S T A T E O F N E W Y O R K

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I N S E N A T E

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Introduced by Sens. SAVINO, ADAMS, ADDABBO, BRESLIN, DIAZ, DILAN, DUANE, ESPADA, FOLEY, HASSELL-THOMPSON, HUNTLEY, KLEIN, KRUEGER, OPPENHEIMER, PADAVAN, PARKER, PERALTA, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, SQUADRON, STACHOWSKI, STAVISKY, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in 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:

Section 1. Legislative findings and intent. Many thousands of domestic workers are employed in New York state as housekeepers, nannies, and companions to the elderly. The labor of domestic workers is central to

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

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the ongoing prosperity that the state enjoys, and yet, despite the value of their work, domestic workers do not receive the same protection of many state laws as do workers in other industries. Domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, are isolated in their workplaces, and are endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse. Moreover, many domestic workers in the state of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labor practices. Additionally, domestic workers are not afforded by law the right to organize labor unions for the purpose of collective bargaining.

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

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

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

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

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

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

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

(B) SUBJECT A DOMESTIC WORKER TO UNWELCOME HARASSMENT BASED ON GENDER, RACE, RELIGION OR NATIONAL ORIGIN, WHERE SUCH HARASSMENT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE BY CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

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

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

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

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

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

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

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

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

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

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

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) ON A CASUAL BASIS in service as a part time baby sitter in the home of the employer[; or someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping]; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or chari-

table institution if such individual is a student; (j) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months.

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

S 9. The opening paragraph of subdivision 5 and the opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, the opening paragraph of subdivision 5 as amended by chapter 205 of the laws of 1993 and the opening paragraph of paragraph A of subdivision 6 as amended by chapter 903 of the laws of 1986, are amended to read as follows:

"Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except a minor child of the employer, [except a domestic or personal worker in a private home who is employed for less than forty hours per week by any one employer, and] except a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order, or an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock, except as provided in section two hundred twelve of this article, or an executive officer of an incorporated religious, charitable or educational institution, or persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution, or volunteers in or for a religious, charitable or educational institution, or persons participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or

educational institution under a certificate issued by the United States department of labor, or recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under an express contract of hire. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

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

S 10. The commissioner of labor shall report to the governor, the speaker of the assembly and the temporary president of the senate before November 1, 2010 on the feasibility and practicality of allowing domestic workers to organize for purposes of collective bargaining. In preparing such report, the commissioner of labor will consult with representatives of domestic workers and individuals and agencies that employ domestic workers, and relevant state agencies including the public employment relations board. The report shall address the feasibility of an employee organization formed in accordance with the State Labor Relations Act, how bargaining units for such organizations could be formed, whether there are any unique issues which arise in this context and whether there are other possible frameworks for collective organization or for ensuring the benefits that accompany organization for domestic workers. The commissioner of labor shall also report, with the assistance of an interagency working group which shall include but not be limited to the chair of the workers' compensation board, the superintendent of insurance, the commissioner of health and the commissioner of economic development, on how best to provide easily accessible educational and informational material for domestic employers and work-

ers. Such material shall cover employment benefits, tax and insurance laws.

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