

SENATE BILL 999

K3, P4

2lr2927

By: **Senator Muse**

Introduced and read first time: February 17, 2012

Assigned to: Rules

Re-referred to: Finance, February 27, 2012

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2012

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Abusive Work Environments in State Agencies –**
3 **~~Employee Remedies~~ Workgroup Study**

4 FOR the purpose of ~~prohibiting a supervisor or an employee who is supervised by the~~
5 ~~supervisor from subjecting an employee to an abusive work environment that~~
6 ~~includes certain abusive conduct that causes certain harm to the employee;~~
7 ~~providing that a supervisor or an employee is individually liable for a violation~~
8 ~~of this Act; providing that a certain supervisor is vicariously liable for a~~
9 ~~violation of this Act; prohibiting a supervisor from retaliating against an~~
10 ~~employee who opposes or resists abusive conduct in the employee's work~~
11 ~~environment or takes other action regarding a violation of this Act; authorizing~~
12 ~~an employee to file an action for a violation of this Act; requiring that a certain~~
13 ~~action be filed in a certain circuit court and within a certain time period after~~
14 ~~the last act that constitutes the alleged violation; specifying certain affirmative~~
15 ~~defenses for a supervisor or an employee against whom a certain action has~~
16 ~~been filed; authorizing certain remedies for violations of this Act; prohibiting a~~
17 ~~circuit court from ordering punitive damages under certain circumstances;~~
18 ~~limiting the liability of a supervisor for emotional distress to a certain dollar~~
19 ~~amount under certain circumstances; requiring an employee who has received~~
20 ~~workers' compensation under a certain provision of law to repay the~~
21 ~~compensation under certain circumstances; stating the intent of the General~~
22 ~~Assembly; providing for the application of this Act; defining certain terms;~~
23 requiring the Joint Committee on Fair Practices and State Personnel to convene
24 a certain workgroup to study and make recommendations regarding certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 matters; providing for the composition and staffing of the workgroup;
 2 prohibiting a member of the workgroup from receiving certain compensation or
 3 reimbursement of expenses; requiring the Joint Committee to report the
 4 findings and recommendations of the workgroup to certain committees of the
 5 General Assembly on or before a certain date; providing for the termination of
 6 this Act; and generally relating to a workgroup to study abusive work
 7 environments in State agencies.

8 ~~BY adding to~~

9 ~~Article Labor and Employment~~

10 ~~Section 3-1101 through 3-1104 to be under the new subtitle "Subtitle 11-~~

11 ~~Abusive Work Environments"~~

12 ~~Annotated Code of Maryland~~

13 ~~(2008 Replacement Volume and 2011 Supplement)~~

14 Preamble

15 WHEREAS, The social and economic well-being of Maryland is dependent on
 16 healthy and productive employees; and

17 WHEREAS, Between 37 and 59 percent of employees directly experience
 18 health-endangering workplace bullying, abuse, and harassment and this type of
 19 workplace mistreatment is approximately four times more prevalent than sexual
 20 harassment alone; and

21 WHEREAS, Workplace bullying, abuse, and harassment can inflict serious
 22 harm on targeted employees, including feelings of shame and humiliation, severe
 23 anxiety, depression, suicidal tendencies, impaired immune systems, hypertension,
 24 increased risk of cardiovascular disease, and symptoms consistent with
 25 posttraumatic stress disorder; and

26 WHEREAS, Abusive work environments can have serious consequences for
 27 employers, including reduced employee productivity and morale, higher turnover and
 28 absenteeism rates, and increased medical and workers' compensation claims; and

29 WHEREAS, If mistreated employees who have been subjected to abusive
 30 treatment at work cannot establish that the behavior was motivated by race, color,
 31 gender, sexual orientation, national origin, or age, they are unlikely to be protected by
 32 the law against the mistreatment; and

33 WHEREAS, Legal protection from abusive work environments should not be
 34 limited to behavior affecting individuals in certain protected classes as is the case
 35 under employment discrimination statutes; and

36 WHEREAS, Existing workers' compensation plans and common-law tort
 37 actions are inadequate to discourage workplace abuse or to provide adequate relief to
 38 employees who have been harmed by abusive work environments; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That ~~the Laws of Maryland read as follows:~~

3 (a) The Joint Committee on Fair Practices and State Personnel Oversight
4 shall convene a workgroup to:

5 (1) determine the extent to which abusive work environments exist in
6 State agencies;

7 (2) determine the extent to which existing remedies address abuse
8 suffered by State employees due to abusive work environments; and

9 (3) make recommendations, including draft legislation, regarding
10 methods of strengthening existing remedies and any new remedies that are needed to
11 address abuse suffered by State employees due to abusive work environments.

12 (b) The workgroup shall consist of:

13 (1) the Secretary of Budget and Management, or the Secretary's
14 designee; and

15 (2) the following members appointed by the co-chairs of the Joint
16 Committee appointed under § 2-10A-08 of the State Government Article:

17 (i) three State employees who are not supervisors, of which:

18 1. one shall have been employed by the State for less
19 than 5 years;

20 2. one shall have been employed by the State for at least
21 5 years but no more than 10 years; and

22 3. one shall have been employed by the State for more
23 than 10 years;

24 (ii) three State employees who have held supervisory positions,
25 of which:

26 1. one shall have held a supervisory position for less
27 than 5 years;

28 2. one shall have held a supervisory position for at least
29 5 years but no more than 10 years; and

30 3. one shall have held a supervisory position for more
31 than 10 years;

1 (iii) a member of the Maryland State Bar who practices in the
 2 State and is knowledgeable about abusive work environments and existing remedies
 3 for abuse suffered due to an abusive work environment; and

4 (iv) three representatives of labor unions that represent State
 5 employees, each of whom represents a different union.

6 (c) The Department of Budget and Management shall provide staff for the
 7 workgroup.

8 (d) A member of the workgroup:

9 (1) may not receive compensation as a member of the workgroup; and

10 (2) is not entitled to reimbursement for expenses.

11 (e) On or before December 31, 2012, the Joint Committee on Fair Practices
 12 and State Personnel shall report the findings and recommendations of the workgroup
 13 to the Senate Finance Committee and the House Appropriations Committee in
 14 accordance with § 2-1246 of the State Government Article.

15 ~~Article — Labor and Employment~~

16 ~~SUBTITLE 11. ABUSIVE WORK ENVIRONMENTS.~~

17 ~~§ 1101.~~

18 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 19 ~~INDICATED:~~

20 ~~(B) (1) “ABUSIVE CONDUCT” MEANS ACTS OF A SUPERVISOR OR~~
 21 ~~EMPLOYEE TARGETED AT AN INDIVIDUAL EMPLOYEE THAT A REASONABLE~~
 22 ~~INDIVIDUAL WOULD EXPERIENCE AS CREATING A HOSTILE WORK~~
 23 ~~ENVIRONMENT BASED ON THE SEVERITY, NATURE, AND FREQUENCY OF THE~~
 24 ~~SUPERVISOR’S OR EMPLOYEE’S CONDUCT.~~

25 ~~(2) “ABUSIVE CONDUCT” INCLUDES:~~

26 ~~(I) REPEATED VERBAL ABUSE, INCLUDING THE USE OF~~
 27 ~~DEROGATORY AND DISPARAGING REMARKS, INSULTS, AND EPITHETS;~~

28 ~~(II) VERBAL OR PHYSICAL CONDUCT OF A THREATENING,~~
 29 ~~INTIMIDATING, HUMILIATING, OR CRUEL NATURE; AND~~

1 ~~(H) THE SABOTAGE OR UNDERMINING OF ANOTHER~~
2 ~~EMPLOYEE'S WORK PERFORMANCE.~~

3 ~~(C) "ADVERSE EMPLOYMENT ACTION" INCLUDES:~~

4 ~~(1) TERMINATION;~~

5 ~~(2) DEMOTION;~~

6 ~~(3) UNFAVORABLE REASSIGNMENT;~~

7 ~~(4) FAILURE TO PROMOTE;~~

8 ~~(5) DISCIPLINARY ACTION; AND~~

9 ~~(6) REDUCTION IN COMPENSATION.~~

10 ~~(D) "EMPLOYEE" INCLUDES AN INDIVIDUAL EMPLOYED BY A~~
11 ~~GOVERNMENTAL UNIT.~~

12 ~~(E) "EMPLOYER" INCLUDES A GOVERNMENTAL UNIT.~~

13 ~~(F) "SUPERVISOR" MEANS AN INDIVIDUAL WITHIN AN EMPLOYER'S~~
14 ~~ORGANIZATION WHO HAS THE AUTHORITY TO:~~

15 ~~(1) DIRECT AND CONTROL THE WORK PERFORMANCE OF AN~~
16 ~~EMPLOYEE; OR~~

17 ~~(2) TAKE CORRECTIVE ACTION REGARDING THE VIOLATION OF A~~
18 ~~LAW OR REGULATION OF WHICH THE EMPLOYEE COMPLAINS.~~

19 ~~3-1102.~~

20 ~~IT IS THE PURPOSE OF THE GENERAL ASSEMBLY IN ENACTING THIS~~
21 ~~SUBTITLE TO PROVIDE:~~

22 ~~(1) A LEGAL INCENTIVE FOR SUPERVISORS TO PREVENT AND~~
23 ~~CORRECT ABUSIVE WORK ENVIRONMENTS UNDER THE SUPERVISOR'S CONTROL;~~
24 ~~AND~~

25 ~~(2) LEGAL RELIEF FOR EMPLOYEES WHO HAVE BEEN HARMED~~
26 ~~PSYCHOLOGICALLY, PHYSICALLY, OR FINANCIALLY BY BEING DELIBERATELY~~
27 ~~SUBJECTED TO ABUSIVE CONDUCT AND A HOSTILE WORK ENVIRONMENT.~~

28 ~~3-1103.~~

1 ~~(A) (1) A SUPERVISOR OR AN EMPLOYEE WHO IS SUPERVISED BY THE~~
2 ~~SUPERVISOR MAY NOT SUBJECT AN EMPLOYEE OF AN EMPLOYER TO AN~~
3 ~~ABUSIVE WORK ENVIRONMENT THAT INCLUDES ABUSIVE CONDUCT SO SEVERE~~
4 ~~THAT IT CAUSES AN ACTUAL MATERIAL IMPAIRMENT OF MENTAL HEALTH OR~~
5 ~~PHYSICAL HEALTH.~~

6 ~~(2) A SUPERVISOR OR AN EMPLOYEE WHO IS SUPERVISED BY THE~~
7 ~~SUPERVISOR IS INDIVIDUALLY LIABLE FOR A VIOLATION OF PARAGRAPH (1) OF~~
8 ~~THIS SUBSECTION THAT IS COMMITTED BY THE SUPERVISOR OR EMPLOYEE,~~
9 ~~RESPECTIVELY.~~

10 ~~(3) A SUPERVISOR OF AN EMPLOYEE WHO VIOLATES PARAGRAPH~~
11 ~~(1) OF THIS SUBSECTION IS VICARIOUSLY LIABLE FOR THE ACTIONS OF THE~~
12 ~~EMPLOYEE.~~

13 ~~(B) A SUPERVISOR MAY NOT RETALIATE IN ANY MANNER, INCLUDING~~
14 ~~TAKING ADVERSE EMPLOYMENT ACTION, AGAINST AN EMPLOYEE OF AN~~
15 ~~EMPLOYER WHO HAS:~~

16 ~~(1) OPPOSED OR RESISTED ANY ABUSIVE CONDUCT IN THE~~
17 ~~EMPLOYEE'S WORK ENVIRONMENT; OR~~

18 ~~(2) FILED AN ACTION FOR A VIOLATION OF THIS SECTION OR~~
19 ~~TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION~~
20 ~~OR PROCEEDING REGARDING A VIOLATION OF THIS SECTION.~~

21 ~~3-1104.~~

22 ~~(A) (1) AN EMPLOYEE OF AN EMPLOYER MAY FILE AN ACTION~~
23 ~~AGAINST THE SUPERVISOR OF THE EMPLOYEE OR AN EMPLOYEE WHO IS~~
24 ~~SUPERVISED BY THE SUPERVISOR FOR A VIOLATION OF § 3-1103 OF THIS~~
25 ~~SUBTITLE.~~

26 ~~(2) AN ACTION FILED UNDER PARAGRAPH (1) OF THIS~~
27 ~~SUBSECTION:~~

28 ~~(I) SHALL BE FILED IN THE CIRCUIT COURT FOR THE~~
29 ~~JURISDICTION WHERE THE EMPLOYER IS LOCATED; AND~~

30 ~~(H) MUST BE FILED NOT LATER THAN 1 YEAR AFTER THE~~
31 ~~LAST ACT THAT CONSTITUTES THE ALLEGED VIOLATION OF § 3-1103 OF THIS~~
32 ~~SUBTITLE.~~

1 ~~(B) IT IS AN AFFIRMATIVE DEFENSE FOR A SUPERVISOR OR AN~~
2 ~~EMPLOYEE AGAINST WHOM AN ACTION UNDER SUBSECTION (A) OF THIS~~
3 ~~SECTION HAS BEEN FILED THAT:~~

4 ~~(1) (I) THE SUPERVISOR EXERCISED REASONABLE CARE TO~~
5 ~~PREVENT AND CORRECT PROMPTLY ANY VIOLATION OF § 3 1103(A) OF THIS~~
6 ~~SUBTITLE BY AN EMPLOYEE WHO IS SUPERVISED BY THE SUPERVISOR; AND~~

7 ~~(II) THE EMPLOYEE WHO FILED THE ACTION AGAINST THE~~
8 ~~SUPERVISOR UNREASONABLY FAILED TO TAKE ADVANTAGE OF APPROPRIATE~~
9 ~~PREVENTIVE OR CORRECTIVE OPPORTUNITIES PROVIDED BY THE SUPERVISOR;~~

10 ~~(2) THE EMPLOYEE VIOLATED § 3 1103(A) OF THIS SUBTITLE AT~~
11 ~~THE DIRECTION OF THE SUPERVISOR, UNDER THE THREAT OF ADVERSE~~
12 ~~EMPLOYMENT ACTION; OR~~

13 ~~(3) THE ACTION IS BASED ON:~~

14 ~~(I) AN ADVERSE EMPLOYMENT ACTION REASONABLY MADE~~
15 ~~FOR POOR PERFORMANCE, MISCONDUCT, OR ECONOMIC NECESSITY;~~

16 ~~(II) A REASONABLE PERFORMANCE EVALUATION; OR~~

17 ~~(III) A SUPERVISOR'S OR AN EMPLOYEE'S REASONABLE~~
18 ~~INVESTIGATION INTO POTENTIALLY ILLEGAL OR UNETHICAL ACTIVITY OF THE~~
19 ~~EMPLOYEE WHO FILED THE ACTION.~~

20 ~~(C) (1) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW~~
21 ~~AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF A~~
22 ~~SUPERVISOR OR AN EMPLOYEE IS FOUND TO BE LIABLE FOR A VIOLATION OF §~~
23 ~~3 1103 OF THIS SUBTITLE, THE CIRCUIT COURT MAY:~~

24 ~~(I) ENJOIN THE SUPERVISOR OR EMPLOYEE FROM~~
25 ~~ENGAGING IN CONDUCT THAT VIOLATES § 3 1103 OF THIS SUBTITLE; AND~~

26 ~~(II) ORDER ANY OTHER RELIEF THAT IS DEEMED~~
27 ~~APPROPRIATE, INCLUDING:~~

28 ~~1. REINSTATEMENT OF THE EMPLOYEE WHO FILED~~
29 ~~THE ACTION UNDER SUBSECTION (A) OF THIS SECTION;~~

30 ~~2. REMOVAL OF THE SUPERVISOR OR EMPLOYEE~~
31 ~~WHO VIOLATED § 3 1103 OF THIS SUBTITLE FROM THE WORK ENVIRONMENT OF~~
32 ~~THE EMPLOYEE WHO FILED THE ACTION;~~

- 1 ~~3. BACK PAY;~~
- 2 ~~4. REIMBURSEMENT OF MEDICAL EXPENSES;~~
- 3 ~~5. COMPENSATION FOR EMOTIONAL DISTRESS;~~
- 4 ~~6. PUNITIVE DAMAGES; OR~~
- 5 ~~7. ATTORNEY'S FEES.~~

6 ~~(2) IF THE SUPERVISOR DID NOT TAKE ADVERSE EMPLOYMENT~~
 7 ~~ACTION AGAINST THE EMPLOYEE, THE LIABILITY OF THE SUPERVISOR FOR~~
 8 ~~VIOLATIONS OF § 3-1103 OF THIS SUBTITLE FOR DAMAGES FOR EMOTIONAL~~
 9 ~~DISTRESS MAY NOT EXCEED \$7,500 AND THE CIRCUIT COURT MAY NOT ORDER~~
 10 ~~PUNITIVE DAMAGES.~~

11 ~~(D) AN EMPLOYEE OF AN EMPLOYER SHALL REPAY ANY WORKERS'~~
 12 ~~COMPENSATION RECEIVED UNDER TITLE 9 OF THIS ARTICLE IF:~~

13 ~~(1) THE WORKERS' COMPENSATION WAS AWARDED TO THE~~
 14 ~~EMPLOYEE FOR INJURIES THAT RESULTED FROM A VIOLATION OF § 3-1103 OF~~
 15 ~~THIS SUBTITLE; AND~~

16 ~~(2) THE EMPLOYEE IS AWARDED MONETARY DAMAGES UNDER~~
 17 ~~SUBSECTION (C) OF THIS SECTION AS A RESULT OF THE SAME VIOLATION FOR~~
 18 ~~WHICH WORKERS' COMPENSATION WAS AWARDED.~~

19 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be~~
 20 ~~construed to apply only prospectively and may not be interpreted to create a cause of~~
 21 ~~action based on acts of a supervisor or an employee who is supervised by the~~
 22 ~~supervisor that occurred before the effective date of this Act.~~

23 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take~~
 24 ~~effect ~~October~~ July 1, 2012. It shall remain effective for a period of 1 year and, at the~~
 25 ~~end of June 30, 2013, with no further action required by the General Assembly, this~~
 26 ~~Act shall be abrogated and of no further force and effect.~~