

**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:

1 SECTION 1. SHORT TITLE.

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

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, 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 ‘demon-
6 strates’ means meets the burdens of production and
7 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) of the Re-
23 habilitation Act of 1973 (29 U.S.C. 791(f)) shall be
24 construed to apply to all employees covered by sec-
25 tion 501 of that Act (29 U.S.C. 791).

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 of this Act, an amendment made by
7 this Act, or the application of such provision or amend-
8 ment to any person or circumstance is held to be unconsti-
9 tutional, the remainder of this Act, the amendments made
10 by this Act, and the application of the provisions of such
11 to any person or circumstance shall not be affected there-
12 by.

