



THE CIVIL RIGHTS PRIVATE ENFORCEMENT AND REMEDIES ACT

A BILL

SECTION 1. SHORT TITLE.

This Act may be cited as the “Civil Rights Private Enforcement and Remedies Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

- (1) The Constitution and federal civil rights laws establish fundamental protections for all persons against discrimination, deprivation of rights, and abuses of governmental and institutional power.
- (2) Despite the existence of comprehensive civil rights protections, enforcement mechanisms have proven insufficient to deter violations and provide meaningful remedies to injured parties.
- (3) Government agencies tasked with civil rights enforcement face significant resource constraints, resulting in limited investigation and prosecution of violations.
- (4) Many individuals whose civil rights have been violated lack effective remedies due to qualified immunity doctrines, procedural barriers, and the discretionary nature of government enforcement.
- (5) Private enforcement actions have historically served as a critical supplement to government enforcement, deterring violations and vindicating the rights of injured persons.
- (6) Anticompetitive practices by state licensing boards and regulatory entities harm consumers, restrict economic opportunity, and violate federal antitrust principles.
- (7) State action immunity has been used to shield anticompetitive conduct from scrutiny, even where such conduct lacks genuine state supervision and authorization.
- (8) The Sherman Act and Clayton Act establish fundamental protections against anticompetitive conduct, but private enforcement against state actors has been inadequately developed.

- (9) Economic liberty and the right to pursue lawful occupations are fundamental rights that require robust protection against arbitrary and anticompetitive restrictions.
- (10) Preliminary and permanent injunctive relief is essential to prevent ongoing and irreparable harm from civil rights violations.
- (11) Compensatory damages, including recovery for lost income and economic opportunity, are necessary to make injured parties whole.
- (12) Attorney's fees and costs provisions are essential to ensure access to justice for persons of limited means whose rights have been violated.
- (13) The deterrent effect of treble damages has proven effective in antitrust enforcement and should be extended to deter anticompetitive conduct by state licensing boards.

(b) PURPOSE.—The purposes of this Act are:

- (1) To establish a comprehensive private right of action for violations of federal civil rights laws and constitutional protections.
- (2) To provide meaningful remedies, including injunctive relief, compensatory damages, and attorney's fees, to persons whose rights have been violated.
- (3) To deter violations of civil rights through the threat of private enforcement actions.
- (4) To supplement government enforcement efforts with private enforcement mechanisms.
- (5) To eliminate barriers to effective civil rights enforcement, including those created by qualified immunity and sovereign immunity doctrines.
- (6) To ensure that state licensing boards and regulatory entities comply with federal antitrust laws.
- (7) To protect economic liberty and the right to pursue lawful occupations free from anticompetitive restrictions; and
- (8) To vindicate the principle that rights without effective remedies are no rights at all.

SEC. 3. DEFINITIONS.

For purposes of this Act:

- (1) “**Person**” means any individual, corporation, partnership, association, trust, governmental entity, or other legal entity.
- (2) “**State licensing board**” means any board, commission, agency, or other entity created by state statute that regulates entry into, or the conduct of, any profession, occupation, or trade.

- (3) “**Regulatory entity**” means any governmental or quasi-governmental body exercising regulatory authority over any profession, occupation, trade, or business activity.
- (4) “**Official capacity**” means acts undertaken pursuant to or under color of state law, federal law, or governmental authority.
- (5) “**Anticompetitive conduct**” means any agreement, combination, conspiracy, or conduct in restraint of trade or commerce that violates the Sherman Act or Clayton Act.
- (6) “**Economic harm**” includes lost income, lost wages, lost business opportunity, diminished economic prospects, costs of compliance with unlawful requirements, and any other pecuniary loss.

SEC. 4. PRIVATE RIGHT OF ACTION.

(a) **GENERAL AUTHORIZATION.**—Any individual or person aggrieved by, economically harmed in their business or property by, or whose rights, privileges, or immunities as secured by the Constitution or federal law are injured or threatened by, a violation of this Act may bring a civil action in any court of competent jurisdiction against:

- (1) Any government entity, state, or political subdivision thereof that violates any provision of this Act.
- (2) Any state licensing board that violates any provision of this Act.
- (3) Any official acting under color of state law or federal law that violates any provision of this Act.
- (4) Any entity or person that violates the federal antitrust laws as clarified and applied by this Act; or
- (5) Any other person or entity that violates any provision of this Act.

(b) **CAUSES OF ACTION.**—Private causes of action are authorized for violations of the following:

- (1) 42 U.S.C. § 1983 as enhanced and clarified by this Act.
- (2) The Privileges or Immunities Clause of the Fourteenth Amendment (U.S. Const. amend. XIV, § 1).
- (3) The Equal Protection Clause (U.S. Const. amend. XIV, § 1) and the Due Process Clauses (U.S. Const. amend. V; U.S. Const. amend. XIV, § 1).
- (4) The Sherman Act (15 U.S.C. §§ 1-7) and the Clayton Act (15 U.S.C. §§ 12-27) as applied to state licensing boards and regulatory entities under Part II of this Act.
- (5) The Commerce Clause (U.S. Const. art. I, § 8, cl. 3) through protectionist or discriminatory state regulations affecting interstate commerce.

- (6) The First Amendment (U.S. Const. amend. I) including freedom of speech, association, and free exercise of religion.
- (7) The Second Amendment (U.S. Const. amend. II) protecting the right to keep and bear arms.
- (8) The Fourth Amendment (U.S. Const. amend. IV) protecting against unreasonable searches and seizures.
- (9) The Fifth Amendment (U.S. Const. amend. V) including protections against self-incrimination and double jeopardy.
- (10) The Eighth Amendment (U.S. Const. amend. VIII) protecting against cruel and unusual punishment and excessive fines.
- (11) Any other provision of the Constitution or federal law protecting individual rights; and
- (12) Any other violation of this Act.

(c) RELIEF AVAILABLE.

- (1) A prevailing plaintiff under this section may obtain, based on proper proof by a preponderance of the evidence:
 - (A) Declaratory relief pursuant to 28 U.S.C. § 2201.
 - (B) Preliminary and permanent injunctive relief against state officials in their official capacities, consistent with *Ex parte Young*, 209 U.S. 123 (1908), and 42 U.S.C. § 1983.
 - (C) Compensatory damages, including:
 - (i) lost income, wages, or economic opportunity.
 - (ii) costs incurred in compliance with unlawful regulations or requirements.
 - (iii) emotional distress and mental anguish.
 - (iv) loss of constitutional or statutory rights.
 - (v) property damage or deprivation; and
 - (vi) any other pecuniary or non-pecuniary loss proximately caused by the violation.
 - (D) In cases involving anticompetitive restraints by state licensing boards, treble damages pursuant to 15 U.S.C. § 15.
 - (E) Punitive damages where the defendant acted with malice, reckless indifference to federal rights, or in deliberate violation of clearly established law.

(F) Reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and as otherwise provided in this Act; and

(G) Such other relief as the court deems just and proper.

(2) In determining damages, courts shall not apply any limitation or cap that would diminish the full compensatory remedy to which a plaintiff is entitled under federal law.

(3) Nominal damages of not less than \$1.00 shall be awarded for any violation of constitutional rights, even where no actual damages are proven.

(d) ATTORNEY'S FEES AND COSTS.

(1) In any action or proceeding to enforce a provision of this Act, the court shall allow the prevailing party, other than the United States, a state or any political subdivision thereof, a state licensing board, any other government entity, any government official sued in an official capacity, or any intervenor aligned with such government parties, reasonable attorney's fees and costs.

(2) A plaintiff who obtains any relief, including nominal damages or injunctive relief, shall be considered a prevailing party entitled to attorney's fees.

(3) Attorney's fees shall be calculated based on the prevailing market rate in the jurisdiction where the case is brought, and shall include compensation for all time reasonably expended.

(4) Courts shall not reduce attorney's fee awards based on:

(A) The achievement of only partial success where success on any significant issue achieves some benefit.

(B) The fact that injunctive relief is preliminary, so long as (1) the defendant—because of the preliminary relief and in order to comply with this Act—changes its laws, policies, or practices at issue in the litigation, or consents to a judgment against it; and (2) there is no subsequent judicial decision in the case contradicting or terminating the preliminary relief.

(C) The limited financial resources of the defendant.

(D) The public nature of the defendant's position; or

(E) Any factor that would discriminate against civil rights plaintiffs.

SEC. 5. ANTITRUST ENFORCEMENT AGAINST STATE LICENSING BOARDS.

(a) APPLICATION OF FEDERAL ANTITRUST LAWS.

- (1) The Sherman Act (15 U.S.C. §§ 1-7) and the Clayton Act (15 U.S.C. §§ 12-27) shall apply in full force to any state licensing board or regulatory entity.
- (2) No state licensing board or regulatory entity shall be entitled to state action immunity from federal antitrust laws unless:
 - (A) The anticompetitive conduct is clearly articulated and affirmatively expressed as state policy; and
 - (B) The conduct is actively supervised by the state itself, as defined in subsection (c).

(b) PRIVATE RIGHT OF ACTION.

- (1) Any person injured in their business or property by a violation of the antitrust laws by a state licensing board or regulatory entity may bring a civil action to recover:
 - (A) Treble damages pursuant to 15 U.S.C. § 15.
 - (B) Injunctive relief against ongoing violations.
 - (C) Declaratory relief that the challenged conduct violates the antitrust laws; and
 - (D) Reasonable attorney's fees and costs.

(c) ACTIVE SUPERVISION REQUIREMENT.—For purposes of this section, active supervision requires:

- (1) Review of the substance of the anticompetitive decision, not merely its procedures.
- (2) The power to veto or modify particular decisions to ensure they accord with state policy.
- (3) Actual exercises of supervision, not merely the theoretical power to supervise.
- (4) Supervision by officials who are not themselves active market participants in the regulated profession; and
- (5) A realistic evaluation of whether the conduct at issue comports with the state's policy objectives.

(d) NO IMMUNITY FOR MARKET PARTICIPANT CONDUCT.—Members of state licensing boards who are active market participants in the profession they regulate shall not be entitled to any immunity, whether qualified immunity, absolute immunity, or state action immunity, for anticompetitive conduct of the licensing board, or by the member in his or her official capacity, that restrains trade or commerce, or unjustly limits access to the market.

SEC. 6. ELIMINATION OF IMMUNITY BARRIERS.

(A) QUALIFIED IMMUNITY LIMITATION.

- (1) Qualified immunity shall not be a defense to any action brought under this Act.
- (2) In any action for violation of constitutional or federal statutory rights, a defendant shall be liable if:
 - (A) The defendant violated the plaintiff's rights as defined by the Constitution or federal statute; and
 - (B) The conduct constituting the violation was not objectively reasonable under clearly established law at the time of the conduct.
- (3) For purposes of paragraph (2)(B), law shall be clearly established only by controlling authority in the jurisdiction or a robust consensus of cases of persuasive authority addressing substantially similar conduct relevant to the violation.
- (4) Abstract or general propositions of law shall not suffice to establish that law was clearly established.
- (5) The burden of proving that conduct was objectively reasonable under clearly established law shall rest with the defendant.

(b) SOVEREIGN IMMUNITY.

- (1) By engaging in conduct that violates the Constitution or federal law, a state or political subdivision thereof constructively waives sovereign immunity for purposes of suits brought under this Act.
- (2) This waiver extends to all claims for damages, injunctive relief, and declaratory relief authorized by this Act.
- (3) No state may reclaim sovereign immunity by disclaiming the authority of its officials to engage in the unconstitutional or unlawful conduct at issue.

(c) ABSOLUTE IMMUNITY.

- (1) Absolute immunity shall not apply to any action brought under Part II (Section 5) of this Act regarding anticompetitive conduct by state licensing boards.
- (2) In all other actions under this Act, absolute immunity shall apply only to:
 - (A) Judges performing judicial functions.
 - (B) Prosecutors performing core prosecutorial functions directly related to advocacy in judicial proceedings; and
 - (C) Legislators performing legislative functions.
- (3) Absolute immunity shall not extend to administrative, investigative, or executive functions, even when performed by judges, prosecutors, or legislators.

SEC. 7. VENUE; PRIORITY.

(a) VENUE.—Actions may be brought in any district where:

- (1) A defendant resides.
- (2) A substantial part of the events giving rise to the claim occurred; or
- (3) A defendant may be found.

(b) PRIORITY.

- (1) Actions brought under this Act shall receive calendar priority in the district courts, similar to actions under 42 U.S.C. § 1983.
- (2) Courts shall expedite consideration of motions for preliminary injunction in cases involving ongoing violations of constitutional rights and seeking prospective relief.

SEC. 8. STATUTE OF LIMITATIONS.

(a) GENERAL LIMITATION PERIOD.

- (1) Civil actions under this Act must be commenced within four years of the date the cause of action accrues.
- (2) A cause of action accrues when the plaintiff knows or reasonably should have known of the injury forming the basis of the claim.

(b) CONTINUING VIOLATIONS.

- (1) For continuing violations, each day of the violation constitutes a separate cause of action.
- (2) The statute of limitations runs from the date of the last violation in a continuing course of conduct.

(c) TOLLING.—The statute of limitations shall be tolled during:

- (1) Any period in which the defendant has actively concealed the violation.
- (2) Any administrative or internal grievance proceedings, until final decision or abandonment; and
- (3) Any period in which the plaintiff is legally incapacitated.

SEC. 9. BURDEN OF PROOF.

(a) PLAINTIFF'S BURDEN.—In actions under this Act, the plaintiff must prove:

- (1) The violation of a constitutional or federal statutory right; and
- (2) That the defendant's conduct was a proximate cause of the plaintiff's injury.

(b) STANDARD OF PROOF.

- (1) The plaintiff must prove the elements of the claim by a preponderance of the evidence.
- (2) For punitive damages, the plaintiff must prove entitlement by clear and convincing evidence.

(c) DEFENDANT'S BURDEN.

- (1) Any defendant asserting an affirmative defense bears the burden of proving all elements of that defense.
- (2) Any defendant claiming that conduct was authorized by state policy bears the burden of proving clear articulation and active supervision.
- (3) Any defendant claiming immunity bears the burden of proving entitlement to immunity.

SEC. 10. RULE OF CONSTRUCTION.

(a) LIBERAL CONSTRUCTION.—This Act shall be liberally construed to effectuate its purposes of:

- (1) Protecting constitutional and federal statutory rights.
- (2) Providing effective remedies for violations.
- (3) Deterring unlawful conduct; and
- (4) Ensuring access to justice for all persons.

(b) RELATION TO OTHER LAWS.

- (1) Nothing in this Act shall be construed to limit any rights or remedies available under other federal statutes or the Constitution.
- (2) The remedies provided by this Act are cumulative and not exclusive.
- (3) A plaintiff may bring claims under this Act in addition to and together with claims under any other applicable law.

(c) PUBLIC HEALTH AND SAFETY MEASURES.—Nothing in this Act shall be construed to prevent the adoption or enforcement of neutral, generally applicable, and clearly defined public health or safety measures that satisfy the specific scrutiny standards provided in this Act, provided such measures:

- (1) Are based on credible scientific or medical evidence.
- (2) Are narrowly tailored to achieve a compelling governmental interest.
- (3) Are the least restrictive means of achieving that interest.

- (4) Do not discriminate based on protected characteristics; and
- (5) Are subject to regular review and sunset provisions.

SEC. 11. SEVERABILITY.

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected thereby.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment and shall apply to:

- (1) All violations occurring on or after the effective date.
- (2) All continuing violations, regardless of when commenced; and
- (3) All conduct that creates an ongoing harm or threatens future harm, regardless of when initiated.

SEC. 13. REGULATIONS.

(a) IMPLEMENTATION.—The Attorney General, in consultation with the Federal Trade Commission, shall promulgate regulations to implement the antitrust provisions of this Act within 120 days of enactment.

(b) GUIDANCE.—Such regulations shall include:

- (1) Guidance on determining when state licensing boards are subject to active supervision.
- (2) Model procedures for state supervision of licensing board decisions.
- (3) Standards for evaluating anticompetitive conduct by regulatory entities; and
- (4) Guidance on calculating damages, including treble damages and economic harm.

(c) LIMITATION.—No regulation shall limit or restrict the rights and remedies provided by this Act.