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**HOUSE BILL NO. 2089**

Offered January 14, 2015

Prefiled January 14, 2015

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 6, consisting of sections numbered 40.1-51.4:6 through 40.1-51.4:9, relating to employee safety; abusive work environments.*

Patrons—Kearney and Hope

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 6, consisting of sections numbered 40.1-51.4:6 through 40.1-51.4:9, as follows:**

*Article 6.**Abusive Work Environments.***§ 40.1-51.4:6. Definitions.**

*As used in this article, unless the context requires otherwise:*

*"Abusive conduct" means conduct of an employer or employee in the workplace that a reasonable person would find hostile. "Abusive conduct" includes, but is not limited to, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; the gratuitous sabotage or undermining of an employee's work performance; attempts to exploit an employee's known psychological or physical vulnerability; or repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets. The determination of whether abusive conduct is present shall include the severity, nature, and frequency of the conduct and, where applicable, the continuation of the conduct after the employee requests that it cease or demonstrates outward signs of emotional or physical distress in the face of the conduct. A single act shall not constitute abusive conduct unless it is especially severe. Conduct shall not be regarded as abusive conduct if an employer provides clear and convincing proof that the conduct is necessary for the furtherance of the employer's legitimate and lawful business interest.*

*"Abusive work environment" means a workplace in which an employee is subjected to abusive conduct by the employer, employees of the employer, or contractors of the employer that is severe enough to cause physical or psychological harm to the employee.*

*"Adverse employment action" means a termination of employment, a constructive discharge, a demotion, an unfavorable reassignment, a refusal to promote, or a disciplinary action resulting in monetary loss.*

*"Constructive discharge" means abusive conduct that causes an employee to resign after the employee has brought to the employer's attention the abusive conduct and the employer failed to take reasonable measures to eliminate the abusive conduct.*

*"Physical harm" means a material impairment of an employee's physical health or bodily integrity, as documented by a physician or supported by competent expert evidence.*

*"Psychological harm" means a material impairment of an employee's mental health, as documented by a psychologist, psychiatrist, or psychotherapist or supported by competent expert evidence.*

**§ 40.1-51.4:7. Prohibited practices.**

*A. No employer shall:*

- 1. Permit an employee to be subjected to an abusive work environment;*
- 2. Subject an employee to an abusive work environment; or*
- 3. Retaliate or take reprisal in any manner against an employee because the employee has brought an action under this article or because the employee has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this article.*

*B. No agent of an employer or coworker of an employee shall subject an employee to an abusive work environment.*

**§ 40.1-51.4:8. Private cause of action.**

*Upon a violation of any provision of this article, an aggrieved employee or former employee may, within one year, institute an action in a court of competent jurisdiction. If the court determines that a defendant violated a provision of this article, the court may order, as applicable, an injunction to restrain any violation of this article that is continuing at the time that the court issues its order; the reinstatement of the employee with full wages, fringe benefits, and seniority rights; removal of any offending party from the work environment of the employee; compensation for all lost wages, benefits,*

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59 *and other remuneration; compensation for medical costs; compensation for emotional duress; punitive*  
60 *damages; and reasonable costs and attorney fees; however, if the court determines that the employer*  
61 *violated a provision of this article but that the violation did not include an adverse employment action*  
62 *against the employee or result in any lost work time, earnings, or other benefits of employment by the*  
63 *employee, the employer shall not be liable for punitive damages.*

64 ***§ 40.1-51.4:9. Liability; defenses.***

65 *A. If the alleged violation is based solely on abusive conduct by coworkers of the aggrieved*  
66 *employee and none of the abusive conduct is by a supervisor or manager, it shall be an affirmative*  
67 *defense that the employer promulgated an effective policy to prohibit and deter the abusive conduct and*  
68 *the employee failed to take advantage of appropriate preventative or corrective opportunities provided*  
69 *by the employer, except that this defense shall not apply if the violation includes an adverse employment*  
70 *action against the employee.*

71 *B. An employee may be individually liable for a violation of this article.*

72 *C. It shall be an affirmative defense for an employee only that the employee committed a violation of*  
73 *this article at the direction of the employer, under actual or implied threat of an adverse employment*  
74 *action.*

75 *D. It shall be an affirmative defense to any alleged violation of this article that:*

76 *1. The complaint is based on an adverse employment action reasonably made for poor performance,*  
77 *misconduct, or economic necessity;*

78 *2. The complaint is based on a reasonable performance evaluation; or*

79 *3. The complaint is based on an employer's reasonable investigation of potentially illegal or*  
80 *unethical activity.*