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HOUSE BILL 334\*  
Committee Substitute Favorable 5/8/89  
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Short Title: Fair Housing/Handicapped & Family.

(Public)

Sponsors:

Referred to:

February 23, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE FAIR HOUSING ACT BY EXTENDING PROTECTION TO THE HANDICAPPED AND FAMILIES WITH CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41A-3 is amended by adding three new subdivisions to read:

"(1a) 'Covered multifamily dwellings' means:

- a. A building, including all units and common use areas, in which there are four or more units if the building has one or more elevators; or
- b. Ground floor units and ground floor common use areas in a building with four or more units.

(1b) 'Familial status' means one or more persons who have not attained the age of 18 years being domiciled with:

- a. A parent or another person having legal custody of the person or persons; or
- b. The designee of the parent or other person having custody, provided the designee has the written permission of the parent or other person.

The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any person who has not attained the age of 18 years.

(3a) 'Handicapping condition' means (i) a physical or mental impairment which substantially limits one or more of a person's major life activities, (ii) a record of having such an impairment, or (iii) being regarded as having such an impairment.

1 Handicapping condition does not include current, illegal use of or addiction to a  
2 controlled substance as defined in 21 U.S.C. § 802, the Controlled Substances Act. The  
3 protections against discrimination on the basis of handicapping condition shall apply to  
4 a buyer or renter of a dwelling, a person residing in or intending to reside in the  
5 dwelling after it is sold, rented, or made available, or any person associated with the  
6 buyer or renter."

7 Sec. 2. G.S. 41A-4 reads as rewritten:

8 **"§ 41A-4. Unlawful discriminatory housing practices.**

9 (a) It is an unlawful discriminatory housing practice for any person in a real  
10 estate transaction, because of race, color, religion, sex, ~~or~~ national origin, handicapping  
11 condition, or familial status to:

12 (1) Refuse to engage in a real estate transaction;

13 (2) Discriminate against a person in the terms, conditions, or privileges of  
14 a real estate transaction or in the furnishing of facilities or services in  
15 connection therewith;

16 (2a) Refuse to permit, at the expense of a handicapped person, reasonable  
17 modifications of existing premises occupied or to be occupied by the  
18 person if the modifications are necessary to the handicapped person's  
19 full enjoyment of the premises; except that, in the case of a rental unit,  
20 the landlord may, where it is reasonable to do so, condition permission  
21 for modifications on agreement by the renter to restore the interior of  
22 the premises to the condition that existed before the modifications,  
23 reasonable wear and tear excepted;

24 (2b) Refuse to make reasonable accommodations in rules, policies,  
25 practices, or services, when these accommodations may be necessary  
26 to a handicapped person's equal use and enjoyment of a dwelling;

27 (2c) Fail to design and construct covered multifamily dwellings available  
28 for first occupancy after March 13, 1991, so that:

29 a. The dwellings have at least one building entrance on an  
30 accessible route, unless it is impractical to do so because of  
31 terrain or unusual site characteristics; or

32 b. With respect to dwellings with a building entrance on an  
33 accessible route:

34 1. The public and common use portions are readily  
35 accessible to and usable by handicapped persons;

36 2. There is an accessible route into and through all  
37 dwellings and units;

38 3. All doors designed to allow passage into, within, and  
39 through these dwellings and individual units are wide  
40 enough for wheelchairs;

41 4. Light switches, electrical switches, electrical outlets,  
42 thermostats, and other environmental controls are in  
43 accessible locations;

- 1                                   5.     Bathroom walls are reinforced to allow later installation  
2                                   of grab bars; and  
3                                   6.     Kitchens and bathrooms have space for an individual in a  
4                                   wheelchair to maneuver;  
5                   (3)    Refuse to receive or fail to transmit a bona fide offer to engage in a  
6                                   real estate transaction;  
7                   (4)    Refuse to negotiate for a real estate transaction;  
8                   (5)    Represent to a person that real property is not available for inspection,  
9                                   sale, rental, or lease when in fact it is so available, or fail to bring a  
10                                  property listing to his attention, or refuse to permit him to inspect real  
11                                  property;  
12                   (6)    Make, print, circulate, post, or mail or cause to be so published a  
13                                  statement, advertisement, or sign, or use a form or application for a  
14                                  real estate transaction, or make a record or inquiry in connection with a  
15                                  prospective real estate transaction, which indicates directly or  
16                                  indirectly, an intent to make a limitation, specification, or  
17                                  discrimination with respect thereto;  
18                   (7)    Offer, solicit, accept, use, or retain a listing of real property with the  
19                                  understanding that any person may be discriminated against in a real  
20                                  estate transaction or in the furnishing of facilities or services in  
21                                  connection therewith; or  
22                   (8)    Otherwise make unavailable or deny housing.  
23   - ~~(b) It is an unlawful discriminatory housing practice for a financial institution to~~  
24   ~~whom application is made for a loan, or other financial assistance in connection with a~~  
25   ~~real estate transaction or for the construction, rehabilitation, repair, maintenance, or~~  
26   ~~improvement of real property to:~~  
27                   (1)    ~~Discriminate against the applicant because of race, color, religion,~~  
28                                  ~~sex, or national origin; or~~  
29                   (2)    ~~Use a form of application for a loan, or other financial assistance, or~~  
30                                  ~~make or keep a record of inquiry in connection with an application for~~  
31                                  ~~a loan, or other financial assistance which indicates, directly or~~  
32                                  ~~indirectly, an intent to make a limitation, specification, or~~  
33                                  ~~discrimination as to race, color, religion, sex, or national origin.~~  
34   ~~The provisions of this subsection shall not prohibit any financial institution from basing~~  
35   ~~its actions on the income or financial abilities of any person.~~  
36   (b1) It is an unlawful discriminatory housing practice for any person or other entity  
37   whose business includes engaging in residential real estate related transactions to  
38   discriminate against any person in making available such a transaction, or in the terms  
39   and conditions of such a transaction, because of race, color, religion, sex, national  
40   origin, handicapping condition, or familial status. As used in this subsection, 'residential  
41   real estate related transaction' means:  
42                   (1)    The making or purchasing of loans or providing financial assistance (i)  
43                                  for purchasing, constructing, improving, repairing, or maintaining a  
44                                  dwelling, or (ii) where the security is residential real estate; or

1           (2) The selling, brokering, or appraising of residential real estate.

2 The provisions of this subsection shall not prohibit any financial institution from using a  
3 loan application which inquires into a person's financial and dependent obligations or  
4 from basing its actions on the income or financial abilities of any person.

5           (c) It is an unlawful discriminatory housing practice for a person to induce or  
6 attempt to induce another to enter into a real estate transaction from which such person  
7 may profit:

8           (1) By representing that a change has occurred, or may or will occur in the  
9 composition of the residents of the block, neighborhood, or area in  
10 which the real property is located with respect to race, color, religion,  
11 sex, ~~or~~ national origin, handicapping condition, or familial status of the  
12 owners or occupants; or

13           (2) By representing that a change has resulted, or may or will result in the  
14 lowering of property values, an increase in criminal or antisocial  
15 behavior, or a decline in the quality of schools in the block,  
16 neighborhood, or area in which the real property is located.

17           (d) It is an unlawful discriminatory housing practice to deny any person who is  
18 otherwise qualified by State law membership in any real estate brokers' organization,  
19 multiple listing service, or other service, organization, or facility relating to the business  
20 of engaging in real estate transactions, or to discriminate in the terms or conditions of  
21 such membership because of race, color, religion, sex, ~~or~~ national origin, handicapping  
22 condition, or familial status.

23           (e) It is an unlawful discriminatory housing practice to coerce, intimidate,  
24 threaten, or interfere with any person in the exercise or enjoyment of, on account of  
25 having exercised or enjoyed, or on account of having aided or encouraged any other  
26 person in the exercise or enjoyment of any right granted or protected by this Chapter."

27           Sec. 3. G.S. 41A-5 reads as rewritten:

28 **"§ 41A-5. Proof of violation.**

29           (a) It is a violation of this Chapter if:

30           (1) A person by his act or failure to act intends to discriminate against a  
31 person. A person intends to discriminate if, in committing an unlawful  
32 discriminatory housing practice described in G.S. 41A-4 he was  
33 motivated in full, or in any part at all, by race, color, religion, sex,  
34 national origin, ~~or any other characteristic or classification protected by this~~  
35 ~~Chapter~~ handicapping condition, or familial status. An intent to  
36 discriminate may be established by direct or circumstantial evidence;  
37 or

38           (2) A person's act or failure to act has the effect, regardless of intent, of  
39 discriminating, as set forth in G.S. 41A-4, against a person of a  
40 particular race, color, religion, sex, national origin, ~~or any other~~  
41 ~~characteristic or classification protected by this Chapter~~ handicapping  
42 condition, or familial status. However, it is not a violation of this  
43 Chapter if a person whose action or inaction has an unintended

1 discriminatory effect, proves that his action or inaction was motivated  
2 and justified by business necessity.

3 (b) It shall be no defense to a violation of this Chapter that the violation was  
4 requested, sought, or otherwise procured by another person."

5 Sec. 4. G.S. 41A-6 reads as rewritten:

6 **"§ 41A-6. Exemptions.**

7 (a) The provisions of G.S. 41A-4 do not apply to the following:

8 (1) The rental of a housing accommodation in a building which contains  
9 housing accommodations for not more than four families living  
10 independently of each other, if the lessor or a member of his family  
11 resides in one of the housing accommodations;

12 (2) The rental of a room or rooms in a private house, not a boarding house,  
13 if the lessor or a member of his family resides in the house;

14 (3) Religious institutions or organizations or charitable or educational  
15 organizations operated, supervised, or controlled by religious  
16 institutions or organizations which give preference to members of the  
17 same religion in a real estate transaction, as long as membership in  
18 such religion is not restricted by race, color, sex, ~~or~~ national origin,  
19 handicapping condition, or familial status;

20 (4) Private clubs, not in fact open to the public, which incident to their  
21 primary purpose or purposes provide lodging, which they own or  
22 operate for other than a commercial purpose, to their members or give  
23 preference to their members;

24 (5) With respect to discrimination based on sex, the rental or leasing of  
25 housing accommodations in single-sex dormitory property;

26 (6) Any person, otherwise subject to its provisions, who adopts and carries  
27 out a plan to eliminate present effects of past discriminatory practices  
28 or to assure equal opportunity in real estate transactions, if the plan is  
29 part of a conciliation agreement entered into by that person under the  
30 provisions of this Chapter or under the provisions of the Federal Fair  
31 Housing Act, 42 U.S.C. § 3601 **et seq.**, or is voluntary and is  
32 consistent with the purposes thereof;

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

36 (b) No provision of this Chapter requires that a dwelling be made available to a  
37 person whose tenancy would constitute a direct threat to the health or safety of other  
38 persons or whose tenancy would result in substantial physical damage to the property of  
39 others.

40 (c) No provision of this Chapter limits the applicability of any reasonable local or  
41 State restrictions regarding the maximum number of occupants permitted to occupy a  
42 dwelling unit.

1       (d) Nothing in this Chapter shall be deemed to nullify any provisions of the  
2 North Carolina Building Code applicable to the construction of residential housing for  
3 the handicapped.

4       (e) No provision of this Chapter regarding familial status applies with respect to  
5 housing for older persons. 'Housing for older persons' means housing:

6           (1) Provided under any State or federal program specifically designed and  
7 operated to assist elderly persons as defined in the program;

8           (2) Intended for and solely occupied by person 62 years or older. Housing  
9 satisfies the requirements of this subdivision even though there are  
10 persons residing in such housing on October 1, 1989, who are under 62  
11 years of age, provided that all new occupants after October 1, 1989,  
12 are 62 years or older; or

13           (3) Intended for and operated for occupancy by at least one person 55  
14 years of age or older per unit as shown by such factors as (i) the  
15 existence of significant facilities and services specifically designed to  
16 meet the physical and social needs of older persons or, if this is not  
17 practicable, that the housing provides important housing opportunities  
18 for older persons, (ii) at least eighty percent (80%) of the units are  
19 occupied by at least one person 55 years of age or older per unit; and  
20 (iii) the publication of and adherence to policies and procedures which  
21 demonstrate an intent by the owner or manager to provide housing for  
22 persons 55 years or older. Housing satisfies the requirements of this  
23 subdivision even though on October 1, 1989, under eighty percent  
24 (80%) of the units in the housing facility are occupied by at least one  
25 person 55 years or older per unit, provided that eighty percent (80%)  
26 of the units that are occupied by new tenants after October 1, 1989, are  
27 occupied by at least one person 55 years or older per unit until such  
28 time as eighty percent (80%) of all the units in the housing facility are  
29 occupied by at least one person 55 years or older. Housing facilities  
30 newly constructed for first occupancy after October 1, 1989, shall  
31 satisfy the requirements of this subdivision if (i) when twenty-five  
32 percent (25%) of the units are occupied, eighty percent (80%) of the  
33 occupied units are occupied by at least one person 55 years or older,  
34 and thereafter (ii) eighty percent (80%) of all newly occupied units are  
35 occupied by at least one person 55 years or older until such time as  
36 eighty percent (80%) of all the units in the housing facility are  
37 occupied by at least one person 55 years of age or older.

38 Housing satisfies the requirements of subdivisions (2) and (3) of this subsection even  
39 though there are units occupied by employees of the housing facility who are under the  
40 minimum age or family members of the employees residing in the same unit who are  
41 under the minimum age, provided the employees perform substantial duties directly  
42 related to the management of the housing."

43       Sec. 5. This act shall become effective October 1, 1989.