

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1230  
OFFERED BY MR. SCOTT OF VIRGINIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Older  
3 Workers Against Discrimination Act”.

**4 SEC. 2. STANDARDS OF PROOF.**

5 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF  
6 1967.—

7 (1) CLARIFYING PROHIBITION AGAINST IMPER-  
8 MISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT  
9 PRACTICES.—Section 4 of the Age Discrimination in  
10 Employment Act of 1967 (29 U.S.C. 623) is amend-  
11 ed by inserting after subsection (f) the following:

12 “(g)(1) Except as otherwise provided in this Act, an  
13 unlawful practice is established under this Act when the  
14 complaining party demonstrates that age or an activity  
15 protected by subsection (d) was a motivating factor for  
16 any practice, even though other factors also motivated the  
17 practice.

1 “(2) In establishing an unlawful practice under this  
2 Act, including under paragraph (1) or by any other meth-  
3 od of proof, a complaining party—

4 “(A) may rely on any type or form of admis-  
5 sible evidence and need only produce evidence suffi-  
6 cient for a reasonable trier of fact to find that an  
7 unlawful practice occurred under this Act; and

8 “(B) shall not be required to demonstrate that  
9 age or an activity protected by subsection (d) was  
10 the sole cause of a practice.”.

11 (2) REMEDIES.—Section 7 of such Act (29  
12 U.S.C. 626) is amended—

13 (A) in subsection (b)—

14 (i) in the first sentence, by striking

15 “The” and inserting “(1) The”;

16 (ii) in the third sentence, by striking

17 “Amounts” and inserting the following:

18 “(2) Amounts”;

19 (iii) in the fifth sentence, by striking

20 “Before” and inserting the following:

21 “(4) Before”; and

22 (iv) by inserting before paragraph (4),

23 as designated by clause (iii) of this sub-

24 paragraph, the following:

1       “(3) On a claim in which an individual demonstrates  
2 that age was a motivating factor for any employment prac-  
3 tice, under section 4(g)(1), and a respondent demonstrates  
4 that the respondent would have taken the same action in  
5 the absence of the impermissible motivating factor, the  
6 court—

7               “(A) may grant declaratory relief, injunctive re-  
8 lief (except as provided in subparagraph (B)), and  
9 attorney’s fees and costs demonstrated to be directly  
10 attributable only to the pursuit of a claim under sec-  
11 tion 4(g)(1); and

12               “(B) shall not award damages or issue an order  
13 requiring any admission, reinstatement, hiring, pro-  
14 motion, or payment.”; and

15               (B) in subsection (c)(1), by striking “Any”  
16 and inserting “Subject to subsection (b)(3),  
17 any”.

18       (3) DEFINITIONS.—Section 11 of such Act (29  
19 U.S.C. 630) is amended by adding at the end the  
20 following:

21       “(m) The term ‘demonstrates’ means meets the bur-  
22 dens of production and persuasion.”.

23       (4) FEDERAL EMPLOYEES.—Section 15 of such  
24 Act (29 U.S.C. 633a) is amended by adding at the  
25 end the following:

1 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed  
2 motive claims (involving practices described in section  
3 4(g)(1)) under this section.”.

4 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF  
5 1964.—

6 (1) CLARIFYING PROHIBITION AGAINST IMPER-  
7 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-  
8 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT  
9 PRACTICES.—Section 703 of the Civil Rights Act of  
10 1964 (42 U.S.C. 2000e–2) is amended by striking  
11 subsection (m) and inserting the following:

12 “(m) Except as otherwise provided in this title, an  
13 unlawful employment practice is established when the  
14 complaining party demonstrates that race, color, religion,  
15 sex, or national origin or an activity protected by section  
16 704(a) was a motivating factor for any employment prac-  
17 tice, even though other factors also motivated the prac-  
18 tice.”.

19 (2) FEDERAL EMPLOYEES.—Section 717 of  
20 such Act (42 U.S.C. 2000e–16) is amended by add-  
21 ing at the end the following:

22 “(g) Sections 703(m) and 706(g)(2)(B) shall apply  
23 to mixed motive cases (involving practices described in sec-  
24 tion 703(m)) under this section.”.

25 (c) AMERICANS WITH DISABILITIES ACT OF 1990.—

1           (1) DEFINITIONS.—Section 101 of the Ameri-  
2           cans with Disabilities Act of 1990 (42 U.S.C.  
3           12111) is amended by adding at the end the fol-  
4           lowing:

5           “(11) DEMONSTRATES.—The term ‘dem-  
6           onstrates’ means meets the burdens of production  
7           and persuasion.”.

8           (2) CLARIFYING PROHIBITION AGAINST IMPER-  
9           MISSIBLE CONSIDERATION OF DISABILITY IN EM-  
10          PLOYMENT PRACTICES.—Section 102 of such Act  
11          (42 U.S.C. 12112) is amended by adding at the end  
12          the following:

13          “(e) PROOF.—

14               “(1) ESTABLISHMENT.—Except as otherwise  
15               provided in this Act, a discriminatory practice is es-  
16               tablished under this Act when the complaining party  
17               demonstrates that disability or an activity protected  
18               by subsection (a) or (b) of section 503 was a moti-  
19               vating factor for any employment practice, even  
20               though other factors also motivated the practice.

21               “(2) DEMONSTRATION.—In establishing a dis-  
22               criminatory practice under paragraph (1) or by any  
23               other method of proof, a complaining party—

24                       “(A) may rely on any type or form of ad-  
25                       missible evidence and need only produce evi-

1           dence sufficient for a reasonable trier of fact to  
2           find that a discriminatory practice occurred  
3           under this Act; and

4                   “(B) shall not be required to demonstrate  
5           that disability or an activity protected by sub-  
6           section (a) or (b) of section 503 was the sole  
7           cause of an employment practice.”.

8           (3) CERTAIN ANTI-RETALIATION CLAIMS.—Sec-  
9           tion 503(c) of such Act (42 U.S.C. 12203(c)) is  
10          amended—

11                   (A) by striking “The remedies” and insert-  
12          ing the following:

13                   “(1) IN GENERAL.—Except as provided in para-  
14          graph (2), the remedies”; and

15                   (B) by adding at the end the following:

16                   “(2) CERTAIN ANTI-RETALIATION CLAIMS.—  
17          Section 107(e) shall apply to claims under section  
18          102(e)(1) with respect to title I.”.

19           (4) REMEDIES.—Section 107 of such Act (42  
20          U.S.C. 12117) is amended by adding at the end the  
21          following:

22                   “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a  
23          claim in which an individual demonstrates that disability  
24          was a motivating factor for any employment practice,  
25          under section 102(e)(1), and a respondent demonstrates

1 that the respondent would have taken the same action in  
2 the absence of the impermissible motivating factor, the  
3 court—

4 “(1) may grant declaratory relief, injunctive re-  
5 lief (except as provided in paragraph (2)), and attor-  
6 ney’s fees and costs demonstrated to be directly at-  
7 tributable only to the pursuit of a claim under sec-  
8 tion 102(e)(1); and

9 “(2) shall not award damages or issue an order  
10 requiring any admission, reinstatement, hiring, pro-  
11 motion, or payment.”.

12 (d) REHABILITATION ACT OF 1973.—

13 (1) IN GENERAL.—Sections 501(f), 503(d), and  
14 504(d) of the Rehabilitation Act of 1973 (29 U.S.C.  
15 791(f), 793(d), and 794(d)), are each amended by  
16 adding after “title I of the Americans with Disabil-  
17 ities Act of 1990 (42 U.S.C. 12111 et seq.)” the fol-  
18 lowing: “, including the standards of causation or  
19 methods of proof applied under section 102(e) of  
20 that Act (42 U.S.C. 12112(e)),”.

21 (2) FEDERAL EMPLOYEES.—The amendment  
22 made by paragraph (1) to section 501(f) shall be  
23 construed to apply to all employees covered by sec-  
24 tion 501.

1 **SEC. 3. APPLICATION.**

2 This Act, and the amendments made by this Act,  
3 shall apply to all claims pending on or after the date of  
4 enactment of this Act.

5 **SEC. 4. SEVERABILITY.**

6 If any provision or portion of a provision of this Act,  
7 an amendment or portion of an amendment made by this  
8 Act, or the application of any provision or portion thereof  
9 or amendment or portion thereof to particular persons or  
10 circumstances is held invalid or found to be unconstitu-  
11 tional, the remainder of this Act, the amendments made  
12 by this Act, or the application of that provision or portion  
13 thereof or amendment or portion thereof to other persons  
14 or circumstances shall not be affected.

