

Bill Cassidy, M.D.

Pending

AMENDMENT NO. _____ Calendar No. _____

Purpose: To eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

H. R. 2617

Schumer for Cassidy AMENDMENT N^o 6558
 By CASSIDY
 To: _____
Amor No 6552
16
 Page(s)
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United States Code, performance goals are

and

to be printed

by Mr. CASSIDY (for himself and Mr. CASEY)

Viz:

1 At the appropriate place, insert the following:

2 **DIVISION ___ —PREGNANT**
3 **WORKERS**

4 SEC. ___ 1. SHORT TITLE.

5 This division may be cited as the "Pregnant Workers
6 Fairness Act".

7 SEC. ___ 2. DEFINITIONS.

8 As used in this division—

1 (1) the term “Commission” means the Equal
2 Employment Opportunity Commission;

3 (2) the term “covered entity”—

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

7 (B) includes—

8 (i) an employer, which means a per-
9 son engaged in industry affecting com-
10 merce who has 15 or more employees as
11 defined in section 701(b) of title VII of the
12 Civil Rights Act of 1964 (42 U.S.C.
13 2000e(b));

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), and an individual described in section
9 201(d) of that Act (2 U.S.C. 1311(d));

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

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

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

20 (4) the term “known limitation” means physical
21 or mental condition related to, affected by, or arising
22 out of pregnancy, childbirth, or related medical con-
23 ditions that the employee or employee’s representa-
24 tive has communicated to the employer whether or
25 not such condition meets the definition of disability

1 specified in section 3 of the Americans with Disabil-
2 ities Act of 1990 (42 U.S.C. 12102);

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

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

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

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

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

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

1 SEC. ____ 3. NONDISCRIMINATION WITH REGARD TO REA-
2 SONABLE ACCOMMODATIONS RELATED TO
3 PREGNANCY.

4 It shall be an unlawful employment practice for a cov-
5 ered entity to—

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

13 (2) require a qualified employee affected by
14 pregnancy, childbirth, or related medical conditions
15 to accept an accommodation other than any reason-
16 able accommodation arrived at through the inter-
17 active process referred to in section ____2(7);

18 (3) deny employment opportunities to a quali-
19 fied employee if such denial is based on the need of
20 the covered entity to make reasonable accommoda-
21 tions to the known limitations related to the preg-
22 nancy, childbirth, or related medical conditions of
23 the qualified employee;

24 (4) require a qualified employee to take leave,
25 whether paid or unpaid, if another reasonable ac-
26 commodation can be provided to the known limita-

1 tions related to the pregnancy, childbirth, or related
2 medical conditions of the qualified employee; or

3 (5) take adverse action in terms, conditions, or
4 privileges of employment against a qualified em-
5 ployee on account of the employee requesting or
6 using a reasonable accommodation to the known lim-
7 itations related to the pregnancy, childbirth, or re-
8 lated medical conditions of the employee.

9 **SEC. ___ 4. REMEDIES AND ENFORCEMENT.**

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

12 (1) IN GENERAL.—The powers, remedies, and
13 procedures provided in sections 705, 706, 707, 709,
14 710, and 711 of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e–4 et seq.) to the Commission, the At-
16 torney General, or any person alleging a violation of
17 title VII of such Act (42 U.S.C. 2000e et seq.) shall
18 be the powers, remedies, and procedures this division
19 provides to the Commission, the Attorney General,
20 or any person, respectively, alleging an unlawful em-
21 ployment practice in violation of this division against
22 an employee described in section ___ 2(3)(A) except
23 as provided in paragraphs (2) and (3) of this sub-
24 section.

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 division provides to the Commission, the Attor-
6 ney General, 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 division provides to the Commission, the
13 Attorney General, or any person alleging such prac-
14 tice (not an employment practice specifically ex-
15 cluded from coverage under section 1977A(a)(1) of
16 the Revised Statutes (42 U.S.C. 1981a(a)(1))).

17 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
18 COUNTABILITY ACT OF 1995.—

19 (1) IN GENERAL.—The powers, remedies, and
20 procedures provided in the Congressional Account-
21 ability Act of 1995 (2 U.S.C. 1301 et seq.) for the
22 purposes of addressing allegations of violations of
23 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))
24 shall be the powers, remedies, and procedures this
25 division provides to address an allegation of an un-

1 lawful employment practice in violation of this divi-
2 sion against an employee described in section
3 ____2(3)(B), except as provided in paragraphs (2)
4 and (3) of this subsection.

5 (2) COSTS AND FEES.—The powers, remedies,
6 and procedures provided in subsections (b) and (c)
7 of section 722 of the Revised Statutes (42 U.S.C.
8 1988) for the purposes of addressing allegations of
9 such a violation shall be the powers, remedies, and
10 procedures this division provides to address allega-
11 tions of 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, for purposes of addressing allegations of
17 such a violation, shall be the powers, remedies, and
18 procedures this division provides to address any alle-
19 gation of such practice (not an employment practice
20 specifically excluded from coverage under section
21 1977A(a)(1) of the Revised Statutes (42 U.S.C.
22 1981a(a)(1))).

23 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
24 3, UNITED STATES CODE.—

1 (1) IN GENERAL.—The powers, remedies, and
2 procedures provided in chapter 5 of title 3, United
3 States Code, to the President, the Commission, the
4 Merit Systems Protection Board, or any person al-
5 leging a violation of section 411(a)(1) of such title
6 shall be the powers, remedies, and procedures this
7 division provides to the President, the Commission,
8 the Board, or any person, respectively, alleging an
9 unlawful employment practice in violation of this di-
10 vision against an employee described in section
11 ____2(3)(C), except as provided in paragraphs (2)
12 and (3) of this subsection.

13 (2) COSTS AND FEES.—The powers, remedies,
14 and procedures provided in subsections (b) and (c)
15 of section 722 of the Revised Statutes (42 U.S.C.
16 1988) shall be the powers, remedies, and procedures
17 this division provides to the President, the Commis-
18 sion, the Board, or any person alleging such prac-
19 tice.

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

1 Commission, the Board, or any person alleging such
2 practice (not an employment practice specifically ex-
3 cluded from coverage under section 1977A(a)(1) of
4 the Revised Statutes (42 U.S.C. 1981a(a)(1))).

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

7 (1) IN GENERAL.—The powers, remedies, and
8 procedures provided in sections 302 and 304 of the
9 Government Employee Rights Act of 1991 (42
10 U.S.C. 2000e-16b; 2000e-16c) to the Commission
11 or any person alleging a violation of section
12 302(a)(1) of such Act (42 U.S.C. 2000e-16b(a)(1))
13 shall be the powers, remedies, and procedures this
14 division provides to the Commission or any person,
15 respectively, alleging an unlawful employment prac-
16 tice in violation of this division against an employee
17 described in section ____2(3)(D), except as provided
18 in paragraphs (2) and (3) of this subsection.

19 (2) COSTS AND FEES.—The powers, remedies,
20 and procedures provided in subsections (b) and (c)
21 of section 722 of the Revised Statutes (42 U.S.C.
22 1988) shall be the powers, remedies, and procedures
23 this division provides to the Commission or any per-
24 son alleging such practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
2 cedures provided in section 1977A of the Revised
3 Statutes (42 U.S.C. 1981a), including the limita-
4 tions contained in subsection (b)(3) of such section
5 1977A, shall be the powers, remedies, and proce-
6 dures this division provides to the Commission or
7 any person alleging such practice (not an employ-
8 ment practice specifically excluded from coverage
9 under section 1977A(a)(1) of the Revised Statutes
10 (42 U.S.C. 1981a(a)(1))).

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

13 (1) IN GENERAL.—The powers, remedies, and
14 procedures provided in section 717 of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000e-16) to the
16 Commission, the Attorney General, the Librarian of
17 Congress, or any person alleging a violation of that
18 section shall be the powers, remedies, and proce-
19 dures this division provides to the Commission, the
20 Attorney General, the Librarian of Congress, or any
21 person, respectively, alleging an unlawful employ-
22 ment practice in violation of this division against an
23 employee described in ____section 2(3)(E), except as
24 provided in paragraphs (2) and (3) of this sub-
25 section.

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 division provides to the Commission, the Attor-
6 ney General, the Librarian of Congress, or any per-
7 son alleging such practice.

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

19 (f) PROHIBITION AGAINST RETALIATION.—

20 (1) IN GENERAL.—No person shall discriminate
21 against any employee because such employee has op-
22 posed any act or practice made unlawful by this divi-
23 sion or because such employee made a charge, testi-
24 fied, assisted, or participated in any manner in an

1 investigation, proceeding, or hearing under this divi-
2 sion.

3 (2) PROHIBITION AGAINST COERCION.—It shall
4 be unlawful to coerce, intimidate, threaten, or inter-
5 fere with any individual in the exercise or enjoyment
6 of, or on account of such individual having exercised
7 or enjoyed, or on account of such individual having
8 aided or encouraged any other individual in the exer-
9 cise or enjoyment of, any right granted or protected
10 by this division.

11 (3) REMEDY.—The remedies and procedures
12 otherwise provided for under this section shall be
13 available to aggrieved individuals with respect to vio-
14 lations of this subsection.

15 (g) LIMITATION.—Notwithstanding subsections
16 (a)(3), (b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful em-
17 ployment practice involves the provision of a reasonable
18 accommodation pursuant to this division or regulations
19 implementing this division, damages may not be awarded
20 under section 1977A of the Revised Statutes (42 U.S.C.
21 1981a) if the covered entity demonstrates good faith ef-
22 forts, in consultation with the employee with known limita-
23 tions related to pregnancy, childbirth, or related medical
24 conditions who has informed the covered entity that ac-
25 commodation is needed, to identify and make a reasonable

1 accommodation that would provide such employee with an
2 equally effective opportunity and would not cause an
3 undue hardship on the operation of the covered entity.

4 **SEC. ____ 5. RULEMAKING.**

5 (a) EEOC RULEMAKING.—Not later than 1 year
6 after the date of enactment of this Act, the Commission
7 shall issue regulations in an accessible format in accord-
8 ance with subchapter II of chapter 5 of title 5, United
9 States Code, to carry out this division. Such regulations
10 shall provide examples of reasonable accommodations ad-
11 dressing known limitations related to pregnancy, child-
12 birth, or related medical conditions.

13 (b) OCWR RULEMAKING.—

14 (1) IN GENERAL.—Not later than 6 months
15 after the Commission issues regulations under sub-
16 section (a), the Board (as defined in section 101 of
17 the Congressional Accountability Act of 1995 (2
18 U.S.C. 1301)) shall (in accordance with section 304
19 of the Congressional Accountability Act of 1995 (2
20 U.S.C. 1384)), issue regulations to implement the
21 provisions of this division made applicable to em-
22 ployees described in section ____2(3)(B), under sec-
23 tion ____4(b).

24 (2) PARALLEL WITH AGENCY REGULATIONS.—

25 The regulations issued under paragraph (1) shall be

1 the same as substantive regulations issued by the
2 Commission under subsection (a) except to the ex-
3 tent that the Board may determine, for good cause
4 shown and stated together with the regulations
5 issued under paragraph (1) that a modification of
6 such substantive regulations would be more effective
7 for the implementation of the rights and protection
8 under this division.

9 **SEC. ___ 6. WAIVER OF STATE IMMUNITY.**

10 A State shall not be immune under the 11th Amend-
11 ment to the Constitution from an action in a Federal or
12 State court of competent jurisdiction for a violation of this
13 division. In any action against a State for a violation of
14 this division, remedies (including remedies both at law and
15 in equity) are available for such a violation to the same
16 extent as such remedies are available for such a violation
17 in an action against any public or private entity other than
18 a State.

19 **SEC. ___ 7. RELATIONSHIP TO OTHER LAWS.**

20 (a) IN GENERAL.—Nothing in this division shall be
21 construed—

22 (1) to invalidate or limit the powers, remedies,
23 and procedures under any Federal law or law of any
24 State or political subdivision of any State or juris-
25 diction that provides greater or equal protection for

1 individuals affected by pregnancy, childbirth, or re-
2 lated medical conditions; or

3 (2) by regulation or otherwise, to require an
4 employer-sponsored health plan to pay for or cover
5 any particular item, procedure, or treatment or to
6 affect any right or remedy available under any other
7 Federal, State, or local law with respect to any such
8 payment or coverage requirement.

9 (b) **RULE OF CONSTRUCTION.**—This division is sub-
10 ject to the applicability to religious employment set forth
11 in section 702(a) of the Civil Rights Act of 1964 (42
12 U.S.C. 2000e-1(a)).

13 **SEC. ___ 8. SEVERABILITY.**

14 If any provision of this division or the application of
15 that provision to particular persons or circumstances is
16 held invalid or found to be unconstitutional, the remainder
17 of this division and the application of that provision to
18 other persons or circumstances shall not be affected.

19 **SEC. ___ 9. EFFECTIVE DATE.**

20 This division shall take effect on the date that is 180
21 days after the date of enactment of this Act.