

_____ offers the following
substitute to HB 1121:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 provide for a right of action for sexual harassment against a co-worker, supervisor, or
3 employer; to provide for definitions; to provide for elements of such right; to provide for
4 when actions may be brought; to provide for damages; to provide for defenses; to provide
5 for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
9 a new chapter to read as follows:

10 "CHAPTER 16

11 51-16-1.

12 As used in this chapter, the term:

13 (1) 'Claimant' means a person bringing a claim under this chapter.

14 (2) 'Co-worker' means a person who works in a similar role or is at an equivalent level
15 or position as claimant or someone who is not a supervisor.

16 (3) 'Employer' means any of the following, or their agents, which employ four or more
17 individuals who perform services within this state:

18 (A) An organization; or

19 (B) A corporation, limited liability company, limited liability partnership, partnership,
20 or association, whether domestic or foreign.

21 (4) 'Sexual harassment' means conduct, including, but not limited to, unwelcome sexual
22 advances or requests for sexual favors or any other unwelcome verbal, visual, or physical
23 conduct of a sexual nature.

24 (5) 'Supervisor' means:

25 (A) A manager, director, or administrator of a claimant; or

26 (B) Any person who in any capacity has supervision or authority over:

27 (i) A claimant; or

28 (ii) Any activity for which a claimant is employed or contracted to do implicitly or
29 explicitly.

30 51-16-2.

31 (a) A claimant shall have a right of action for sexual harassment against a co-worker or
32 supervisor who, as viewed by a reasonable person, initiates nonconsensual or unwelcome
33 sexual advances or requests; makes commands for sexual favors; or otherwise engages in
34 nonconsensual or unwelcome verbal, visual, or physical conduct of a sexual nature to the
35 claimant or another and:

36 (1) The claimant's rejection of such initiation, command, or conduct; bringing an action
37 against or reporting such initiation, command, or conduct; or assisting another in
38 reporting such initiation, command, or conduct is used as a component of the basis for
39 employment decisions adversely affecting the claimant, including, but not limited to,
40 termination, demotion, transfer, or reassignment to an inferior or less desirable position,
41 duties, work schedule, or other similarly unfavorable treatment; or

42 (2) The initiation, command, or conduct has the purpose or effect of interfering with the
43 claimant's work performance or creating an intimidating, hostile, or sexually offensive
44 work environment.

45 (b) The same cause of action as provided for in subsection (a) of this Code section shall
46 exist against the employer when the employer knew or should have known of the sexual
47 harassment or of the co-worker's or supervisor's propensity to sexually harass; provided,
48 however, that an employer shall not be subject to liability under this subsection if the
49 employer can show that, acting in good faith, it exercised care to prevent and promptly
50 address sexual harassment when it occurs.

51 51-16-3.

52 Any action for sexual harassment pursuant to the provisions of this chapter shall be
53 commenced within two years from the date of the incident or within one year from
54 exhaustion of all procedures provided for by an employer, where applicable, whichever is
55 later.

56 51-16-4.

57 It shall be an affirmative defense to liability under this chapter that the conduct forming the
58 basis of an action under this chapter:

59 (1) Does not rise above the level of what a reasonable person would consider merely
60 tactless, boorish, inconsiderate, overfamiliar, or otherwise impolite, particularly with
61 regard to the totality of the circumstances, including, but not limited to, the nature of the
62 employer, the conduct at issue, and the context in which the alleged conduct occurred;

63 or

64 (2) Is consensual contact between co-workers.

65 51-16-5.

66 (a) Relief the court may order for a prevailing claimant includes, but is not limited to,
67 compensation for lost wages, benefits, other remuneration or compensatory damages,
68 reasonable attorney's fees, court costs, and other related expenses.

69 (b) The provisions of this chapter shall be construed as being in addition to, and in no way
70 deny, alter, or amend, any other civil or criminal rights or remedies in law or in equity, or
71 notice requirements provided under any other provision of law."

72 **SECTION 2.**

73 All laws and parts of laws in conflict with this Act are repealed.