

**AMENDMENT TO THE AMENDMENT IN THE NATURE
OF A SUBSTITUTE TO H.R. 1065**

OFFERED BY Mr. Fulcher

Strike all and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Pregnant Workers
3 Fairness Act”.

**4 SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-
5 ABLE ACCOMMODATIONS RELATED TO PREG-
6 NANCY.**

7 It shall be an unlawful employment practice for a cov-
8 ered entity to—

9 (1) not make reasonable accommodations to the
10 known limitations related to the pregnancy, child-
11 birth, or related medical conditions of a qualified
12 employee, unless such covered entity can dem-
13 onstrate that the accommodation would impose an
14 undue hardship on the operation of the business of
15 such covered entity;

16 (2) require a qualified employee affected by
17 pregnancy, childbirth, or related medical conditions
18 to accept an accommodation other than any reason-

1 able accommodation arrived at through the inter-
2 active process referred to in section 5(7);

3 (3) deny employment opportunities to a quali-
4 fied employee if such denial is based on the need of
5 the covered entity to make reasonable accommoda-
6 tions to the known limitations related to the preg-
7 nancy, childbirth, or related medical conditions of a
8 qualified employee;

9 (4) require a qualified employee to take leave,
10 whether paid or unpaid, if another reasonable ac-
11 commodation can be provided to the known limita-
12 tions related to the pregnancy, childbirth, or related
13 medical conditions of a qualified employee; or

14 (5) take adverse action in terms, conditions, or
15 privileges of employment against a qualified em-
16 ployee on account of the employee requesting or
17 using a reasonable accommodation to the known lim-
18 itations related to the pregnancy, childbirth, or re-
19 lated medical conditions of the employee.

20 **SEC. 3. REMEDIES AND ENFORCEMENT.**

21 (a) EMPLOYEES COVERED BY TITLE VII OF THE
22 CIVIL RIGHTS ACT OF 1964.—

23 (1) IN GENERAL.—The powers, remedies, and
24 procedures provided in sections 705, 706, 707, 709,
25 710, and 711 of the Civil Rights Act of 1964 (42

1 U.S.C. 2000e–4 et seq.) to the Commission, the At-
2 torney General, or any person alleging a violation of
3 title VII of such Act (42 U.S.C. 2000e et seq.) shall
4 be the powers, remedies, and procedures this Act
5 provides to the Commission, the Attorney General,
6 or any person, respectively, alleging an unlawful em-
7 ployment practice in violation of this Act against an
8 employee described in section 5(3)(A) except as pro-
9 vided in paragraphs (2) and (3) of this subsection.

10 (2) COSTS AND FEES.—The powers, remedies,
11 and procedures provided in subsections (b) and (c)
12 of section 722 of the Revised Statutes (42 U.S.C.
13 1988) shall be the powers, remedies, and procedures
14 this Act provides to the Commission, the Attorney
15 General, or any person alleging such practice.

16 (3) DAMAGES.—The powers, remedies, and pro-
17 cedures provided in section 1977A of the Revised
18 Statutes (42 U.S.C. 1981a), including the limita-
19 tions contained in subsection (b)(3) of such section
20 1977A, shall be the powers, remedies, and proce-
21 dures this Act provides to the Commission, the At-
22 torney General, or any person alleging such practice
23 (not an employment practice specifically excluded
24 from coverage under section 1977A(a)(1) of the Re-
25 vised Statutes).

1 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
2 COUNTABILITY ACT OF 1995.—

3 (1) IN GENERAL.—The powers, remedies, and
4 procedures provided in the Congressional Account-
5 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
6 Board (as defined in section 101 of such Act (2
7 U.S.C. 1301)) or any person alleging a violation of
8 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))
9 shall be the powers, remedies, and procedures this
10 Act provides to the Board or any person, respec-
11 tively, alleging an unlawful employment practice in
12 violation of this Act against an employee described
13 in section 5(3)(B) except as provided in paragraphs
14 (2) and (3) of this subsection.

15 (2) COSTS AND FEES.—The powers, remedies,
16 and procedures provided in subsections (b) and (c)
17 of section 722 of the Revised Statutes (42 U.S.C.
18 1988) shall be the powers, remedies, and procedures
19 this Act provides to the Board or any person alleg-
20 ing such practice.

21 (3) DAMAGES.—The powers, remedies, and pro-
22 cedures provided in section 1977A of the Revised
23 Statutes (42 U.S.C. 1981a), including the limita-
24 tions contained in subsection (b)(3) of such section
25 1977A, shall be the powers, remedies, and proce-

1 dures this Act provides to the Board or any person
2 alleging such practice (not an employment practice
3 specifically excluded from coverage under section
4 1977A(a)(1) of the Revised Statutes).

5 (4) OTHER APPLICABLE PROVISIONS.—With re-
6 spect to a claim alleging a practice described in
7 paragraph (1), title III of the Congressional Ac-
8 countability Act of 1995 (2 U.S.C. 1381 et seq.)
9 shall apply in the same manner as such title applies
10 with respect to a claim alleging a violation of section
11 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

12 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
13 3, UNITED STATES CODE.—

14 (1) IN GENERAL.—The powers, remedies, and
15 procedures provided in chapter 5 of title 3, United
16 States Code, to the President, the Commission, the
17 Merit Systems Protection Board, or any person al-
18 leging a violation of section 411(a)(1) of such title
19 shall be the powers, remedies, and procedures this
20 Act provides to the President, the Commission, the
21 Board, or any person, respectively, alleging an un-
22 lawful employment practice in violation of this Act
23 against an employee described in section 5(3)(C) ex-
24 cept as provided in paragraphs (2) and (3) of this
25 subsection.

1 (2) COSTS AND FEES.—The powers, remedies,
2 and procedures provided in subsections (b) and (c)
3 of section 722 of the Revised Statutes (42 U.S.C.
4 1988) shall be the powers, remedies, and procedures
5 this Act provides to the President, the Commission,
6 the Board, or any person alleging such practice.

7 (3) DAMAGES.—The powers, remedies, and pro-
8 cedures provided in section 1977A of the Revised
9 Statutes (42 U.S.C. 1981a), including the limita-
10 tions contained in subsection (b)(3) of such section
11 1977A, shall be the powers, remedies, and proce-
12 dures this Act provides to the President, the Com-
13 mission, the Board, or any person alleging such
14 practice (not an employment practice specifically ex-
15 cluded from coverage under section 1977A(a)(1) of
16 the Revised Statutes).

17 (d) EMPLOYEES COVERED BY GOVERNMENT EM-
18 PLOYEE RIGHTS ACT OF 1991.—

19 (1) IN GENERAL.—The powers, remedies, and
20 procedures provided in sections 302 and 304 of the
21 Government Employee Rights Act of 1991 (42
22 U.S.C. 2000e–16b; 2000e–16c) to the Commission
23 or any person alleging a violation of section
24 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1))
25 shall be the powers, remedies, and procedures this

1 Act provides to the Commission or any person, re-
2 spectively, alleging an unlawful employment practice
3 in violation of this Act against an employee de-
4 scribed in section 5(3)(D) except as provided in
5 paragraphs (2) and (3) of this subsection.

6 (2) COSTS AND FEES.—The powers, remedies,
7 and procedures provided in subsections (b) and (c)
8 of section 722 of the Revised Statutes (42 U.S.C.
9 1988) shall be the powers, remedies, and procedures
10 this Act provides to the Commission or any person
11 alleging such practice.

12 (3) DAMAGES.—The powers, remedies, and pro-
13 cedures provided in section 1977A of the Revised
14 Statutes (42 U.S.C. 1981a), including the limita-
15 tions contained in subsection (b)(3) of such section
16 1977A, shall be the powers, remedies, and proce-
17 dures this Act provides to the Commission or any
18 person alleging such practice (not an employment
19 practice specifically excluded from coverage under
20 section 1977A(a)(1) of the Revised Statutes).

21 (e) EMPLOYEES COVERED BY SECTION 717 OF THE
22 CIVIL RIGHTS ACT OF 1964.—

23 (1) IN GENERAL.—The powers, remedies, and
24 procedures provided in section 717 of the Civil
25 Rights Act of 1964 (42 U.S.C. 2000e–16) to the

1 Commission, the Attorney General, the Librarian of
2 Congress, or any person alleging a violation of that
3 section shall be the powers, remedies, and proce-
4 dures this Act provides to the Commission, the At-
5 torney General, the Librarian of Congress, or any
6 person, respectively, alleging an unlawful employ-
7 ment practice in violation of this Act against an em-
8 ployee described in section 5(3)(E) except as pro-
9 vided in paragraphs (2) and (3) of this subsection.

10 (2) COSTS AND FEES.—The powers, remedies,
11 and procedures provided in subsections (b) and (c)
12 of section 722 of the Revised Statutes (42 U.S.C.
13 1988) shall be the powers, remedies, and procedures
14 this Act provides to the Commission, the Attorney
15 General, the Librarian of Congress, or any person
16 alleging such practice.

17 (3) DAMAGES.—The powers, remedies, and pro-
18 cedures provided in section 1977A of the Revised
19 Statutes (42 U.S.C. 1981a), including the limita-
20 tions contained in subsection (b)(3) of such section
21 1977A, shall be the powers, remedies, and proce-
22 dures this Act provides to the Commission, the At-
23 torney General, the Librarian of Congress, or any
24 person alleging such practice (not an employment

1 practice specifically excluded from coverage under
2 section 1977A(a)(1) of the Revised Statutes).

3 (f) PROHIBITION AGAINST RETALIATION.—

4 (1) IN GENERAL.—No person shall discriminate
5 against any employee because such employee has op-
6 posed any act or practice made unlawful by this Act
7 or because such employee made a charge, testified,
8 assisted, or participated in any manner in an inves-
9 tigation, proceeding, or hearing under this Act.

10 (2) PROHIBITION AGAINST COERCION.—It shall
11 be unlawful to coerce, intimidate, threaten, or inter-
12 fere with any individual in the exercise or enjoyment
13 of, or on account of such individual having exercised
14 or enjoyed, or on account of such individual having
15 aided or encouraged any other individual in the exer-
16 cise or enjoyment of, any right granted or protected
17 by this Act.

18 (3) REMEDY.—The remedies and procedures
19 otherwise provided for under this section shall be
20 available to aggrieved individuals with respect to vio-
21 lations of this subsection.

22 (g) LIMITATION.—Notwithstanding subsections
23 (a)(3), (b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful em-
24 ployment practice involves the provision of a reasonable
25 accommodation pursuant to this Act or regulations imple-

1 menting this Act, damages may not be awarded under sec-
2 tion 1977A of the Revised Statutes (42 U.S.C. 1981a) if
3 the covered entity demonstrates good faith efforts, in con-
4 sultation with the employee with known limitations related
5 to pregnancy, childbirth, or related medical conditions who
6 has informed the covered entity that accommodation is
7 needed, to identify and make a reasonable accommodation
8 that would provide such employee with an equally effective
9 opportunity and would not cause an undue hardship on
10 the operation of the covered entity.

11 **SEC. 4. RULEMAKING.**

12 Not later than 2 years after the date of enactment
13 of this Act, the Commission shall issue regulations in an
14 accessible format in accordance with subchapter II of
15 chapter 5 of title 5, United States Code, to carry out this
16 Act. Such regulations shall provide examples of reasonable
17 accommodations addressing known limitations related to
18 pregnancy, childbirth, or related medical conditions.

19 **SEC. 5. DEFINITIONS.**

20 As used in this Act—

- 21 (1) the term “Commission” means the Equal
22 Employment Opportunity Commission;
- 23 (2) the term “covered entity”—

1 (A) has the meaning given the term “re-
2 spondent” in section 701(n) of the Civil Rights
3 Act of 1964 (42 U.S.C. 2000e(n)); and

4 (B) includes—

5 (i) an employer, which means a per-
6 son engaged in industry affecting com-
7 merce who has 15 or more employees as
8 defined in section 701(b) of title VII of the
9 Civil Rights Act of 1964 (42 U.S.C.
10 2000e(b)), subject to the applicability to
11 religious employment as set forth in sec-
12 tion 702(a) of Title VII of the Civil Rights
13 Act of 1964 (42 U.S.C. 2000e-1(a));

14 (ii) an employing office, as defined in
15 section 101 of the Congressional Account-
16 ability Act of 1995 (2 U.S.C. 1301) and
17 section 411(c) of title 3, United States
18 Code;

19 (iii) an entity employing a State em-
20 ployee described in section 304(a) of the
21 Government Employee Rights Act of 1991
22 (42 U.S.C. 2000e-16c(a)); and

23 (iv) an entity to which section 717(a)
24 of the Civil Rights Act of 1964 (42 U.S.C.
25 2000e-16(a)) applies;

1 (3) the term “employee” means—

2 (A) an employee (including an applicant),
3 as defined in section 701(f) of the Civil Rights
4 Act of 1964 (42 U.S.C. 2000e(f));

5 (B) a covered employee (including an ap-
6 plicant), as defined in section 101 of the Con-
7 gressional Accountability Act of 1995 (2 U.S.C.
8 1301);

9 (C) a covered employee (including an appli-
10 cant), as defined in section 411(c) of title 3,
11 United States Code;

12 (D) a State employee (including an appli-
13 cant) described in section 304(a) of the Govern-
14 ment Employee Rights Act of 1991 (42 U.S.C.
15 2000e–16c(a)); or

16 (E) an employee (including an applicant)
17 to which section 717(a) of the Civil Rights Act
18 of 1964 (42 U.S.C. 2000e–16(a)) applies;

19 (4) the term “person” has the meaning given
20 such term in section 701(a) of the Civil Rights Act
21 of 1964 (42 U.S.C. 2000e(a));

22 (5) the term “known limitation” means physical
23 or mental condition related to, affected by, or arising
24 out of pregnancy, childbirth, or related medical con-
25 ditions that the employee or employee’s representa-

1 tive has communicated to the employer whether or
2 not such condition meets the definition of disability
3 specified in section 3 of the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12102);

5 (6) the term “qualified employee” means an
6 employee or applicant who, with or without reason-
7 able accommodation, can perform the essential func-
8 tions of the employment position, except that an em-
9 ployee or applicant shall be considered qualified if—

10 (A) any inability to perform an essential
11 function is for a temporary period;

12 (B) the essential function could be per-
13 formed in the near future; and

14 (C) the inability to perform the essential
15 function can be reasonably accommodated; and

16 (7) the terms “reasonable accommodation” and
17 “undue hardship” have the meanings given such
18 terms in section 101 of the Americans with Disabil-
19 ities Act of 1990 (42 U.S.C. 12111) and shall be
20 construed as such terms are construed under such
21 Act and as set forth in the regulations required by
22 this Act, including with regard to the interactive
23 process that will typically be used to determine an
24 appropriate reasonable accommodation.

1 **SEC. 6. WAIVER OF STATE IMMUNITY.**

2 A State shall not be immune under the 11th Amend-
3 ment to the Constitution from an action in a Federal or
4 State court of competent jurisdiction for a violation of this
5 Act. In any action against a State for a violation of this
6 Act, remedies (including remedies both at law and in eq-
7 uity) are available for such a violation to the same extent
8 as such remedies are available for such a violation in an
9 action against any public or private entity other than a
10 State.

11 **SEC. 7. RELATIONSHIP TO OTHER LAWS.**

12 Nothing in this Act shall be construed to invalidate
13 or limit the powers, remedies, and procedures under any
14 Federal law or law of any State or political subdivision
15 of any State or jurisdiction that provides greater or equal
16 protection for individuals affected by pregnancy, child-
17 birth, or related medical conditions.

18 **SEC. 8. SEVERABILITY.**

19 If any provision of this Act or the application of that
20 provision to particular persons or circumstances is held
21 invalid or found to be unconstitutional, the remainder of
22 this Act and the application of that provision to other per-
23 sons or circumstances shall not be affected.

