

**H. B. 2591**

(By Delegates Longstreth, Caputo, Manypenny, Manchin,  
Ferro, Poling, D., Eldridge and Fleischauer)

[Introduced February 21, 2013; referred to the  
Committee on Energy, Industry and Labor, Economic  
Development and Small Business then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §5-27-1, §5-27-2,  
§5-27-3, §5-27-4, §5-27-5, §5-27-6, §5-27-7, §5-27-8, §5-27-9  
and §5-27-10, all relating to creating the Healthy Workplace  
Act; legislative findings and purpose; definitions; unlawful  
employment practices; employer liability and defense;  
affirmative defenses; relief procedures through private right  
of action; injunction; damages, compensatory and punitive;  
attorney fees; time limitations; providing that article does  
not supersede rights and obligations provided under collective  
bargaining laws and rules; prohibiting receipt of damages  
under this article and workers' compensation benefits for same  
time period; and requiring reimbursement.

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

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new article, designated §5-27-1, §5-27-2,

1 §5-27-3, §5-27-4, §5-27-5, §5-27-6, §5-27-7, §5-27-8, §5-27-9 and  
2 §5-27-10, all to read as follows:

3 **ARTICLE 27. HEALTHY WORKPLACE ACT.**

4 **§5-27-1. Legislative findings.**

5 The Legislature finds that:

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

8 (b) At least one third of all employees will directly  
9 experience health-endangering workplace bullying, abuse and  
10 harassment during their working lives and this form of mistreatment  
11 is approximately four times more prevalent than sexual harassment  
12 alone;

13 (c) Workplace bullying, mobbing and harassment can inflict  
14 serious harm upon targeted employees, including feelings of shame  
15 and humiliation, severe anxiety, depression, suicidal tendencies,  
16 impaired immune systems, hypertension, increased risk of  
17 cardiovascular disease and symptoms consistent with post-traumatic  
18 stress disorder;

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

23 (e) If mistreated employees, who have been subjected to  
24 abusive treatment at work cannot establish that the behavior was

1 motivated by race, color, sex, sexual orientation, national origin  
2 or age, they are unlikely to be protected by the law against such  
3 mistreatment;

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

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

11 **§5-27-2. Purpose.**

12 It is the purpose of this article:

13 (a) To provide legal relief for employees who have been  
14 harmed, psychologically, physically or economically by deliberate  
15 exposure to abusive work environments; and

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

18 **§5-27-3. Definitions.**

19 (a) "Abusive conduct" includes acts, omissions or both acts or  
20 omissions, that a reasonable person would find abusive, based on  
21 the severity, nature and frequency of the conduct. Abusive conduct  
22 may include, but is not limited to: (1) Repeated verbal abuse such  
23 as the use of derogatory remarks, insults and epithets; (2) verbal,  
24 nonverbal or physical conduct of a threatening, intimidating or

1 humiliating nature; or (3) the sabotage or undermining of an  
2 employee's work performance. It is considered an aggravating factor  
3 that the conduct exploited an employee's known psychological or  
4 physical illness or disability.

5 (b) "Abusive work environment" exists when an employer or one  
6 or more of its employees, acting with intent to cause pain or  
7 distress to an employee, subjects that employee to abusive conduct  
8 that causes physical harm, psychological harm, or both physical  
9 harm and psychological harm.

10 (c) "Adverse employment action" includes, but is not limited  
11 to, a termination, demotion, unfavorable reassignment, failure to  
12 promote, disciplinary action or reduction in compensation.

13 (d) "Constructive discharge" is considered a termination and,  
14 therefore, an adverse employment action within the meaning of this  
15 article. A constructive discharge for purposes of this article  
16 exists where: (1) The employee reasonably believed he or she was  
17 subjected to an abusive work environment; (2) the employee resigned  
18 because of that conduct; and (3) the employer was aware of the  
19 abusive conduct prior to the resignation and failed to stop it.

20 (e) "Psychological harm" is the impairment of a person's  
21 mental health, as established by competent evidence.

22 (f) "Physical harm" is the impairment of a person's physical  
23 health or bodily integrity, as established by competent evidence.

24 **§5-27-4. Unlawful Employment Practices.**

1 It is an unlawful employment practice under this article to  
2 subject an employee to an abusive work environment as defined by  
3 this article.

4 It is an unlawful employment practice under this article to  
5 retaliate in any manner against an employee who has opposed any  
6 unlawful employment practice under this article, or who has made a  
7 charge, testified, assisted or participated in any manner in an  
8 investigation or proceeding under this article, including, but not  
9 limited to, internal complaints and proceedings, arbitration and  
10 mediation proceedings and legal actions.

11 **§5-27-5. Employer Liability and Defense.**

12 An employer is vicariously liable for an unlawful employment  
13 practice, as defined by this article, committed by its employee.  
14 Where the alleged unlawful employment practice does not include an  
15 adverse employment action, it is an affirmative defense for an  
16 employer only that:

17 (a) The employer exercised reasonable care to prevent and  
18 correct promptly any actionable behavior; and

19 (b) The complainant employee unreasonably failed to take  
20 advantage of appropriate preventive or corrective opportunities  
21 provided by the employer.

22 **§5-27-6. Employee Liability and Defense.**

23 An employee may be individually liable for an unlawful  
24 employment practice as defined by this article.

1 It is an affirmative defense for an employee only that the  
2 employee committed an unlawful employment practice as defined in  
3 this article at the direction of the employer, under actual or  
4 implied threat of an adverse employment action.

5 **§5-27-7. Affirmative Defenses.**

6 It is an affirmative defense that:

7 (a) The complaint is based on an adverse employment action  
8 reasonably made for poor performance, misconduct, or economic  
9 necessity; or,

10 (b) The complaint is based on a reasonable performance  
11 evaluation; or

12 (c) The complaint is based on an employer's reasonable  
13 investigation about potentially illegal or unethical activity.

14 **§5-27-8. Relief; injunction; damages, compensatory and punitive;**  
15 **attorney fees; limitations.**

16 Where a party is liable for an unlawful employment practice  
17 under this article, the court may enjoin the defendant from  
18 engaging in the unlawful employment practice and may order any  
19 other relief that is determined appropriate, including, but not  
20 limited to, reinstatement, removal of the offending party from the  
21 complainant's work environment, back pay, front pay, medical  
22 expenses, compensation for pain and suffering, compensation for  
23 emotional distress, punitive damages and attorney's fees.

24 Where an employer is liable for an unlawful employment

1 practice under this article that did not include an adverse  
2 employment action, emotional distress damages and punitive damages  
3 may be awarded only when the actionable conduct was extreme and  
4 outrageous. This limitation does not apply to individually named  
5 employee defendants.

6 **§5-27-9. Private right of action; time limitations.**

7 This article may be enforced solely by a private right of  
8 action. An action under this article must be commenced no later  
9 than one year after the last act that constitutes the alleged  
10 unlawful employment practice.

11 **§5-27-10. Effect on other legal relationships; prohibitions; and**  
12 **reimbursements.**

13 This article does not supersede rights and obligations  
14 provided under collective bargaining laws and rules.

15 The remedies provided in this article are in addition to any  
16 remedies provided under any other law. Nothing in this article  
17 relieves any person from any liability, duty, penalty or punishment  
18 provided by any other law: *Provided*, That if an employee receives  
19 workers' compensation for medical costs for the same injury or  
20 illness pursuant to this article and the workers' compensation law,  
21 the payments of workers' compensation shall be reimbursed from  
22 compensation paid under this article.

NOTE: The purpose of this bill is to create the Healthy Workplace Act to provide legal relief for employees who have been harmed, psychologically, physically or economically by deliberate exposure to abusive work environments and legal incentive for employers to prevent and respond to abusive mistreatment of employees at work.

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