

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 333*
Committee Substitute Favorable 5/8/89

Short Title: Fair Housing/Ads and Temp. Relief.

(Public)

Sponsors:

Referred to:

February 23, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATE FAIR HOUSING ACT TO CLARIFY
3 PROVISIONS REGARDING DISCRIMINATORY ADVERTISING AND THE
4 ENFORCEMENT PROCEDURES REGARDING A DISCRIMINATION
5 COMPLAINT.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 41A-6 reads as rewritten:

8 "§ 41A-6. Exemptions.

9 The provisions of G.S. 41A-4 except for subsection (a)(6), do not apply to the
10 following:

- 11 (1) The rental of a housing accommodation in a building which contains
12 housing accommodations for not more than four families living
13 independently of each other, if the lessor or a member of his family
14 resides in one of the housing accommodations;
- 15 (2) The rental of a room or rooms in a private house, not a boarding house,
16 if the lessor or a member of his family resides in the house;
- 17 (3) Religious institutions or organizations or charitable or educational
18 organizations operated, supervised, or controlled by religious
19 institutions or organizations which give preference to members of the
20 same religion in a real estate transaction, as long as membership in
21 such religion is not restricted by race, color, sex, or national origin;
- 22 (4) Private clubs, not in fact open to the public, which incident to their
23 primary purpose or purposes provide lodging, which they own or

- 1 operate for other than a commercial purpose, to their members or give
2 preference to their members;
- 3 (5) With respect to discrimination based on sex, the rental or leasing of
4 housing accommodations in single-sex dormitory property;
- 5 (6) Any person, otherwise subject to its provisions, who adopts and carries
6 out a plan to eliminate present effects of past discriminatory practices
7 or to assure equal opportunity in real estate transactions, if the plan is
8 part of a conciliation agreement entered into by that person under
9 provisions of this Chapter or under the provisions of the Federal Fair
10 Housing Act, 42 U.S.C. § 3601 **et seq.** or is voluntary and is consistent
11 with the purposes thereof;
- 12 (7) The sale, rental, exchange, or lease of commercial real estate. For the
13 purposes of this Chapter, commercial real estate means real property
14 which is not intended for residential use."

15 Sec. 2. G.S. 41A-7 reads as rewritten:

16 "**§ 41A-7. Enforcement.**

17 (a) Any person who claims to have been injured by an unlawful discriminatory
18 housing practice or who reasonably believes that he will be irrevocably injured by an
19 unlawful discriminatory housing practice may file a complaint with the North Carolina
20 Human Relations Council. Complaints shall be in writing, shall state the facts upon
21 which the allegation of an unlawful discriminatory housing practice is based, and shall
22 contain such other information and be in such form as the Council requires. Council
23 employees shall assist complainants in reducing complaints to writing and shall assist in
24 setting forth the information in the complaint as may be required by the Council.
25 Within 10 days after receipt of the complaint, the Director of the Council shall ~~furnish a~~
26 ~~copy of the complaint to the person who allegedly committed or is about to commit the~~
27 ~~unlawful discriminatory housing practice.~~ serve on the respondent a copy of the complaint
28 and a notice advising the respondent of his procedural rights and obligations under this
29 Chapter. Within 10 days after receipt of the complaint, the Director of the Council shall
30 serve on the complainant a notice acknowledging the filing of the complaint and
31 informing the complainant of his time limits and choice of forums under this Chapter.

32 (b) A complaint under subsection (a) shall be filed within ~~180 days~~ one year after
33 the alleged unlawful discriminatory housing practice occurred. A respondent may file
34 an answer to the complaint against him within 10 days after receiving a copy of the
35 complaint. With the leave of the Council, which shall be granted whenever it would be
36 reasonable and fair to do so, the complaint and the answer may be amended at any time.
37 Complaints and answers shall be verified.

38 (c) Whenever another agency of the State or any other unit of government of the
39 State has jurisdiction over the subject matter of any complaint filed under this section,
40 and such agency or unit of government has legal authority equivalent to or greater than
41 the authority under this Chapter to investigate or act upon the complaint, the Council
42 shall be divested of jurisdiction over such complaint. The Council shall, within 30 days,
43 notify the agency or unit of government of the apparent unlawful discriminatory

1 housing practice, and request that the complaint be investigated in accordance with such
2 authority.

3 (d) Complaints may be resolved at any time by informal conference, conciliation,
4 or persuasion. Nothing said or done in the course of such informal procedure may be
5 made public by the Council or used as evidence in a subsequent proceeding under this
6 Chapter without the written consent of the person concerned.

7 (e) ~~Upon receipt of a complaint, the Council shall investigate~~ Within 30 days after
8 the filing of the complaint, the Council shall commence an investigation of the
9 complaint to ascertain the facts relating to the alleged unlawful discriminatory housing
10 practice. If the complaint is not resolved before the investigation is complete, upon
11 completion of the investigation, the Council shall determine whether or not there are
12 reasonable grounds to believe that an unlawful discriminatory housing practice has
13 occurred. The Council shall make a determination within 90 days after receiving the
14 complaint, unless the Council determines that good cause exists for further delay. The Council
15 shall make a determination within 90 days after the filing of the complaint. If the
16 Council is unable to complete the investigation and issue a determination within 90 days
17 after the filing of the complaint, the Council shall notify the complainant and respondent
18 in writing of the reasons for not doing so. If the Council concludes at any time
19 following the filing of a complaint under this section that prompt judicial action is
20 necessary to carry out the purposes of this Chapter, the Council may commence a civil
21 action for, and the court may grant, appropriate temporary or preliminary relief pending
22 final disposition of the complaint. Any temporary restraining order or other order
23 granting preliminary or temporary relief shall be issued in accordance with G.S. 1A-1,
24 et seq., Rules of Civil Procedure. The commencement of a civil action under this
25 subsection does not affect the continuation of the Council's investigation or the
26 initiation of a separate civil action pursuant to other subsections of this section.

27 (f) If the Council finds no reasonable ground to believe that an unlawful
28 discriminatory housing practice has occurred or is about to occur it shall dismiss the
29 complaint and issue to the complainant a right-to-sue letter which will enable him to
30 bring a civil action in superior court in accordance with the provisions of subsection (j)
31 of this section.

32 (g) If the Council finds reasonable grounds to believe that an unlawful
33 discriminatory housing practice has occurred or is about to occur it shall proceed to try
34 to eliminate or correct the discriminatory housing practice by informal conference,
35 conciliation, or persuasion. Any conciliation agreement arising out of conciliation
36 efforts by the Council shall be an agreement between the respondent and the
37 complainant and shall be subject to the approval of the Council. The Council may also
38 be a party to such conciliation agreements. Each conciliation agreement shall be made
39 public unless the complainant and respondent otherwise agree, and the Council
40 determines that disclosure is not required to further the purposes of this Chapter.

41 (h) If the Council is unable to resolve the alleged unlawful discriminatory
42 housing practice it ~~may declare that conciliation efforts have failed~~ shall notify the parties in
43 writing that conciliation efforts have failed. ~~Upon making such a declaration, the Council~~
44 ~~may:~~

- 1 (1) ~~Dismiss the complaint and issue to the complainant a right to sue letter~~
2 ~~which will enable him to bring a civil action in superior court; or~~
3 (2) ~~Commence a civil action in superior court, in its own name, or in its~~
4 ~~own name on behalf of the complainant. In such an action, the Council~~
5 ~~shall be represented by an attorney employed by the Council, and G.S.~~
6 ~~114-2 shall not apply.~~

7 (i) ~~If after 130 days after a complaint has been filed the Council has failed to~~
8 ~~resolve the complaint or issue a right to sue letter, the Council shall, upon written~~
9 ~~request of the complainant, issue a right to sue letter to the complainant. Issuance of a~~
10 ~~letter under this subsection shall not prevent the Council from commencing a civil~~
11 ~~action under subsection (h)(2) of this section which action shall be consolidated with~~
12 ~~any action filed by the complainant. A complainant may make a written request to the~~
13 ~~Council for a right-to-sue letter:~~

- 14 (1) Within 10 days following the receipt of a notice of conciliation failure;
15 or
16 (2) After 130 days following the filing of a complaint, if the Council has
17 not issued a notice of conciliation failure.

18 Upon receipt of a timely request, the Council shall issue to the complainant a right-to-
19 sue letter which will enable him to bring a civil action in superior court in accordance
20 with the provisions of subsection (j) of this section.

21 (j) A civil action brought by a complainant pursuant to subsections (f) or (i) of
22 this section shall be commenced within one year after the right-to-sue letter is issued.
23 The court may grant relief, as it deems appropriate, including any permanent or
24 temporary injunction, temporary restraining order, or other order, and may award to the
25 plaintiff, compensatory and punitive damages, and may award court costs, and
26 reasonable attorney's fees to the prevailing party, other than a State agency or commission;
27 _ Provided, however, ~~That~~ that a prevailing respondent may be awarded court costs and
28 reasonable attorney's fees only upon a showing that the case is frivolous, unreasonable,
29 or without foundation.

30 ~~If the action is brought by the Council on behalf of a complainant, the court may~~
31 ~~award actual and punitive damages to the complainant. The court may award punitive~~
32 ~~damages to a prevailing plaintiff or complainant only if it is shown that the defendant~~
33 ~~committed a violation of this Chapter with intent to discriminate.~~

34 (k) After the Council has issued a notice of conciliation failure pursuant to
35 subsection (h) of this section, if the complainant does not request a right-to-sue letter
36 pursuant to subsection (i) of this section, the complainant, the respondent, or the
37 Council may elect to have the claims and issues asserted in the reasonable grounds
38 determination decided in a civil action commenced and maintained by the Council.

- 39 (1) An election for a civil action under this subsection shall be made no
40 later than 20 days after an electing complainant or respondent receives
41 the notice of conciliation failure, or if the Council makes the election,
42 not more than 20 days after the notice of conciliation failure is issued.
43 A complainant or respondent who makes an election for a civil action
44 pursuant to this subsection shall give notice to the Council. If the

1 Council makes an election, it shall notify all complainants and
2 respondents of the election.

3 (2) If an election is made under this subsection, no later than 60 days after
4 the election is made the Council shall commence a civil action in
5 superior court in its own name on behalf of the complainant. In such
6 an action, the Council shall be represented by an attorney employed by
7 the Council, and G.S. 114-2 shall not apply.

8 In a civil action brought under this subsection, the court may grant relief as it deems
9 appropriate, including any permanent or temporary injunction, temporary restraining
10 order, or other equitable relief and may award to any person aggrieved by an unlawful
11 discriminatory housing practice compensatory and punitive damages. Parties to a civil
12 action brought pursuant to this Chapter shall have the right to a jury trial as provided for
13 by the North Carolina Rules of Civil Procedure.

14 (1) After the Council has issued a notice of conciliation failure pursuant to
15 subsection (h) of this section, if the complainant does not request a right-to-sue letter
16 pursuant to subsection (i) of this section, and if an election for a civil action is not made
17 pursuant to subsection (k) of this section, the Council shall apply to the Director of the
18 Office of Administrative Hearings for the designation of an administrative law judge to
19 preside at a hearing of the case. Upon receipt of the application, the Director of the
20 Office of Administrative Hearings shall, without undue delay, assign an administrative
21 law judge to hear the case.

22 (1) All hearings shall be conducted pursuant to the provisions of Article
23 3A of Chapter 150B of the General Statutes, except that the case in
24 support of the complaint shall be presented at the hearing by the
25 Council's attorney or agent, and G.S. 114-2 shall not apply. The
26 parties to the complaint shall otherwise be given an opportunity to
27 participate in the hearing as provided in G.S. 150B-40(a).

28 (2) The administrative law judge assigned to hear a case pursuant to this
29 subsection shall sit in place of the Council and shall have the authority
30 of a presiding officer in a contested case under Article 3A of Chapter
31 150B of the General Statutes. The administrative law judge shall
32 make a proposal for decision, which shall contain proposed findings of
33 fact, proposed conclusions of law, and proposed relief, if appropriate.
34 The Council may make its final decision only after carefully reviewing
35 and considering the administrative law judge's proposal for decision,
36 and after a copy of that proposal for decision is served on the parties
37 and an opportunity is given each party to file exceptions and proposed
38 findings of fact and to present oral and written arguments to the
39 Council.

40 (3) The Council's final decision may be made by a panel consisting of
41 three Council members appointed by the chairperson of the Council.
42 If the Council, in its final decision, finds that a respondent has violated
43 or is about to violate this Chapter, it may order such relief as may be
44 appropriate, including payment to the complainant by the respondent

1 of compensatory damages and injunctive or other equitable relief. The
2 Council's order may also assess a civil penalty against the respondent:

3 a. In an amount not exceeding ten thousand dollars (\$10,000) if
4 the respondent has not been adjudged to have committed any
5 prior unlawful discriminatory housing practices;

6 b. In an amount not exceeding twenty-five thousand dollars
7 (\$25,000) if the respondent has been adjudged to have
8 committed one other unlawful discriminatory housing practice
9 during the five-year period ending on the date of the filing of
10 the complaint; or

11 c. In an amount not exceeding fifty thousand dollars (\$50,000) if
12 the respondent has been adjudged to have committed two or
13 more unlawful discriminatory housing practices during the
14 seven-year period ending on the date of the filing of the
15 complaint.

16 If the acts constituting the unlawful discriminatory housing practice
17 that is the object of the complaint are committed by the same natural
18 person who has been previously adjudged to have committed acts
19 constituting an unlawful discriminatory housing practice, then the civil
20 penalties set forth in sub-subdivisions b. and c. of this subsection may
21 be imposed without regard to the period of time within which any
22 subsequent discriminatory housing practice occurred.

23 (m) Any person aggrieved by the final agency decision following a hearing may
24 petition for judicial review in accordance with the provisions of G.S. 150B-43 through
25 G.S. 150B-52. The court in a review proceeding may:

26 (1) Affirm, modify, or reverse the Council's decision in accordance with
27 G.S. 150B-51;

28 (2) Remand the case to the Council for further proceedings;

29 (3) Grant to any party such temporary relief, restraining order, or other
30 order as it deems appropriate; or

31 (4) Issue an order to enforce the Council's order to the extent that the order
32 is affirmed or modified.

33 (n) If, within 30 days after service on the parties of the Council's decision and
34 order following a hearing, no party has petitioned for judicial review, the Council or the
35 person entitled to relief may file with the clerk of superior court in the county where the
36 unlawful discriminatory housing practice occurred, or in the county where the real
37 property is located, a certified copy of the Council's final order. Upon such a filing, the
38 clerk of the court shall enter an order enforcing the Council's final order."

39 Sec. 3. G.S. 41A-9 is repealed.

40 Sec. 4. This act is effective upon ratification.