The committee on Ways and Means, on the residue of the House Bill relative to workforce reform (House, No. 4026), reports, a “Bill establishing the domestic workers bill of rights” (Senate, No. 2132).

For the committee,

Stephen M. Brewer
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 105D of chapter 149 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 39, the words “one of chapter one hundred and fifty-one B” and inserting in place thereof the following words:- 1 of chapter 151B and section 190.

SECTION 2. Section 150 of said chapter 149, as so appearing, is hereby amended by striking out, in line 21, the words “or 159C”, and inserting in place thereof the following words:-, 159C or 190.

SECTION 3. Said chapter 149 is hereby further amended by adding the following sections:-

Section 190. (a) As used in this section and in section 191, the following words shall have the following meanings unless the context clearly requires otherwise:
“Domestic worker”, an individual or employee who is paid by an employer to perform work of a domestic nature within a household including, but not limited to: (i) housekeeping; (ii) house cleaning; (iii) home management; (iv) nanny services; (v) caretaking of individuals in the home, including sick, convalescing and elderly individuals; (vi) laundering; (vii) cooking; (viii) home companion services; and (ix) other household services for members of households or their guests in private homes; provided, however, that “domestic worker” shall not include a personal care attendant or an individual whose vocation is not childcare or an individual whose services for the employer primarily consist of childcare on a casual, intermittent and irregular basis for 1 or more family or household members.

“Employer”, a person who employs a domestic worker to work within a household whether or not the person has an ownership interest in the household; provided, however, that an “employer” shall not include a staffing agency, employment agency or placement agency licensed or registered pursuant to chapter 140 or an individual to whom a personal care attendant provides services.

“Employ”, to suffer or permit to work.

“Forced services”, services performed or provided by a domestic worker as defined in section 49 of chapter 265.

“Person”, 1 or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

“Personal care attendant”, an individual who provides personal care attendant services to persons with disabilities or seniors under the MassHealth personal care attendant program or any successor program under sections 70 to 75, inclusive, of chapter 118E.
“Rest” or “period of rest”, a period of time with complete freedom from all duties and during which a domestic worker may either leave the employer’s premises or stay on the employer’s premises for purely personal pursuits; provided, however, that paid days of rest shall be considered vacation time and pay under chapter 149.

“Working time”, compensable time that includes all time during which a domestic worker is required to be on the employer’s premises or to be on duty and any time worked before or beyond the end of the normal scheduled shift to complete work; provided, however, that “working time” shall include meal periods, rest periods and sleeping periods unless a domestic worker is free to leave the employer’s premises and use the time for the domestic worker’s sole use and benefit and is completely relieved of all work-related duties.

(b) An employer who employs a domestic worker for 40 hours a week or more shall provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month and, where possible, this time shall allow time for religious worship. The domestic worker may voluntarily agree to work on a day of rest; provided, however, that the agreement is in writing and the domestic worker is compensated at the overtime rate for all hours worked on that day pursuant to section 1A of chapter 151. Days or periods of rest, whether paid or unpaid, shall be job-protected leave from employment.

(c) 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 under chapter 151 and regulations promulgated under said chapter 151.

(d) When a domestic worker is required to be on duty for a period of 24 consecutive hours or more, the employer and the domestic worker may agree, under terms that comply with
chapter 151 and regulations promulgated under said chapter 151, to exclude a regularly
scheduled sleeping period of not more than 8 hours from working time for each 24-hour period.

(e) When a domestic worker is required to be on duty for a period of 24 consecutive
hours or more and unless a prior written agreement is made, all meal periods, rest periods and
sleeping periods shall constitute working time.

(f) An employer may deduct from the wages of a domestic worker an amount for food
and beverages if the food and beverages are voluntarily and freely chosen by the domestic
worker. If a domestic worker cannot easily bring or prepare meals on premises, the employer
shall not deduct an amount from the wages of a domestic worker for food or beverages. An
employer shall not deduct from the wages of a domestic worker an amount for food and
beverages that exceeds the amounts permitted pursuant to chapter 151 and regulations
promulgated under said chapter 151.

(g) An employer may deduct from the wages of a domestic worker an amount for
lodging if the domestic worker voluntarily and freely accepts, desires and actually uses the
lodging and the lodging meets the standards for adequate, decent and sanitary lodging pursuant
to chapters 111 and 151 and the regulations promulgated under said chapters 111 and 151. An
employer shall not deduct an amount from the wages of a domestic worker for lodging that
exceeds the amounts permitted pursuant to chapter 151 and the regulations promulgated under
said chapter 151. An employer shall not deduct from the wages of a domestic worker an amount
for lodging if the employer requires that a domestic worker reside on the employer’s premises or
in a particular location.
(h) No deductions for meals or lodging shall be made from a domestic worker’s wages without the domestic worker’s prior written consent. No other deductions shall be made from a domestic worker’s wages other than for specifically named and identified purposes, goods or services required or expressly allowed by law.

(i) A domestic worker shall have a right to privacy under section 1B of chapter 214. An employer shall not restrict or interfere with a domestic worker’s means of private communication, monitor a domestic worker’s private communications, take any of the domestic worker’s documents or other personal effects or engage in any conduct which constitutes forced services or trafficking of a person in violation of sections 50 and 51 of chapter 265.

(j) A domestic worker may request a written evaluation of work performance from an employer after 3 months of employment and annually thereafter. A domestic worker may inspect and dispute the written evaluation under section 52C.

(k) If a domestic worker resides in the employer’s household and the employer terminates employment without cause, the employer shall provide written notice and at least 30 days of lodging, either on-site or in comparable off-site conditions, or severance pay in an amount equivalent to the domestic worker’s average earnings during 2 weeks of employment. Neither notice nor a severance payment shall be required in cases involving good faith allegations that are made in writing with reasonable basis and belief and without reckless disregard or willful ignorance of the truth that the domestic worker has abused, neglected or caused any other harmful conduct against the employer, members of the employer’s family or individuals residing in the employer’s home.
(l) An employer who employs a domestic worker shall keep a record of wages and hours pursuant to section 15 of chapter 151. In addition to the information required pursuant to said section 15 of said chapter 151, an employer who employs a domestic worker for 16 hours or more a week shall provide the following information: (i) the rate of pay, including overtime and additional compensation for added duties or multilingual skills; (ii) working hours, including meal breaks and other time off; (iii) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises and, whether or not earned, vacation days, personal days, holidays, severance, transportation costs and if health insurance costs are paid or reimbursed; (iv) any fees or other costs, including costs for meals and lodging; (v) the responsibilities associated with the job; (vi) the process for raising and addressing grievances and additional compensation if new duties are added; (vii) the right to collect workers’ compensation if injured; (viii) the circumstances under which the employer will enter the domestic worker’s designated living space on the employer’s premises; (ix) the required notice of employment termination by either party; and (x) any other rights or benefits afforded to the domestic worker. Failure to comply with this paragraph shall constitute a violation of paragraph (3) of section 19 of chapter 151.

(m) An employer shall provide a domestic worker with a notice that contains all applicable state and federal laws that apply to the employment of domestic workers. This requirement shall be satisfied if the employer provides a notice as described in paragraph (o).

(n) Nothing in this section shall 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.
The attorney general shall enforce this section and shall promulgate rules and regulations necessary for enforcement. The attorney general may obtain injunctive or declaratory relief for this purpose. The attorney general shall post on its website a sample written record of information required under paragraph (l), a multilingual notice of employment rights under this section and state and federal employment laws that apply to the employment of domestic workers required under paragraph (m). A violation of this section shall be subject to paragraphs (1) and (2) of subsection (b) and subsection (c) of section 27C and section 150.

Section 191. (a) It shall be an unlawful discriminatory practice for an employer to: (i) engage in unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature to a domestic worker if submission to the conduct is made either explicitly or implicitly a term or condition of the domestic worker’s employment, if submission to or rejection of the conduct by a domestic worker is used as the basis for employment decisions affecting the domestic worker or if the conduct has the purpose or effect of unreasonably interfering with a domestic worker’s work performance by creating an intimidating, hostile or offensive working environment; (ii) subject a domestic worker to unwelcome harassment based on sex, sexual orientation, gender identity, race, color, age, religion, national origin or disability if the harassment has the purpose or effect of unreasonably interfering with a domestic worker’s work performance by creating an intimidating, hostile or offensive working environment; or (iii) refuse job-protected leave for the birth or adoption of a child by the domestic worker or a spouse under section 105D.

(b) For the purposes of clause (i) of subsection (a), “domestic worker” shall include personal care attendants as defined in section 190.
(c) This section shall be enforced by the Massachusetts Commission Against Discrimination pursuant to chapter 151B.

SECTION 4. Section 19 of chapter 151 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 4 and 5, the words for not less than sixteen hours per week.

SECTION 5. Section 4A of chapter 151A of the General Laws, as so appearing, is hereby amended by inserting after the word “unit”, in line 23, the words: or domestic service performed by 1 or more individuals.

SECTION 6. Section 6 of said chapter 151A, as so appearing, is hereby amended by striking out subsection (b).

SECTION 7. Section 1 of chapter 151B of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word “the” and inserting in place thereof the following words: an employer of domestic workers including those covered under section 190 of chapter 149, the.

SECTION 8. Said section 1 of said chapter 151B, as so appearing, is hereby further amended by striking out, in line 32, the words , or in the domestic service of any person.

SECTION 9. Section 1 of chapter 153 of the General Laws, as so appearing, is hereby amended by striking out, in line 33, the words “domestic servants or”.

SECTION 10. Not later than April 1, 2015, the executive office of labor and workforce development in consultation with the attorney general shall develop and implement a multilingual outreach program to inform domestic workers and employers about their rights and
responsibilities. This program shall include the distribution of know your rights information, model employment agreements, educational materials for employers on their human resources duties in employing domestic workers, including information on benefits, tax and insurance laws and a model written work evaluation form.

SECTION 11. The attorney general shall promulgate regulations under subsection (o) of section 190 of chapter 149 of the General Laws on or before April 1, 2015.

SECTION 12. Sections 1 to 4, inclusive, shall take effect on April 1, 2015.