

117TH CONGRESS
1ST SESSION

S. 2298

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

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. BLUMENTHAL (for himself, Mr. BOOKER, and Mr. WYDEN) introduced the following bill; which was read twice and 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 portions of the concurring opinion of Justice Gins-
 18 burg in *Comcast Corp. v. National Ass’n of African*
 19 *American-Owned Media*, 140 S. Ct. 1009 (2020),
 20 and the dissenting opinion of Justice Marshall in
 21 *General Building Contractors Ass’n v. Pennsylvania*,
 22 458 U.S. 375 (1982).

23 “(c) DEFINITIONS.—In this section:

24 “(1) DEMONSTRATES.—The term ‘dem-
 25 onstrates’ means meets the burdens of production
 26 and persuasion.

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

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

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

“(C) soliciting, selecting, hiring, or dealing with a vendor, supplier, contractor, or subcontractor;

“(D) dealing with or serving (including refusing to serve) a shopper, patron, or customer;

“(E) accessing, processing, or granting (including denying) access to loans, credit, bonding, or insurance; and

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

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

“(3) FULL AND EQUAL BENEFIT AND ENJOYMENT OF ECONOMIC ACTIVITY.—The term ‘full and equal benefit and enjoyment of economic activity’ means the benefit or enjoyment, respectively, of the same benefits, privileges, advantages, preferences,

1 opportunities, terms, conditions, goods, services, fa-
 2 cilities, accommodations, service and treatment, em-
 3 ployment, and rights to make, enforce, perform,
 4 modify, and terminate contracts, and freedom from
 5 intimidation, harassment, and profiling as white citi-
 6 zens benefit from or enjoy, respectively.

7 “(4) INCLUDING.—The term ‘including’ means
 8 including, but not limited to, consistent with the
 9 term’s standard meaning in Federal law.

10 “(5) SECURITY OF PERSON AND PROPERTY.—
 11 The term ‘security’, used with respect to person and
 12 property, includes protection from physical harm
 13 and a threat of harm to one’s body or property, and
 14 protection against exposure to or a disproportionate
 15 burden from the negative human health and environ-
 16 mental impacts of pollution or an environmental
 17 hazard.

18 “(d) STATEMENT OF EQUAL RIGHTS.—All nonWhite
 19 persons within the jurisdiction of the United States shall
 20 have the same right in every State and territory as is en-
 21 joyed by White citizens to the full and equal benefit and
 22 enjoyment of economic activity, to security of their persons
 23 and property, to make and enforce contracts, including
 24 carrying out the contract formation process, and to sue,
 25 be parties, and give evidence, and to the full and equal

1 benefit of all laws and proceedings, and shall be subject,
 2 in comparison to White citizens, to like punishment, pains,
 3 penalties, taxes, licenses, and exactions of every kind, and
 4 to no other.

5 “(e) DISCRIMINATORY EFFECTS ALSO PROHIB-
 6 ITED.—

7 “(1) IN GENERAL.—No person shall use a cri-
 8 terion, method of administration, practice, or policy
 9 that has a disparate impact in violation of sub-
 10 section (d).

11 “(2) DEMONSTRATION.—A challenged criterion,
 12 method of administration, practice, or policy that
 13 has an impact described in paragraph (1) shall be
 14 unjustifiable unless its user demonstrates that—

15 “(A) the use serves a legitimate purpose,
 16 which is both required by a substantial business
 17 necessity and not a pretext for discrimination;
 18 and

19 “(B) if the complaining party proffers an
 20 alternative, that that alternative is either incon-
 21 sistent with substantial business necessity or
 22 would produce an equal or greater disparate im-
 23 pact on the basis of a classification protected by
 24 subsection (d).

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

7 “(f) PROTECTION AGAINST IMPAIRMENT.—All rights
 8 protected by this section are protected against impairment
 9 by nongovernmental discrimination and impairment under
 10 color of State law.

11 “(g) BURDEN OF PROOF FOR DISCRIMINATORY
 12 TREATMENT ACTIONS.—

13 “(1) PROTECTED CLASSIFICATION.—In this
 14 subsection, the term ‘protected classification’ means
 15 a classification protected by subsection (d).

16 “(2) DEMONSTRATION.—The equal rights guar-
 17 anteed under subsection (d) shall be considered to be
 18 denied when the complaining party demonstrates
 19 that race or a protected classification was a moti-
 20 vating factor for the denial of such rights even
 21 though other factors also motivated the denial. A de-
 22 nial of equal rights guaranteed under subsection (d)
 23 may be established with comparator evidence or any
 24 other evidence that sufficiently demonstrates a de-

1 nial of such rights, including evidence of conduct
2 that a reasonable person would find racially hostile.

3 “(h) STANDING.—Any person suffering injury in fact
4 as a result of the alleged violation of this section may
5 bring a claim or cause of action for damages, or for equi-
6 table or for declaratory relief, under this section. Standing
7 shall not be limited to victims who were parties to, or
8 third-party beneficiaries of, a contract with the defendant.

9 “(i) RESPONDEAT SUPERIOR LIABILITY.—Principals
10 shall be liable for violations of this section by their agents,
11 and local governments shall be liable for violations of this
12 section by their employees, acting within the scope of their
13 duties.

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

21 “(k) STATUTE OF LIMITATIONS.—All causes of ac-
22 tion under this section shall be governed by the 4-year
23 statute of limitations provided by section 1658(a) of title
24 28, United States Code.

1 “(l) REMEDIATING PAST DISCRIMINATION.—Nothing
2 in this section shall be construed to prohibit or limit a
3 lawful effort, under a provision other than this section,
4 to remedy the effects of discrimination that has occurred
5 or is occurring.”.

6 **SEC. 3. APPLICATION TO CLAIMS.**

7 This Act, and the amendment made by this Act, shall
8 apply to all claims of violations of section 1977 of the Re-
9 vised Statutes that are pending on or after the date of
10 enactment of this Act.

11 **SEC. 4. SEVERABILITY.**

12 If any provision of this Act, an amendment made by
13 this Act, or the application of such provision or amend-
14 ment to any person or circumstance is held to be unconsti-
15 tutional, the remainder of this Act, the amendments made
16 by this Act, and the application of such provision or
17 amendment to any person or circumstance shall not be af-
18 fected thereby.

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