

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 721
HOUSE BILL 333

AN ACT TO AMEND THE STATE FAIR HOUSING ACT TO CLARIFY PROVISIONS REGARDING DISCRIMINATORY ADVERTISING AND THE ENFORCEMENT PROCEDURES REGARDING A DISCRIMINATION COMPLAINT.

The General Assembly of North Carolina enacts:

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

"§ 41A-6. Exemptions.

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

- (1) The rental of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations;
- (2) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house;
- (3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, or national origin;
- (4) Private clubs, not in fact open to the public, which incident to their primary purpose or purposes provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members;
- (5) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property;
- (6) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under provisions of this Chapter or under the provisions of the Federal Fair Housing Act, 42 U.S.C. § 3601 **et seq.** or is voluntary and is consistent with the purposes thereof;

- (7) The sale, rental, exchange, or lease of commercial real estate. For the purposes of this Chapter, commercial real estate means real property which is not intended for residential use."

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

"§ 41A-7. Enforcement.

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

No complaint may be filed with the Council under this section during any period in which the Council is not certified by the Secretary of the United States Department of Housing and Urban Development in accordance with 42 U.S.C. § 3610(f) to have jurisdiction over the subject matter of the complaint. Provided, however, that during any such period in which the Council is not certified, any person who claims to have been injured by an unlawful discriminatory practice or who reasonably believes that he will be irrevocably injured by an unlawful discriminatory housing practice may bring a civil action directly in superior court in accordance with the provisions of subsection (j) of this section, except that any such civil action shall be commenced within one year after the occurrence or termination of the alleged unlawful discriminatory housing practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) All hearings shall be conducted pursuant to the provisions of Article 3A of Chapter 150B of the General Statutes, except that the case in support of the complaint shall be presented at the hearing by the Council's attorney or agent, and G.S. 114-2 shall not apply. The parties to the complaint shall otherwise be given an opportunity to participate in the hearing as provided in G.S. 150B-40(a).
- (2) The administrative law judge assigned to hear a case pursuant to this subsection shall sit in place of the Council and shall have the authority of a presiding officer in a contested case under Article 3A of Chapter 150B of the General Statutes. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact, proposed conclusions of law, and proposed relief, if appropriate. The Council may make its final decision only after carefully reviewing and considering the administrative law judge's proposal for decision, and after a copy of that proposal for decision is served on the parties and an opportunity is given each party to file exceptions and proposed findings of fact and to present oral and written arguments to the Council.
- (3) The Council's final decision may be made by a panel consisting of three Council members appointed by the chairperson of the Council. If the Council, in its final decision, finds that a respondent has violated or is about to violate this Chapter, it may order such relief as may be appropriate, including payment to the complainant by the respondent

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

- a. In an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;
- b. In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or
- c. In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

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

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

- (1) Affirm, modify, or reverse the Council's decision in accordance with G.S. 150B-51;
- (2) Remand the case to the Council for further proceedings;
- (3) Grant to any party such temporary relief, restraining order, or other order as it deems appropriate; or
- (4) Issue an order to enforce the Council's order to the extent that the order is affirmed or modified.

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

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

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.