

1 **H. B. 3015**

2
3 (By Delegates Longstreth, Caputo and Manchin)

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6 [Introduced January 11, 2012; referred to the

7 Committee on Energy, Industry and Labor, Economic Development and
8 Small Business then the Judiciary.]

9 **Carryover
Bill**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §21-3E-1, §21-3E-2,
12 §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8 and
13 §21-3E-9, all relating to labor; providing for healthy
14 workplaces by providing remedies for hostile work
15 environments; defining terms; providing an affirmative defense
16 for employers; banning retaliation in certain circumstances;
17 providing an employer duty to respond to third-party acts of
18 malice; restricting applicability to employment practices not
19 covered by existing state laws on human rights or wrongful
20 discharge; and providing certain time limitations for
21 commencing action.

22 *Be it enacted by the Legislature of West Virginia:*

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §21-3E-1, §21-3E-2,
25 §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8 and

1 §21-3E-9, all to read as follows:

2 **ARTICLE 3E. THE HEALTHY AND SAFE WORKPLACE ACT.**

3 **§21-3E-1. Findings.**

4 The Legislature hereby finds and declares that:

5 (a) The social and economic well-being of the state is
6 dependent upon healthy and productive employees;

7 (b) Between thirty-seven percent and fifty-nine percent of
8 employees directly experience health-endangering workplace
9 bullying, abuse and harassment, and this mistreatment is
10 approximately four times more prevalent than sexual harassment
11 alone;

12 (c) Workplace bullying, mobbing and harassment can inflict
13 serious harm upon targeted employees, including feelings of shame
14 and humiliation, severe anxiety, depression, suicidal tendencies,
15 cardiovascular disease and symptoms consistent with posttraumatic
16 stress disorder;

17 (d) Abusive work environments can have serious consequences
18 for employers, including reduced employee productivity and morale,
19 higher turnover and absenteeism rates and increases in medical and
20 workers' compensation claims;

21 (e) If mistreated employees who have been subjected to abusive
22 treatment at work cannot establish that the behavior was motivated
23 by race, color, sex, sexual orientation, national origin or age,
24 they are unlikely to be protected by the law against such

1 mistreatment;

2 (f) Legal protection from abusive work environments should not
3 be limited to behavior grounded in protected class status as that
4 provided for under employment discrimination statuses; and

5 (g) Existing workers' compensation plans and common-law tort
6 actions are inadequate to discourage this behavior or to provide
7 adequate relief to employees who have been harmed by abusive work
8 environments.

9 **§21-3E-2. Purpose.**

10 The Legislature states the purpose of this article is:

11 (a) To provide legal relief for employees who have been
12 harmed, psychologically, physically or economically, by being
13 deliberately subjected to abusive work environments; and

14 (b) To provide legal incentive for employers to prevent and
15 respond to abusive mistreatment of employees at work.

16 **§21-3E-3. Definitions.**

17 For the purposes of this article:

18 (a) "Abusive conduct" means conduct, including acts,
19 omissions, or both, that a reasonable person would find hostile,
20 based on the severity, nature, and frequency of the defendant's
21 conduct. Abusive conduct may include, but is not limited to:
22 repeated infliction of verbal abuse such as the use of derogatory
23 remarks, insults and epithets; verbal or physical conduct of a
24 threatening, intimidating or humiliating nature; the sabotage or

1 undermining of an employee's work performance; or attempts to
2 exploit an employee's known psychological or physical
3 vulnerability. A single act normally will not constitute abusive
4 conduct, but an especially severe and egregious act may meet this
5 standard.

6 (b) "Adverse employment action" means an action that includes,
7 but is not limited to, a termination, demotion, unfavorable
8 reassignment, failure to promote, disciplinary action, or reduction
9 in compensation.

10 (c) "Abusive work environment" means an environment that
11 exists when the defendant subjects an employee to abusive conduct
12 so severe that it causes tangible harm to the employee.

13 (d) "Constructive discharge" exists where: (1) The employee
14 reasonably believed he or she was subjected to abusive conduct; (2)
15 the employee resigned because of that abusive conduct; (3) prior to
16 resigning, the employee brought to the employer's attention the
17 existence of the abusive conduct and the employer failed to take
18 reasonable steps to correct the situation. A constructive
19 discharge shall be considered a termination, and, therefore, an
20 adverse employment action within the meaning of this article.

21 (e) "Employer" includes private employers as well as the state
22 or any subdivision thereof, any county, municipality, unit of local
23 government, school district, community college district, municipal
24 or public corporation, or state university.

1 (f) "Psychological harm" means the material impairment of a
2 person's mental health, as established by competent evidence.

3 (g) "Physical harm" means the material impairment of a
4 person's physical health or bodily integrity, as established by
5 competent evidence.

6 (h) "Tangible harm" means psychological harm or physical harm.

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8 **§21-3E-4. Unlawful employment practices.**

9 (a) It is an unlawful employment practice under this article
10 to subject an employee to an abusive work environment as defined by
11 this article. For the purposes of this article, expression
12 protected by the First Amendment of the Constitution of the United
13 States and Article III of the West Virginia Constitution including
14 the exercise of free speech, free expression and free exercise of
15 religion or expression of religiously based views may not be
16 considered "abusive conduct" unless the intent is to intimidate or
17 harass.

18 (b) It is an unlawful employment practice under this article
19 to retaliate in any manner against an employee who has opposed any
20 unlawful employment practice under this article, or who has made a
21 charge, testified, assisted or participated in any manner in an
22 investigation or proceeding under this article, including, but not
23 limited to, internal complaints and proceedings, arbitration and
24 mediation proceedings and legal actions.

1 **§21-3E-5. Employer liability and defense.**

2 (a) An employer shall be vicariously liable for an unlawful
3 employment practice, as defined by this article, committed by its
4 employee.

5 (b) Where the alleged unlawful employment practice does not
6 include an adverse employment action, it shall be an affirmative
7 defense for an employer if:

8 (1) The employer exercised reasonable care to prevent and
9 correct promptly any actionable behavior; and

10 (2) The complainant employee unreasonably failed to take
11 advantage of appropriate preventive or corrective opportunities
12 provided by the employer.

13 **§21-3E-6. Employee liability and defense.**

14 (a) An employee may be individually liable for an unlawful
15 employment practice as defined by this article.

16 (b) It is an affirmative defense for an employee only that the
17 employee committed an unlawful employment practice, as defined in
18 this article, at the direction of the employer, under threat of an
19 adverse employment action.

20 **§21-3E-7. Relief.**

21 (a) Where a defendant has been found to have committed an
22 unlawful employment practice under this article, the court may
23 enjoin the defendant from engaging in the unlawful employment
24 practice and may order any other relief that is deemed appropriate,

1 including, but not limited to, reinstatement or removal of the
2 offending party from the complainant's work environment. The
3 plaintiff may also recover from the defendant appropriate
4 compensation for back pay, front pay, medical expenses, emotional
5 distress, humiliation and loss of personal dignity and punitive
6 damages. The Court shall also award the costs of litigation,
7 including reasonable attorney fees and witness fees, to the
8 complainant.

9 (b) Where an employer has been found to have committed an
10 unlawful employment practice under this article that did not
11 culminate in an adverse employment action, its liability for
12 damages for emotional distress may not exceed \$50,000, and it may
13 not be subject to punitive damages. This provision does not apply
14 to an individually named employee defendant.

15 **§21-3E-8. Procedures.**

16 (a) This article may be enforced solely by a private right of
17 action with the right to a jury trial.

18 (b) An action under this article must be commenced no later
19 than one year after the last act that constitutes the alleged
20 unlawful employment practice.

21 **§21-3E-9. Effect on other legal relationships.**

22 (a) The remedies provided in this article shall be in addition
23 to any remedies provided under any other law, and nothing in this
24 article relieves any person from any liability, duty, penalty or

1 punishment provided by any other law, except that if an employee
2 receives workers' compensation for medical costs for the same
3 injury or illness pursuant to both this article and the Workers'
4 Compensation Act, or compensation under both this article and that
5 act in cash payments for the same period of time not working as a
6 result of the compensable injury or illness or the unlawful
7 employment practice, the payments of workers' compensation shall be
8 reimbursed from compensation paid under this article.

NOTE: The purpose of this bill is to create a new cause of action to deter workplace bullying. This bill makes it an unlawful employment practice to subject an employee to an abusive work environment that exists when the defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee. Further, this bill makes it an unlawful employment practice to retaliate in any manner against an employee who has made a charge, testified, assisted or participated in any manner against an employee who has made a charge, testified, assisted or participated in any manner in an investigation or proceeding regarding bullying in the workplace.

This article is new; therefore, it has been completely underscored.