

File No. 130467

Committee Item No. \_\_\_\_\_

Board Item No. 29

### COMMITTEE/BOARD OF SUPERVISORS

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Committee \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date 5/21/2013

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#### OTHER (Use back side if additional space is needed)

- ASSEMBLY BILL 2411
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: ERICA DAVIES

Date 5/16/2013

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Urging the California State Legislature to Pass Assembly Bill 241]

2  
3 **Resolution urging the California State Legislature and the Governor to pass Assembly**  
4 **Bill 241, the Domestic Worker Bill of Rights, to provide respect, protection, rights, and**  
5 **dignity to domestic workers and to value the work they perform caring for our children,**  
6 **elderly, and our families.**

7  
8 WHEREAS, California's domestic workers—comprised of housekeepers, nannies, and  
9 caregivers for children, persons with disabilities, and the elderly—work in private households  
10 to care for the health, safety and well-being of the most important aspects of Californians'  
11 lives, their families and homes; and

12 WHEREAS, Domestic workers play a critical role in California's economy, working to  
13 ensure the health and prosperity of California families and freeing others to participate in the  
14 workforce; which is increasingly necessary in these difficult economic times; and,

15 WHEREAS, Domestic workers across the state of California have joined together to  
16 form the California Domestic Workers' Coalition to achieve social and economic justice and  
17 secure much-needed protections for domestic workers under California's labor laws; and,

18 WHEREAS, The National Domestic Workers Alliance is organizing domestic workers  
19 across the United States to end the exclusion of domestic workers from federal labor  
20 protections, and the International Domestic Workers Network, made up of domestic worker  
21 organizations across the world, has formed to fight exploitation and abuse by creating and  
22 advancing international standards in the industry; and,

23 WHEREAS, The treatment of domestic service workers under federal and state laws  
24 has historically reflected stereotypical assumptions about the nature of domestic work,  
25 specifically that the relationship between employer and "servant" was "personal," rather than

1 commercial, in character; that employment within a household was not "real" productive work;  
2 and that women did not work to support their families; and,

3 WHEREAS, The Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which  
4 Congress enacted to ensure a fair day's pay for a fair day's work, excluded domestic workers  
5 from its protection at a time when 60% of African American women workers were employed  
6 as domestic workers; and,

7 WHEREAS, The majority of domestic workers are women of color and are largely and  
8 increasingly immigrants who, because of race and sex discrimination and fear of deportation,  
9 are particularly vulnerable to unlawful employment practices and abuses; and

10 WHEREAS, Domestic workers usually work alone, behind closed doors, and out of the  
11 public eye, leaving them isolated, vulnerable to abuse and exploitation, and unable to  
12 advocate collectively for better working conditions; and,

13 WHEREAS, Domestic workers often labor under harsh conditions, work long hours for  
14 low wages without benefits or job security, and face termination without notice or severance  
15 pay, leaving many suddenly without both a job and a home; and,

16 WHEREAS, Most domestic workers work to support families and children of their own  
17 and more than half are primary income earners, yet two-thirds of domestic workers earn low  
18 wages or wages below the poverty line; and,

19 WHEREAS, Many live-in domestic workers are not permitted to make basic decisions  
20 regarding the food they eat or to cook or heat their meals; and,

21 WHEREAS, In the worst cases, domestic workers are verbally and physically abused  
22 or sexually assaulted, forced to sleep in conditions unfit for human habitation, and stripped of  
23 their privacy and dignity; and,

24 WHEREAS, Many employers desire to treat their caregivers and housekeepers fairly,  
25 but do not have the information to guide them in setting terms of employment, and may never

1 develop a formal contract or clearly establish the rights and obligations each party owes to the  
2 other; and,

3 WHEREAS, Domestic workers are still excluded from the most basic protections  
4 afforded the rest of the labor force under state and federal law, including the rights to fair  
5 wages, safe and healthy working conditions, workers' compensation, protection from  
6 discriminatory and abusive treatment, and to engage in collective bargaining; and,

7 WHEREAS, Domestic workers are excluded under the National Labor Relations Act  
8 (29 U.S.C. Sec. 151 et seq.), leaving them unprotected when asking for respect of their basic  
9 rights and unable to collectively bargain for conditions allowing them to labor in dignity; and,

10 WHEREAS, Domestic workers whose primary work is to care for children, the elderly,  
11 or persons with disabilities are excluded from overtime protections, meal and rest breaks, and  
12 reporting time pay under California law, and the federal Fair Labor Standards Act exempts  
13 live-in domestic workers from overtime provisions and exempts "companions" for the elderly  
14 and the infirm, and "casual" babysitters, from federal minimum wage and overtime provisions;  
15 and,

16 WHEREAS, Domestic workers are excluded from the protections of the California  
17 Occupational Safety and Health Act of 1973 and therefore do not have the right to work in a  
18 healthy and safe environment, leaving them unprotected from dangerous and unhealthy  
19 working conditions on a regular basis; and,

20 WHEREAS, State and federal antidiscrimination laws apply only to employers with  
21 certain minimum numbers of employees, and domestic workers are often unprotected against  
22 discrimination based on race, color, religion, sex, national origin, age, and disability; and,

23 WHEREAS, Domestic workers do not have the right to a minimum number of  
24 consecutive hours of uninterrupted sleep, they are often woken up repeatedly throughout the  
25

1 night, leaving them sleep deprived, vulnerable to illness, and unable to provide proper care for  
2 those in their charge; and,

3 WHEREAS, The vast majority of domestic workers receive no health benefits from their  
4 employers and have no right to paid sick days, many workers cannot take time off to deal with  
5 illness or medical emergencies, thereby endangering their own health and the health of the  
6 families they care for; and,

7 WHEREAS, In 2012 Assemblyman Tom Ammiano introduced AB 889 "Domestic  
8 Worker Bill of Rights", which would have provided domestic workers with equal overtime pay,  
9 equal right to a safe and healthy workplace, equal right to worker's compensation, equal right  
10 to notice before termination, equal right to five hours of uninterrupted sleep under adequate  
11 conditions, rights to annual cost of living wage increase, and rights to paid vacations and sick  
12 days; and

13 WHEREAS, Despite being supported by 45 Assemblymembers and 21 Senators as well  
14 as having 128 endorsers, including the California Nurses Association and the California Labor  
15 Federation, AB 889 was vetoed by Governor Jerry Brown; and

16 WHEREAS, Assemblyman Ammiano has reintroduced the "Domestic Worker Bill of  
17 Rights," AB 241, and

18 WHEREAS, AB 241 has been endorsed by such groups as POWER, California NOW,  
19 California Nurses Association/National Nurses Organizing Committee, United Educators of  
20 SF, San Francisco Labor Council and California Immigrant Policy Center, Gray Panthers of  
21 San Francisco, San Francisco Labor Council, Young Workers United, Unite Here Local 2,  
22 Coleman Advocates, Filipino Community Center, Chinese Progressive Association, and  
23 Interfaith Council on Economics and Justice; now, therefore, be it

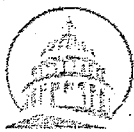
24 RESOLVED, By the Board of Supervisors of the City and County of San Francisco that  
25 coverage of domestic workers under state and federal labor law should be an expression of

1 respect for their dignity and equality and the importance of the work they perform, and a  
2 rejection of antiquated and long-discredited stereotypes about domestic work; and be it

3 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges the  
4 California legislature and the Governor of California to pass the "Domestic Worker Bill of  
5 Rights" supported by the California Domestic Workers' Coalition; and be it

6 FURTHER RESOLVED, That the San Francisco Board of Supervisors directs the clerk  
7 to distribute this Resolution to all of San Francisco's state legislators urging them to endorse  
8 this Resolution.

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California  
LEGISLATIVE INFORMATION

**AB-241 Domestic work employees: labor standards. (2013-2014)**

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

**ASSEMBLY BILL**

**No. 241**

**Introduced by Assembly Member Ammiano**

**February 06, 2013**

**An act relating to employment to amend Sections 3351, 3352, 3551, 3708, and 3715 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.**

LEGISLATIVE COUNSEL'S DIGEST

AB 241, as amended, Ammiano. Domestic workers—protections—work employees: labor standards.

(1) Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except as specified. Existing law creates the Industrial Welfare Commission and authorizes it to adopt rules, regulations, and orders to ensure that employers comply with those provisions. Existing law makes violations of certain of these provisions a misdemeanor.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined, with specified exceptions. The bill would define domestic work as services related to the care of persons in private households or maintenance of private households or their premises, which would include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations. The bill would provide an overtime compensation rate for domestic work employees, with specified exceptions. The bill would expressly apply Wage Order No. 15-2001 of the Industrial Welfare Commission, with specified exceptions, to a domestic work employee, except that the new domestic work provisions established by this bill will prevail over provisions that afford less protection. The bill would prescribe standards for determining whether travel time spent by a personal attendant, as defined, accompanying a domestic work employer are to be considered hours worked. The bill would further establish standards for sleeping periods, including accommodations for a domestic work employee who is required to sleep in a private household and would apply provisions regarding meal and rest breaks, as specified, to personal attendants. The bill would require that a domestic worker, after one year of work with the same employer, receive paid days of rest in each calendar year that would be compensated at the employee's regular rate of pay and calculated pursuant to a specified method related to the number of hours worked in an average week. The bill would require the Division of Labor Standards Enforcement to enforce these provisions. The bill would also provide a domestic work employee a private right of action to enforce these provisions. By expanding the definition of a crime, this bill would impose a state-mandated local

program.

(2) Existing law requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of and in the course of employment. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to secure the payment of workers' compensation, as specified. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would remove that exclusion and require all domestic work employers, as defined, to secure the payment of workers' compensation and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law generally provides employees with protection regarding wages, hours, and working conditions.~~

~~This bill would declare the intent of the Legislature to enact legislation to provide labor protection for domestic work employees.~~

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: ~~no~~yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *The Legislature finds and declares all of the following:*

(a) *As recognized by the State of California in Resolution Chapter 119 of the Statutes of 2010, it is the policy of the state to encourage and protect the rights of domestic work employees.*

(b) *California's domestic workers, which includes housekeepers, nannies, and caregivers for children, persons with disabilities, and the elderly, work in private households to care for the health, safety, and well-being of the most important aspects of Californians' lives: their families and homes.*

(c) *Domestic workers play a critical role in California's economy, working to ensure the health and prosperity of California families and freeing others to participate in the workforce, which is increasingly necessary in these difficult economic times. The labor of domestic workers is central to the ongoing prosperity of the state but, despite the value of their work, domestic workers have not received the same protection under state laws as workers in other industries. Although domestic workers labor to support families and children of their own, and often are primary income earners, many earn low wages and live below the poverty line.*

(d) *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 California to ensure that the rights of domestic workers are respected, protected, and enforced.*

(e) *The vast majority of domestic workers are women of color and immigrants and are particularly vulnerable to unlawful employment practices. Domestic workers usually work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation by some employers, and unable to advocate collectively for better working conditions. Many domestic workers labor under harsh conditions and work long hours for low wages without any benefits. For those who are live-in employees, when terminated, they lose not only their jobs but their homes. This bill recognizes that many personal attendants have positive working relationships with their employers. However, it must also be recognized that there are other situations where domestic workers are verbally and physically abused or sexually assaulted, forced to sleep in conditions unfit for human habitation, and stripped of their privacy and dignity.*

(f) *Many domestic workers are still excluded from the most basic protections afforded to the rest of the labor force under state and federal law, including the rights to fair wages, safe and healthy working conditions, workers' compensation, and protection from discriminatory and abusive treatment. The treatment of domestic workers under federal and state laws has historically reflected stereotypical assumptions about the nature of domestic work, specifically that the relationship between employer and "servant" was "personal," rather than commercial, in character, that employment within a household was not "real" productive work, and that women did not work to support their families.*



(g) Recognizing that people with disabilities often need personal attendants in order to be active participants in work, community, social, and cultural life, this bill creates certain modifications to the definition of compensable hours worked to accommodate situations when out-of-town travel with a personal attendant is necessary. The bill further modifies the existing definition of compensable hours worked in Wage Order No. 15-2001 of the Industrial Welfare Commission to allow for an unpaid sleep period of up to eight hours for personal attendants under specified circumstances. Personal attendants, who have long been denied the right to take meal and rest breaks, will be afforded the protection of Sections 11 and 12 of Minimum Wage Order No. 15-2001, which includes a provision for on-duty meals when the nature of the work prevents an employee from being relieved of all duty.

(h) Given the limited legal protections historically provided to domestic workers, and bearing in mind the unique conditions and demands of this private, home-based industry, the Legislature, as an exercise of the police power of the State of California for the protection of the public welfare, prosperity, health, safety, and peace of its people, further finds that domestic workers are entitled to industry-specific protections and labor standards that eliminate discriminatory provisions in the labor laws and guarantee domestic workers basic workplace rights to ensure that domestic workers are treated with equality, respect, and dignity.

SEC. 2. Part 4.5 (commencing with Section 1450) is added to Division 2 of the Labor Code, to read:

**PART 4.5. Domestic Work Employees**  
**CHAPTER 1. General Provisions and Definitions**

1450. This part shall be known and may be cited as the Domestic Worker Bill of Rights.

1451. As used in this part, the following definitions apply:

(a) "Domestic work" means services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.

(b) (1) "Domestic work employee" means an individual who performs domestic work and includes live-in domestic work employees and personal attendants.

(2) "Domestic work employee" does not include any of the following:

(A) Any person who performs services through the In-Home Supportive Services program under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(B) Any person who is the parent, grandparent, spouse, sibling, child, or legally adopted child of the domestic work employer.

(C) Any person under 18 years of age who is employed as a babysitter for a minor child of the domestic work employer in the employer's home.

(D) Any person employed as a casual babysitter for a minor child in the domestic employer's home. A casual babysitter is a person whose employment is irregular and intermittent and who does not work more than six hours per week caring for the same minor child or children. If a person who performs babysitting services on an irregular and intermittent basis does a significant amount of work other than supervising, feeding, and dressing a child, this exemption shall not apply and the person shall be considered a domestic work employee. A person who is a casual babysitter who is over 18 years of age retains the right to payment of minimum wage for all hours worked, pursuant to Wage Order No. 15-2001 of the Industrial Welfare Commission.

(E) Any person employed by a licensed health facility, as defined in Section 1250 of the Health and Safety Code.

(F) Any person who is employed by, or contracts with, an organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services.

(G) Any person who provides child care and who, pursuant to subdivision (d) or (f) of Section 1596.792 of the Health and Safety Code, is exempt from the licensing requirements of Chapters 3.4 (commencing with Section

1596.70), 3.5 (commencing with Section 1596.90), and 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code, if the parent or guardian of the child to whom child care is provided receives child care and development services pursuant to any program authorized under the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code) or the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code).

(c) (1) "Domestic work employer" means a person, including corporate officers or executives, who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of a domestic work employee.

(2) "Domestic work employer" does not include any of the following:

(A) The State of California or an individual who receives domestic work services through the In-Home Supportive Services program under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or who is eligible for that program based on his or her income.

(B) An employment agency that complies with Section 1812.5095 of the Civil Code and that operates solely to procure, offer, refer, provide, or attempt to provide work to domestic workers if the relationship between the employment agency and the domestic workers for whom the agency procures, offers, refers, provides, or attempts to provide domestic work is characterized by all of the factors listed in subdivision (b) of Section 1812.5095 of the Civil Code and Section 687.2 of the Unemployment Insurance Code.

(C) A licensed health facility, as defined in Section 1250 of the Health and Safety Code.

(d) "Emergency" means an unpredictable or unavoidable occurrence of a serious nature that occurs unexpectedly requiring immediate action.

(e) "Hours worked" means the time during which a domestic work employee is subject to the control of a domestic work employer and includes all time the domestic work employee is suffered or permitted to work, whether or not required to do so.

(f) "Live-in domestic work employee" means an employee who resides in the domestic work employer's household at least five days per week and for whom the employer makes sleep accommodations available in compliance with Section 1457.

(g) "Personal attendant" means any person employed by a private party or employed by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a person who, by reason of advanced age, physical disability, or mental deficiency, needs supervision. A person is a personal attendant only if no significant amount of work other than the foregoing is required. For purposes of this subdivision, no significant amount of work means that the work did not exceed 20 percent of the total weekly hours worked.

1452. The Division of Labor Standards Enforcement shall enforce this part.

1453. (a) Any domestic work employee aggrieved by a violation of this part may bring an administrative action pursuant to Section 98 or may bring a civil action in a court of competent jurisdiction against the domestic work employer violating this part.

(b) A domestic work employee who brings an action pursuant to this section and prevails shall be entitled to any legal or equitable relief permitted by law as may be appropriate to remedy the violation. A domestic work employee bringing a civil action pursuant to this section shall also be entitled to an award of reasonable attorney's fees and costs, including expert witness fees.

(c) The rights and remedies specified in this part are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law. If a provision of Wage Order No. 15-2001 of the Industrial Welfare Commission or any other provision of law affords less protection to a domestic work employee, this part shall prevail. If a provision of Wage Order No. 15-2001 of the Industrial Welfare Commission or any other provision of law affords more protection to a domestic work employee, the wage order shall prevail.

(d) Notwithstanding any provision of this code or Section 340 of the Code of Civil Procedure, to commence an action for a violation of this part a domestic work employee shall file an administrative or civil complaint within three years of the violation.

**CHAPTER 2. Domestic Work Employee Rights**

**1454.** A domestic work employee shall be compensated pursuant to Section 510, except as provided in Section 1455 or 1456.

**1455. (a)** A domestic work employee who is a live-in employee or is required to be on duty for 24 consecutive hours or more shall have a minimum of eight consecutive hours for uninterrupted sleep, except in an emergency. Any time worked during an emergency interruption constitutes hours worked.

**(b)** If a domestic work employee is a live-in employee or is required to be on duty for 24 consecutive hours or more, the domestic work employer and the domestic work employee may agree in writing to exclude from hours worked a bona fide regularly scheduled sleeping period of not more than eight hours for uninterrupted sleep from hours worked, provided that the employee has eight hours free of duty and available for continuous, uninterrupted sleep and the domestic work employer otherwise complies with this section and Section 1457. Absent a written agreement, the eight hours available for sleep shall constitute hours worked.

**1456.** If a domestic work employer who is a person with a disability needs to be accompanied by a personal attendant when traveling out of town, all time spent accompanying the employer in transit, and all time attending to, or carrying out, directives of the employer constitutes hours worked. Periods during which the personal attendant is completely relieved of duty, is not required to be at the same location as the employer, and that are long enough to enable the attendant to use the time effectively for his or her own purposes do not constitute hours worked. The employer and the employee may agree to exclude from hours worked a bona fide sleeping period of not more than eight hours, provided that there is a written agreement and the employee has eight hours free of duty and available for continuous, uninterrupted sleep.

**1457.** Any domestic work employee who is required to sleep in the private household of his or her employer shall be provided sleeping accommodations that are adequate, decent, and sanitary according to usual customary standards. These domestic work employees shall be provided a room separate from any household resident and shall not be required to share a bed.

**1458.** Sections 11 and 12 of Wage Order No. 15-2001 of the Industrial Welfare Commission shall apply to a personal attendant.

**1460.** A domestic work employer shall permit a domestic work employee who works five hours or more a day to choose the food he or she eats and to prepare his or her own meals. A domestic work employer shall permit a domestic work employee to use the job site's kitchen facilities and kitchen appliances without charge or deduction from pay. If a domestic work employee is informed that a person in the household has bona fide health issues related to food, including, but not limited to, food allergies, or has religious or dietary restrictions which make presence of some foods unacceptable, the employee shall not eat or prepare that food in the household.

**1461.** After one year of work with the same employer, a domestic worker shall be entitled to paid days of rest in each calendar year that shall be compensated at the employee's regular rate of pay and calculated as follows:

**(a)** If the employee worked an average of fewer than a total of 20 hours per week for an employer over the last year, the employee is entitled to one day of paid rest from that employer for the calendar year, as long as the employee is not employed on a casual basis. Employment on a casual basis, for purposes of this section, is work that is intermittent or irregular.

**(b)** If the employee worked an average of 20 but fewer than 30 hours per week for an employer over the last year, the employee is entitled to two days of paid rest from that employer for the calendar year.

**(c)** If the employee worked an average of 30 or more hours per week for an employer, the employee is entitled to three days of paid rest for the calendar year from that employer.

**(d)** If an employee is terminated or quits without having used all paid days of rest, the unused paid days of rest shall be paid to the employee as wages at the final rate of pay. An employee shall carry over accrued unused paid days of rest from one year to the next.

**SEC. 3.** Section 3351 of the Labor Code is amended to read:

**3351.** "Employee" means every person in the service of an employer under any appointment or contract of hire

or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay; provided that, where the officers and directors of the private corporation are the sole shareholders thereof, the corporation and the officers and directors shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151.

(d) ~~Except as provided in subdivision (h) of Section 3352, any~~ A person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, *persons of advanced age, or persons with physical or mental disabilities*, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment ~~as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations~~, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability ~~company, company~~, provided that where the working members of the partnership or limited liability company are general partners or managers, the partnership or limited liability company and the partners or managers shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151. If a private corporation is a general partner or manager, "working members of a partnership or limited liability company" shall include the corporation and the officers and directors of the corporation, provided that the officers and directors are the sole shareholders of the corporation. If a limited liability company is a partner or member, "working members of the partnership or limited liability company" shall include the managers of the limited liability company.

(g) For the purposes of subdivisions (c) and (f), the persons holding the power to revoke a trust as to shares of a private corporation or as to general partnership or limited liability company interests held in the trust, shall be deemed to be the shareholders of the private corporation, or the general partners of the partnership, or the managers of the limited liability company.

**SEC. 4. Section 3352 of the Labor Code is amended to read:**

**3352.** "Employee" excludes the following:

(a) Any person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) Any person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) Any person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who receives no compensation from the county or municipal corporation or from the citizens thereof for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive any person so deputized from recourse against a private person employing him or her for injury occurring in the course of and arising out of the employment.

(d) Any person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section ~~101(6)~~ 501 of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who receives no compensation for those services other than meals, lodging, or transportation.

(e) Any person performing voluntary service as a ski patrolman who receives no compensation for those services other than meals or lodging or the use of ski tow or ski lift facilities.

(f) Any person employed by a ski lift operator to work at a snow ski area who is relieved of and not performing any prescribed duties, while participating in recreational activities on his or her own initiative.

(g) Any person, other than a regular employee, participating in sports or athletics who receives no compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

~~(h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412, or who earned less than one hundred dollars (\$100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.~~

~~(i)~~

(h) Any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.

~~(j)~~

(i) Any person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by any public agency or private, nonprofit organization, who receives no remuneration for these services other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

~~(k)~~

(j) Any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

~~(l)~~

(k) Any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

~~(m)~~

(l) Any law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

~~(n)~~

(m) Any person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

~~(o)~~

(n) Any person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

**SEC. 5. Section 3551 of the Labor Code is amended to read:**

**3551.** (a) Every employer subject to the compensation provisions of this code, ~~except employers of employees defined in subdivision (d) of Section 3351,~~ shall give every new employee, either at the time the employee is hired or by the end of the first pay period, written notice of the information contained in Section 3550. The content of the notice required by this section shall be prescribed by the administrative director after consultation with the Commission on Health and Safety and Workers' Compensation.

(b) The notice required by this section shall be easily understandable and available in both English and

Spanish. In addition to the information contained in Section 3550, the content of the notice required by this section shall include:

- (1) Generally, how to obtain appropriate medical care for a job injury.
- (2) The role and function of the primary treating physician.
- (3) A form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician," as defined by Section 4600, or "personal chiropractor," as defined by Section 4601.

(c) The content of the notice required by this section shall be made available to employers and insurers by the administrative director. Insurers shall provide this notice to each of their policyholders, with advice concerning the requirements of this section and the penalties for a failure to provide this notice to all employees.

**SEC. 6. Section 3708 of the Labor Code is amended to read:**

**3708.** In such action it is presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof is upon the employer, to rebut the presumption of negligence. It is not a defense to the employer that the employee was guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow servant. No contract or regulation shall restore to the employer any of the foregoing defenses.

~~This section shall not apply to any employer of an employee, as defined in subdivision (d) of Section 3351, with respect to such employee, but shall apply to employers of employees described in subdivision (b) of Section 3715, with respect to such employees.~~

**SEC. 7. Section 3715 of the Labor Code is amended to read:**

**3715.** (a) ~~Any employee, except an employee as defined in subdivision (d) of Section 3351, whose employer has failed to secure the payment of compensation as required by this division, or his or her dependents in case death has ensued, may, in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, file his or her application with the appeals board for compensation and the appeals board shall hear and determine the application for compensation in like manner as in other claims and shall make the award to the claimant as he or she would be entitled to receive if the employer had secured the payment of compensation as required, and the employer shall pay the award in the manner and amount fixed thereby or shall furnish to the appeals board a bond, in any amount and with any sureties as the appeals board requires, to pay the employee the award in the manner and amount fixed thereby.~~

~~(b) Notwithstanding this section or any other provision of this chapter except Section 3708, any person described in subdivision (d) of Section 3351 who is (1) engaged in household domestic service who is employed by one employer for over 52 hours per week, (2) engaged as a part time gardener in connection with a private dwelling, if the number of hours devoted to the gardening work for any individual regularly exceeds 44 hours per month, or (3) engaged in casual employment where the work contemplated is to be completed in not less than 10 working days, without regard to the number of persons employed, and where the total labor cost of the work is not less than one hundred dollars (\$100) (which amount shall not include charges other than for personal services), shall be entitled, in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, to file his or her application with the appeals board for compensation. The appeals board shall hear and determine the application for compensation in like manner as in other claims, and shall make the award to the claimant as he or she would be entitled to receive if the person's employer had secured the payment of compensation as required, and the employer shall pay the award in the manner and amount fixed thereby, or shall furnish to the appeals board a bond, in any amount and with any sureties as the appeals board requires, to pay the employee the award in the manner and amount fixed thereby.~~

~~It is the intent of the Legislature that the amendments to this section by Chapter 17 of the Statutes of 1977, make no change in the law as it applied to those types of employees covered by this subdivision prior to the effective date of Chapter 1263 of the 1975 Regular Session.~~

(e)

(b) (1) In any claim in which it is alleged that the employer has failed to secure the payment of compensation, the director, only for purposes of this section and Section 3720, shall determine, on the basis of the evidence available to him or her, whether the employer was prima facie illegally uninsured. A finding that the employer was prima facie illegally uninsured shall be made when the director determines that there is sufficient

evidence to constitute a prima facie case that the employer employed an employee on the date of the alleged injury and had failed to secure the payment of compensation, and that the employee was injured arising out of, and occurring in the course of, the employment.

*Failure*

(2) *Failure* of the employer to furnish within 10 days the written statement in response to a written demand for a written statement prescribed in Section 3711, addressed to the employer at its address as shown on the official address record of the appeals board, shall constitute in itself sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation.

*A*

(3) *A* written denial by the insurer named in the statement furnished by the employer as prescribed in Section 3711, that the employer was so insured as claimed, or the nonexistence of a valid certificate of consent to self-insure for the time of the claimed injury, if the statement furnished by the employer claims the employer was self-insured, shall constitute in itself sufficient evidence for a prima facie case that the employer had failed to secure the payment of compensation.

*The*

(4) *The* nonexistence of a record of the employer's insurance with the Workers' Compensation Insurance Rating Bureau shall constitute in itself sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation.

*The*

(5) *The* un rebutted written declaration under penalty of perjury by the injured employee, or applicant other than the employee, that the employee was employed by the employer at the time of the injury, and that he or she was injured in the course of his or her employment, shall constitute, in itself, sufficient evidence for a prima facie case that the employer employed the employee at the time of the injury, and that the employee was injured arising out of, and occurring in the course of, the employment.

(d)

(c) (1) When the director determines that an employer was prima facie illegally uninsured, the director shall mail a written notice of the determination to the employer at his or her address as shown on the official address record of the appeals board, and to any other more recent address the director may possess. The notice shall advise the employer of its right to appeal the finding, and that a lien may be placed against the employer's and any parent corporation's property, or the property of substantial shareholders of a corporate employer as defined by Section 3717.

*Any*

(2) *Any* employer aggrieved by a finding of the director that it was prima facie illegally uninsured may appeal the finding by filing a petition before the appeals board. The petition shall be filed within 20 days after the finding is issued. The appeals board shall hold a hearing on the petition within 20 days after the petition is filed with the appeals board. The appeals board shall have exclusive jurisdiction to determine appeals of the findings by the director, and no court of this state has jurisdiction to review, annul, or suspend the findings or the liens created thereunder, except as provided by Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4.

(e)

(d) (1) Any claim brought against an employer under this section may be resolved by the director by compromise and release or stipulated findings and award as long as the appeals board has acquired jurisdiction over the employer and the employer has been given notice and an opportunity to object.

*Notice*

(2) *Notice* may be given by service on the employer of an appeals board notice of intention to approve the compromise and release or stipulated findings and award. The employer shall have 20 days after service of the notice of intention to file an objection with the appeals board and show good cause therefor.

*If*

(3) *If* the employer objects, the appeals board shall determine if there is good cause for the objection.

If

(4) If appeals board finds good cause for the objection, the director may proceed with the compromise and release or stipulated findings and award if doing so best serves the interest of the Uninsured Employers Fund, but shall have no cause of action against the employer under Section 3717 unless the appeals board case is tried to its conclusion and the employer is found liable.

If

(5) If appeals board does not find good cause for the objection, and the compromise and release or stipulated findings and award is approved, the Uninsured Employers Fund shall have a cause of action against the employer pursuant to Section 3717.

(f)

(e) The director may adopt regulations to implement and interpret the procedures provided for in this section.

*SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~SECTION 1. It is the intent of the Legislature to enact legislation to provide labor protection for domestic work employees.~~



# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**

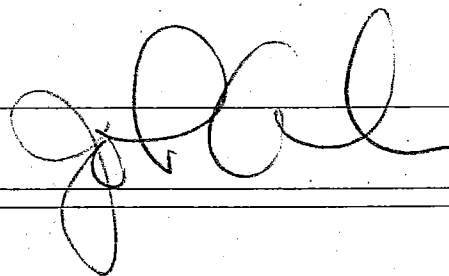
John Avalos

**Subject:**

Supporting California Assembly Bill 241, Domestic Worker Bill of Rights

**The text is listed below or attached:**

Signature of Sponsoring Supervisor: \_\_\_\_\_



For Clerk's Use Only:

