

117TH CONGRESS
1ST SESSION

H. R. 4157

To amend section 1977 of the Revised Statutes to protect equal rights under law.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2021

Mr. RASKIN (for himself and Mr. JONES) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 1977 of the Revised Statutes to protect equal rights under law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Economic Inclusion
5 Civil Rights Act of 2021”.

6 **SEC. 2. EQUAL RIGHTS.**

7 Section 1977 of the Revised Statutes (42 U.S.C.
8 1981) is amended to read as follows:

1 **“SEC. 1977. EQUAL RIGHTS UNDER LAW.**

2 “(a) FINDING.—Congress finds that the decisions of
3 the Supreme Court of the United States in *Comcast Corp.*
4 *v. National Ass’n of African American-Owned Media*, 140
5 S. Ct. 1009 (2020), and *General Building Contractors*
6 *Ass’n v. Pennsylvania*, 458 U.S. 375 (1982), have weak-
7 ened the scope and effectiveness of Federal civil rights
8 protections.

9 “(b) PURPOSE AND AUTHORITY.—

10 “(1) AUTHORITY.—This section is an exercise
11 of congressional authority under section 5 of the
12 14th Amendment, section 2 of the 13th Amendment,
13 and the Commerce Clause of section 8 of article I,
14 of the Constitution of the United States.

15 “(2) PURPOSE.—The purpose of this section is
16 to protect civil rights, including to enact into law key
17 principles set forth in portions of the concurring
18 opinion of Justice Ginsburg in *Comcast Corp. v. Na-*
19 *tional Ass’n of African American-Owned Media*, 140
20 S. Ct. 1009 (2020), and the dissenting opinion of
21 Justice Marshall in *General Building Contractors*
22 *Ass’n v. Pennsylvania*, 458 U.S. 375 (1982).

23 “(c) DEFINITIONS.—In this section:

24 “(1) ECONOMIC ACTIVITY.—The term ‘economic
25 activity’ shall have the broadest meaning permissible
26 under the Constitution, including—

1 “(A) making, performing, and enforcing
2 contracts;

3 “(B) producing, consuming, browsing for,
4 shopping for, or waiting for goods or services;

5 “(C) soliciting, selecting, hiring, or dealing
6 with a vendor, supplier, contractor, or subcon-
7 tractor;

8 “(D) dealing with or serving (including re-
9 fusing to serve) a shopper, patron, or customer;

10 “(E) accessing, processing, or granting (in-
11 cluding denying) access to loans, credit, bond-
12 ing, or insurance; and

13 “(F) purchasing, leasing, selling, holding,
14 or conveying real or personal property,

15 whether the activities described in this paragraph
16 occur on the internet, at a physical location, or
17 through any other medium.

18 “(2) FULL AND EQUAL BENEFIT AND ENJOY-
19 MENT OF ECONOMIC ACTIVITY.—The term ‘full and
20 equal benefit and enjoyment of economic activity’
21 means the benefit or enjoyment, respectively, of the
22 same benefits, privileges, advantages, preferences,
23 opportunities, terms, conditions, goods, services, fa-
24 cilities, accommodations, service and treatment, em-
25 ployment, and rights to make, enforce, perform,

1 modify, and terminate contracts, and freedom from
2 intimidation, harassment, and profiling as white citi-
3 zens benefit from or enjoy, respectively.

4 “(3) SECURITY OF PERSON AND PROPERTY.—

5 The term ‘security’, used with respect to person and
6 property, includes protection from physical harm
7 and a threat of harm to one’s body or property, and
8 protection against exposure to or a disproportionate
9 burden from the negative human health and environ-
10 mental impacts of pollution or an environmental
11 hazard.

12 “(d) STATEMENT OF EQUAL RIGHTS.—All persons
13 within the jurisdiction of the United States shall have the
14 same right in every State and territory as is enjoyed by
15 white citizens to the full and equal benefit and enjoyment
16 of economic activity, to security of their persons and prop-
17 erty, to make and enforce contracts, including carrying
18 out the contract formation process, and to sue, be parties,
19 and give evidence, and to the full and equal benefit of all
20 laws and proceedings, and shall be subject, in comparison
21 to white citizens, to like punishment, pains, penalties,
22 taxes, licenses, and exactions of every kind, and to no
23 other.

24 “(e) DISCRIMINATORY EFFECTS ALSO PROHIB-
25 ITED.—

1 “(1) IN GENERAL.—No person shall use a cri-
2 terion, method of administration, practice, or policy
3 that has the effect of unjustifiably subjecting an in-
4 dividual to discrimination in violation of subsection
5 (d).

6 “(2) DEMONSTRATION.—A challenged criterion,
7 method of administration, practice, or policy that
8 has an effect described in paragraph (1) shall be un-
9 justifiable unless its user demonstrates that—

10 “(A) the use serves a legitimate purpose,
11 which is both required by a substantial business
12 necessity and not a pretext for discrimination;
13 and

14 “(B) if the complaining party proffers an
15 alternative, that that alternative is either incon-
16 sistent with substantial business necessity or
17 would produce an equal or greater discrimina-
18 tory effect on the basis of a classification pro-
19 tected by subsection (d).

20 “(3) LIMITATION ON SUBSTANTIAL BUSINESS
21 NECESSITY DEFENSE.—A demonstration that a cri-
22 terion, method of administration, practice, or policy
23 is required by a substantial business necessity may
24 not be used as a defense against a claim of inten-
25 tional discrimination under this section.

1 “(f) PROTECTION AGAINST IMPAIRMENT.—All rights
2 protected by this section are protected against impairment
3 by nongovernmental discrimination and impairment under
4 color of State law.

5 “(g) BURDEN OF PROOF FOR DISCRIMINATORY
6 TREATMENT ACTIONS.—The equal rights guaranteed
7 under subsection (d) shall be considered to be denied when
8 the complaining party demonstrates that race was a moti-
9 vating factor for the denial of such rights even though
10 other factors also motivated the denial. A denial of equal
11 rights guaranteed under subsection (d) may be established
12 with comparator evidence or any other evidence that suffi-
13 ciently demonstrates a denial of such rights, including evi-
14 dence of conduct that a reasonable person would find ra-
15 cially hostile.

16 “(h) STANDING.—Any person suffering injury in fact
17 as a result of the alleged violation of this section may
18 bring a cause of action for damages, or for equitable or
19 for declaratory relief, under this section. Standing shall
20 not be limited to victims who were parties to, or third-
21 party beneficiaries of, a contract with the defendant.

22 “(i) RESPONDEAT SUPERIOR LIABILITY.—Principals
23 shall be liable for violations of this section by their agents,
24 and local governments shall be liable for violations of this

1 section by their employees, acting within the scope of their
2 duties.

3 “(j) JURY TRIAL RIGHT.—All persons within the ju-
4 risdiction of the United States shall have the right to en-
5 force a right provided under this section in a court of law
6 and before a jury of their peers, and no joint-action waiver
7 or pre-dispute arbitration agreement shall be valid or en-
8 forceable with respect to any alleged violation of this sec-
9 tion.

10 “(k) STATUTE OF LIMITATIONS.—All causes of ac-
11 tion under this section shall be governed by the 4-year
12 statute of limitations provided by section 1658(a) of title
13 28, United States Code.

14 “(l) REMEDIATING PAST DISCRIMINATION.—Nothing
15 in this section shall be construed to prohibit or limit a
16 lawful effort, under a provision other than this section,
17 to remedy the effects of discrimination that has occurred
18 or is occurring.”.

19 **SEC. 3. APPLICATION TO PENDING ACTIONS.**

20 This Act, and the amendment made by this Act, shall
21 apply to any cause of action for a violation of section 1977
22 of the Revised Statutes that is pending on or after the
23 date of enactment of this Act.

1 **SEC. 4. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such provision or amend-
4 ment to any person or circumstance is held to be unconsti-
5 tutional, the remainder of this Act, the amendments made
6 by this Act, and the application of such provision or
7 amendment to any person or circumstance shall not be af-
8 fected thereby.

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