

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2694  
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 “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));

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

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

20 (iv) an entity to which section 717(a)  
21 of the Civil Rights Act of 1964 (42 U.S.C.  
22 2000e–16(a)) applies;

23 (3) the term “employee” means—

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

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

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

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

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

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

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

1 not such condition meets the definition of disability  
2 specified in section 3 of the Americans with Disabil-  
3 ities Act of 1990 (42 U.S.C. 12102);

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

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

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

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

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

