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:

SECTION 1. SHORT TITLE.

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

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 imper-
missible consideration of race, color, reli-
gion, 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, or national origin or an activity protected by section
704(a) was a motivating factor for any employment prac-
tice, even though other factors also motivated the prac-
tice.”.

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

“(g) Sections 703(m) and 706(g)(2)(B) shall apply
to mixed motive cases (involving practices described in sec-
tion 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 IMPERMISSIBLE 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-
idence 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 subsection (a) or (b) of section 503 was the sole cause of an employment practice.”.

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

(A) by striking “The remedies” and inserting the following:

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

(B) by adding at the end the following:

“(2) CERTAIN ANTI-RETAIATION 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-
relief (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) shall be
construed to apply to all employees covered by sec-
tion 501.
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 or portion of a provision of this Act, an amendment or portion of an amendment made by this Act, or the application of any provision or portion thereof or amendment or portion thereof to particular persons or circumstances is held invalid or found to be unconstitutional, the remainder of this Act, the amendments made by this Act, or the application of that provision or portion thereof or amendment or portion thereof to other persons or circumstances shall not be affected.