

# Lawmakers question legislation's proponents

## WORKPLACE BULLYING BILL UPDATE

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CHARLESTON — Advocates for a new workplace bullying law made their case to a Judiciary subcommittee Tuesday.

Legislators fired off questions about the proposal and the West Virginia Chamber of Commerce expressed its opposition to the draft — pointing out what it views as significant holes.

## QUESTION

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ings, or interaction with a boss or co-worker who has a harsh personality. Bullying is a "hostile work environment" that interferes with a company's business and results in health-harming mistreatment of the victim.

Bill author Taylor Downs, a Fairmont lawyer who now works for Manchin but drafted the bill before joining the firm, explained the history and purpose of the bill. State code provides no cause of action for workplace bullying, he said. The West Virginia Human Rights Act protects only specific classes of individuals, while tort law for intentional infliction of emotional distress has such a high standard that lawsuits generally go nowhere.

The Healthy Workplace Act, he said, falls in between. It defines several key terms at length, including "abusive work environment," in which the defendant subjects an employee "to abusive conduct so severe it causes tangible harm to the employee." Those terms, including tangible harm, are key to making the bill work, he said.

The bill makes it illegal to subject an employee to an abu-

The subcommittee is launching a study of HB 3015, The Healthy and Safe Workplace Act, sponsored by Delegate Linda Longstreth, D-Marion, and her two Marion colleagues, Mike Caputo and subcommittee co-chairman Tim Manchin.

Lana Cooke and two other former WVU employees gave their accounts of workplace bullying and how it affected their health. Cooke is the state Healthy Work-

place Bill coordinator, under the auspices of the Washington state-based Workplace Bullying Institute. They described heart problems, a stroke, depression, anxiety, high blood pressure, asthma and more.

Cooke also presented a PowerPoint overview of what bullying means: It's not just incivility or rudeness or hurt feel-

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sive work environment or to retaliate against an employee who opposes unlawful employment practices described in the code. It describes employer and employee liabilities and defenses.

In a civil suit, if the defendant is found guilty, the court may order the plaintiff reinstated or the defendant removed from work, and compensation for lost pay, distress, punitive damages and court costs.

If a guilty employer's actions did not lead to the plaintiff's termination, demotion or other adverse actions, liability for emotional distress is capped at \$50,000 and punitive damages are prohibited.

Members who work as lawyers had questions. How would an employee's pre-existing mental health problems factor into a lawsuit? Is the boss liable for an employee bullying another employee if the boss never sees it and just has a he-said-she-said situation? While the bill outlines specific defenses for employers, doesn't it put too much burden of proof on them to make their case they either didn't know about the problem or tried to solve it?

Delegate John Ellem, R-Wood, asked Downs, "If it's that [bad] of a workplace,

why don't you just quit?"

Downs responded, "Sometimes it's hard to find a [new] job," especially during this weak economy.

Brenda Nichols Harper, with the state chamber, said some terms are still too poorly defined to be clear, and could open doors to problems. An employee's mental and physical health issues could pose problems with federal HIPPA privacy laws.

And while the three bill proponents testified how proper channels failed them, Harper said other legal remedies already exist.

Harper observed that none of the 23 states that attempted to pass a healthy workplace act has succeeded, pointing out that other legislatures also are having trouble making it workable. This year, 13 states are considering 18 such bills.

She said if legislators move forward with the bill, the "loose" definitions will need work.

After the meeting, Longstreth agreed the bill needs work. "I think it's a beginning. It's putting it on the table and making people aware. I agree the bill needs to be tightened up." It's just another tool to help employees. "I don't want something out there that's not going to help someone."