part-time worker of any person actually in
15 regular attendance during the day time as a student in an elementary or
16 secondary school. THE TERM "EMPLOYMENT" SHALL INCLUDE DOMESTIC OR
17 PERSONAL WORK IN A PRIVATE HOME. The term "employment" shall not include
18 the services of a licensed real estate broker or sales associate if it
19 be proven that (a) substantially all of the remuneration (whether or not
20 paid in cash) for the services performed by such broker or sales associ-
21 ate is directly related to sales or other output (including the perform-
22 ance of services) rather than to the number of hours worked; (b) the
23 services performed by the broker or sales associate are performed pursu-
24 ant to a written contract executed between such broker or sales associ-
25 ate and the person for whom the services are performed within the past
26 twelve to fifteen months; and (c) the written contract provided for in
27 [paragraph] SUBPARAGRAPH (b) [herein] OF THIS PARAGRAPH was not executed
28 under duress and contains the following provisions:

29 S 10. The commissioner of labor shall report to the governor, the
30 speaker of the assembly and the temporary president of the senate before
31 November 1, 2010 on the feasibility and practicality of allowing domes-
32 tic workers to organize for purposes of collective bargaining. In
33 preparing such report, the commissioner of labor will consult with
34 representatives of domestic workers and individuals and agencies that
35 employ domestic workers, and relevant state agencies including the
36 public employment relations board. The report shall address the feasi-
37 bility of an employee organization formed in accordance with the State
38 Labor Relations Act, how bargaining units for such organizations could
39 be formed, whether there are any unique issues which arise in this
40 context and whether there are other possible frameworks for collective
41 organization or for ensuring the benefits that accompany organization
42 for domestic workers. The commissioner of labor shall also report, with
43 the assistance of an interagency working group which shall include but
44 not be limited to the chair of the workers' compensation board, the
45 superintendent of insurance, the commissioner of health and the commis-
46 sioner of economic development, on how best to provide easily accessible
47 educational and informational material for domestic employers and work-
48 ers. Such material shall cover employment benefits, tax and insurance
49 laws.

50 S 11. This act shall take effect on the ninetieth day after it shall
51 have become a law.