AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2062
OFFERED BY MS. BONAMICI OF OREGON

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Older Workers Against Discrimination Act of 2021”.

SEC. 2. STANDARDS OF PROOF.

(a) Age Discrimination in Employment Act of 1967.—

(1) Clarifying prohibition against impermissible consideration of age in employment practices.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by inserting after subsection (f) the following:

“(g)(1) Except as otherwise provided in this Act, an unlawful practice is established under this Act when the complaining party demonstrates that age or an activity protected by subsection (d) was a motivating factor for any practice, even though other factors also motivated the practice.
“(2) In establishing an unlawful practice under this Act, including under paragraph (1) or by any other method of proof, a complaining party—

“(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that an unlawful practice occurred under this Act; and

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

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

(A) in subsection (b)—

(i) in the first sentence, by striking “The” and inserting “(1) The”;

(ii) in the third sentence, by striking “Amounts” and inserting the following:

“(2) Amounts”;

(iii) in the fifth sentence, by striking “Before” and inserting the following:

“(4) Before”; and

(iv) by inserting before paragraph (4), as designated by clause (iii) of this subparagraph, the following:
“(3) On a claim in which an individual demonstrates that age was a motivating factor for any employment practice under section 4(g)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

“(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney’s fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

“(B) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.”; and

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

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

“(m) The term ‘demonstrates’ means meets the burdens of production and persuasion.”.

(4) FEDERAL EMPLOYEES.—Section 15 of such Act (29 U.S.C. 633a) is amended by adding at the end the following:
“(h) Sections 4(g) and 7(b)(3) shall apply to mixed motive claims (involving practices described in section 4(g)(1)) under this section.”.

(b) Title VII of the Civil Rights Act of 1964.—

(1) Clarifying prohibition against impermissible consideration of race, color, religion, sex, or national origin in employment practices.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by striking subsection (m) and inserting the following:

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

(2) Federal Employees.—Section 717 of such Act (42 U.S.C. 2000e–16) is amended by adding at the end the following:

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

(c) Americans with Disabilities Act of 1990.—
(1) DEFINITIONS.—Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) is amended by adding at the end the following:

“(11) DEMONSTRATES.—The term ‘demonstrates’ means meets the burdens of production and persuasion.”.

(2) CLARIFYING PROHIBITION AGAINST IMPELLIBLE CONSIDERATION OF DISABILITY IN EMPLOYMENT PRACTICES.—Section 102 of such Act (42 U.S.C. 12112) is amended by adding at the end the following:

“(e) PROOF.—

“(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

“(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

“(A) may rely on any type or form of admissible evidence and need only produce evi-
dence sufficient for a reasonable trier of fact to
find that a discriminatory practice occurred
under this Act; and

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

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

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

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

(B) by adding at the end the following:

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

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

“(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
claim in which an individual demonstrates that disability
was a motivating factor for any employment practice
under section 102(e)(1), and a respondent demonstrates
that the respondent would have taken the same action in
the absence of the impermissible motivating factor, the
court—

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

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

(d) REHABILITATION ACT OF 1973.—

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

(2) FEDERAL EMPLOYEES.—The amendment
made by paragraph (1) to section 501(f) of the Re-
habilitation Act of 1973 (29 U.S.C. 791(f)) shall be
construed to apply to all employees covered by sec-
SEC. 3. APPLICATION.

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

SEC. 4. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.