



Civil-Suit Provision in House-Passed Concealed Carry Reciprocity Bill (H.R. 38): Scope and Application

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In December 2017, the House of Representatives passed H.R. 38, The Concealed Carry Reciprocity Act of 2017. H.R. 38's overarching purpose is to allow persons who are eligible to carry a concealed handgun in one state to lawfully carry a handgun in other states that have a concealed-carry regime for their residents, without regard to differences in the states' eligibility requirements for concealed carry. In furtherance of this goal, the bill authorizes a private right of action against any person who interferes with a concealed-carry right that the bill establishes.

The civil-suit provision in H.R. 38 provides that:

A person who is deprived of any right, privilege, or immunity secured by this section, under color of any statute, ordinance, regulation, custom, or usage of any State or any political subdivision thereof, may bring an action in any appropriate court against any other person, including a State or political subdivision thereof, who causes the person to be subject to the deprivation, for damages or other appropriate relief.

This provision has garnered [significant attention](#) in light of the questions it has raised about when civil liability may be triggered, particularly with respect to the circumstances under which law enforcement agencies and personnel could potentially become liable for investigating whether a person is lawfully carrying a concealed handgun. The success of such a potential lawsuit would depend on the nature of the particular police interaction and involve a highly fact-intensive judicial inquiry.

Indeed, H.R. 38's civil-suit provision raises numerous legal questions. For instance, what rights does the bill bestow, who may enforce them, and who may be sued for interfering with those rights? Additionally,

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would [principles of sovereign immunity](#) prevent law enforcement from being sued under H.R. 38? And does the civil liability provision of H.R. 38 expose states and their law enforcement to civil liability for engaging in conduct beyond that for which civil suits may already be brought under [42 U.S.C. § 1983](#)?

These questions, among others, are explored in detail in a general distribution memorandum that is available through the author of this Sidebar upon [request](#).
