

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 592

Short Title: Fayetteville Fair Housing Amendments.

(Local)

Sponsors: Senators Edwards and Rand.

Referred to: Local Government and Regional Affairs

April 5, 1995

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROVISIONS OF THE CHARTER OF THE CITY OF FAYETTEVILLE CONCERNING FAIR HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of the Charter of the City of Fayetteville, being Chapter 557, Session Laws of 1979, as enacted by Chapter 355 of the Session Laws of 1989, reads as rewritten:

"ARTICLE 8. FAIR HOUSING.

"Sec. 8.30. Equal housing. The City Council shall have the power to adopt ordinances prohibiting discrimination in real estate transactions on the basis of race, color, sex, religion, handicap, familial status, or national origin. Such ordinances may

- (1) ~~Regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons;~~
- (2) ~~Provide that violations constitute a criminal offense;~~
- (3) ~~Subject the offender to civil penalties;~~
- (4) ~~Provide that the City may enforce the ordinances by application to the Superior General Court of Justice for appropriate legal and equitable remedies, including but not limited to mandatory and prohibitory~~

1           ~~injunctions and orders of abatement, attorney's fees and punitive~~  
2           ~~damages, and the court shall have jurisdiction to grant such remedies.~~  
3 origin in the sale, rental, or advertising of dwellings, in the provision of brokerage  
4 services, or in the availability of residential real estate related transactions. Such  
5 ordinances may regulate or prohibit any act, practice, activity, or procedure related  
6 directly or indirectly, to the sale, financing, or rental of public or private housing, that  
7 affects or may tend to affect the availability or desirability of housing on an equal basis to  
8 all persons, and may:

9           (1) Provide that discrimination includes:

- 10           a. A refusal to permit, at the expense of a handicapped person,  
11 reasonable modifications of existing premises occupied or to be  
12 occupied by such person if such modification may be necessary  
13 to afford such person full enjoyment of the premises, except that,  
14 in the case of a rental, the landlord may, where it is reasonable to  
15 do so, condition permission for a modification on the renter  
16 agreeing to restore the interior of the premises to the condition  
17 that existed before the modification, reasonable wear and tear  
18 excepted;
- 19           b. A refusal to make reasonable accommodations in rules, policies,  
20 practices, or services when such accommodations may be  
21 necessary to afford such handicapped person equal opportunity to  
22 use and enjoy a dwelling; or
- 23           c. Failure to design and construct those covered multifamily  
24 dwellings available for first occupancy after March 13, 1991, in  
25 such a manner that:
- 26           1. The public use and common use portions of such dwelling  
27 are readily accessible to and usable by handicapped  
28 persons;
- 29           2. All the doors designed to allow passage into and within all  
30 premises within such dwelling are sufficiently wide to  
31 allow passage by handicapped persons in wheelchairs; and
- 32           3. All premises within such dwellings contain the following  
33 features of adaptive design:
- 34           I. An accessible route into and through the dwelling;  
35           II. Light switches, electrical outlets, thermostats, and  
36 other environmental controls in accessible  
37 locations;
- 38           III. Reinforcements in the bathroom wall to allow later  
39 installation of grab bars; and
- 40           IV. Usable kitchen and bathrooms such that an  
41 individual in a wheelchair can maneuver about the  
42 space.

1 Compliance with the appropriate requirements of the American National  
2 Standard for Buildings and Facilities Providing Accessibility and  
3 Usability for Physically Handicapped People (commonly cited as 'ANSI  
4 A117.1-1968') suffices to satisfy the requirements of subdivision c.3. of  
5 this subdivision.

6 (2) Provide that Fayetteville Human Relations Commission shall have the  
7 power to:

8 a. Receive, initiate, investigate, seek to conciliate, hold hearings,  
9 and make recommendations to parties named in complaints  
10 alleging violations of this Article, approve or disapprove plans to  
11 eliminate or reduce discriminatory practices or the effects of  
12 discriminatory practices, and monitor compliance with the terms  
13 of such plans.

14 b. Apply, upon an affirmative vote of a majority, a quorum being  
15 present and voting, to the Cumberland County Superior Court  
16 upon the failure of any person to respond to or comply with a  
17 lawful interrogatory, subpoena, or request for the production of  
18 relevant evidence or possible sources of evidence for an order  
19 requiring such person to respond or comply. The court shall  
20 have jurisdiction to issue such order after notice to all proper  
21 parties. On petition of the person to whom the subpoena is  
22 directed, the court may vacate or modify the subpoena.

23 c. Petition the court, with the approval of the Fayetteville City  
24 Council, for any appropriate relief, if the Commission  
25 determines, following a hearing as provided in this ordinance,  
26 that there is a reasonable cause to believe that a violation of this  
27 Article has occurred, and if efforts at conciliation have not been  
28 concluded to the satisfaction of the Commission, or if the terms  
29 of any conciliation agreement negotiated by the Commission  
30 under the provision of this Article or said ordinance are not being  
31 complied with by respondent(s).

32 d. Adopt, promulgate, amend, and rescind such rules and  
33 regulations to effectuate the purposes and policies of this Article  
34 or said ordinance and the policies and practices of the  
35 Commission in connection therewith, including regulations  
36 requiring the posting or inclusion in advertising material of  
37 notices prepared or approved by the Commission, and regulations  
38 as to filing, approval, or disapproval of plans to eliminate or  
39 reduce the effects of discriminatory practices. The Commission  
40 may authorize its staff to receive, initiate, seek to conciliate, or  
41 carry out investigative duties as specified in this Article and the  
42 rules and regulations adopted by the Commission. Such rules  
43 and regulations shall be approved by the City Council and shall

- 1                   only be adopted, amended, or rescinded after the Commission  
2                   holds a public hearing. A copy of the text of the proposed rule,  
3                   amendment, or decision shall be available for public inspection  
4                   and copying at the office of the Commission.
- 5           e.       Impanel a hearing board appointed by the City Council to hear  
6                   complaints, which board shall consist of five hearing officers  
7                   who shall not be members of the Commission. No member of  
8                   the hearing board shall have a part in the investigation of a  
9                   complaint, except as to the issuance of subpoenas or  
10                   interrogatories and other appropriate legal processes.
- 11           f.       Authorize its hearing board appointed by the City Council  
12                   impaneled at any time after a complaint is filed with the  
13                   Commission, and upon a majority vote of said board, to issue  
14                   subpoenas and subpoenas duces tecum compelling witnesses to  
15                   attend and testify at the hearing and compelling witnesses to  
16                   bring with them at the hearing certain specified evidence and to  
17                   require, by summons, subpoena, or other appropriate legal  
18                   process, answers to interrogatories, to administer oaths, and to  
19                   examine witnesses under oath or affirmation in person or by  
20                   deposition. If any person refuses to obey a subpoena issued  
21                   pursuant to this ordinance, answer interrogatories or other  
22                   appropriate legal process, the Commission may apply to the  
23                   superior court for an order requiring such person to obey the  
24                   subpoena, answer the interrogatories, or other appropriate legal  
25                   process. The court may take any appropriate legal action to  
26                   compel compliance. Witnesses whose depositions are taken or  
27                   who are summoned before the Commission or its agents shall be  
28                   entitled to the same witness and mileage fees as are paid to  
29                   witnesses in the courts of this State.
- 30           g.       Authorize the hearing board, upon receipt of a written application  
31                   to said board, to grant a respondent a reasonable number of  
32                   subpoenas and interrogatories by and in the name of the  
33                   Commission to the same extent and subject to the same  
34                   limitations as the Commission itself.
- 35           h.       Petition the superior court for injunctive relief, including  
36                   temporary restraining orders, after the filing of a complaint and  
37                   upon a majority vote of the Commission, a quorum being present  
38                   and voting.
- 39       (3)       Provide that an aggrieved person, his agent, or a member of the  
40                   Commission may file a written complaint with the Commission within  
41                   one year after the alleged violation occurred, setting forth the facts upon  
42                   which the complaint is based, and setting forth facts sufficient to enable  
43                   the hearing board to identify the person charged (hereinafter the

1           respondent). Upon the filing of a complaint, the Commission shall  
2           serve notice upon the complainant acknowledging such filing and  
3           advising the complainant of the time limits and choice of forums  
4           provided under this Article. No later than 10 days after the filing of a  
5           complaint, the Commission shall serve on the respondent a notice  
6           identifying the alleged discriminatory housing practice and advising  
7           such respondent of the procedural rights and obligations of respondents  
8           under this Article, together with a copy of the original complaint.

9           (4) Provide that the Commission shall investigate complaints filed herein,  
10           make determinations of probable cause, and seek to conciliate apparent  
11           violations of this Article. Investigations shall commence within 30 days  
12           after the filing of a complaint. The investigation shall be completed in  
13           100 days. If for any reason, the 100-day period must be extended, or  
14           delayed, the Commission shall write to the parties explaining the  
15           reasons for said extension or delay. Conciliation efforts may be  
16           initiated by any party, aggrieved person, the Commission, staff or  
17           hearing board.

18           (5) Provide that a conciliation agreement negotiated herein may include, but  
19           is not limited to:

20           a. Sale, exchange, lease, rental, assignment, or sublease of real  
21           property to a person.

22           b. Extension to all persons of the full and equal enjoyment of the  
23           advantages, facilities, privileges, and services of the respondent.

24           c. Reporting as to the manner of compliance.

25           d. Posting of notices in conspicuous places in the respondent's place  
26           of business in a form prescribed by the court to the Commission.

27           e. Payment to the complainant of actual damages, including  
28           compensation for humiliation and embarrassment, and reasonable  
29           attorneys' fees.

30           f. At any time, but not later than one year from the date of a  
31           conciliation agreement, the Commission or Director shall  
32           investigate whether the terms of the agreement are being  
33           complied with by the respondent. Upon deciding that the terms  
34           of the agreement are not being complied with by the respondent,  
35           the Commission or staff shall informally seek voluntary  
36           compliance with the conciliation agreement. If informal methods  
37           fail, the Commission, with the approval of the City Council, shall  
38           file a civil action seeking enforcement of the terms of the  
39           conciliation agreement.

40           g. At any time after a complaint is filed, the Commission may file a  
41           petition in the superior court, seeking appropriate temporary  
42           injunctive relief, against the respondent, pending final  
43           determination of proceedings under the ordinance.

1           h. Each conciliation agreement shall be made public unless the  
2           complainant and respondent otherwise agree and the Commission  
3           determines that disclosure is not required to further the purposes  
4           of this Article.

5           (6) Provide that the City Council shall establish a hearing board consisting  
6           of five members, one of whom shall be a representative of the real estate  
7           industry, and one of whom shall be a licensed attorney, to hear  
8           complaints and make appropriate findings. The Fair Housing Board  
9           heretofore appointed shall continue in existence for purposes of carrying  
10           out the powers, duties, and responsibilities authorized in this Article and  
11           said ordinance. All appointments shall be for two-year terms, with no  
12           member eligible to serve more than two consecutive terms. The Fair  
13           Housing Board so appointed shall commence whenever the Commission  
14           determines there is probable cause to believe the Article has been  
15           violated and a conciliation failure has occurred. Hearings open to the  
16           public may be initiated by the respondent at any time during the  
17           conciliation process. If the hearing board determines:

18           a. That the respondent has not engaged in an unlawful practice, the  
19           board shall state its findings of fact and conclusions of law and  
20           shall issue an order dismissing the complaint; or

21           b. That the respondent has engaged in an unlawful practice, it shall  
22           state its findings of fact and conclusions of law.

23           (7) Provide that final administrative disposition of the complaint shall be  
24           made within one year of the date the complaint is filed, unless it is  
25           impracticable to do so. If final administrative disposition is not able to  
26           be made within one year, the Commission shall notify the complainant  
27           and the respondent in writing of the reasons for not doing so.

28           (8) Provide that an action alleging a violation of the ordinance may be filed  
29           in the Cumberland County Superior Court (hereinafter known as the  
30           court) by the city attorney or his designee on behalf of the Commission,  
31           the complainant, or aggrieved person, with the approval of the  
32           Fayetteville City Council, upon the recommendation of the Commission  
33           that there is reasonable cause to believe a violation of the ordinance has  
34           occurred or is about to occur and if the City Council finds that:

35           a. There is reasonable cause to believe that a person or group of  
36           persons is engaged in a pattern or practice of resistance of the full  
37           enjoyment of any rights granted by the ordinance;

38           b. There is reasonable cause to believe that any person or group of  
39           persons has been denied any of the rights granted by the  
40           ordinance and such denial raises an issue of general public  
41           importance; or

42           c. There is reasonable cause to believe that the violation affects an  
43           individual's rights under this Article.

1           (9)    Provide that if the Commission determines that (i) there is reasonable  
2           cause to believe that a violation of the ordinance has occurred; (ii) a  
3           lawsuit has not been authorized by the City Council; and (iii) if  
4           conciliation attempts are unsuccessful, the Commission shall notify the  
5           parties of its findings, and the individual complainant may bring a  
6           private action in court.

7           (10)   Provide that if it shall be determined by the court that a discriminatory  
8           practice has occurred, an order may issue granting relief to those  
9           persons who have suffered the effects of such discrimination. Before  
10          relief may be granted, it shall not be necessary for the court to find that  
11          intentional discrimination has occurred. It shall be sufficient that the  
12          respondent's action or failure to act resulted in unlawful discrimination.

13          (11)   Provide that the court may grant any relief it deems appropriate,  
14          including any permanent or preliminary injunction, temporary  
15          restraining orders, or other orders, including an order enjoining the  
16          defendant from engaging in such practice or ordering such affirmative  
17          action as may be appropriate, and may award to the plaintiff actual and  
18          punitive damages, may assess civil penalties and may award court costs  
19          and reasonable attorneys' fees to a prevailing party. Provided, however,  
20          that a prevailing respondent may be awarded court costs and reasonable  
21          attorneys' fees only upon a showing that the case is frivolous,  
22          unreasonable, or without foundation. The judge may assess a civil  
23          penalty against the respondent in an amount not:

24          a.       Exceeding ten thousand dollars (\$10,000) if the respondent has  
25          not been adjudged to have committed any prior discriminatory  
26          housing practice;

27          b.       Exceeding twenty-five thousand dollars (\$25,000) if the  
28          respondent has been adjudged to have committed one other  
29          discriminatory housing practice during the five-year period  
30          ending on the date of the filing of the charge; and

31          c.       Exceeding fifty thousand dollars (\$50,000) if the respondent has  
32          been adjudged to have committed two or more discriminatory  
33          practices during the seven-year period ending on the date of the  
34          filing of this charge.

35          However, if the present and previous discriminatory practices were acts,  
36          committed by the same natural person, the judge may impose penalties  
37          without regard to the time limitations set forth above.

38          (12)   Provide that all civil actions brought pursuant to the ordinance shall be  
39          heard by the court, de novo.

40          (13)   Provide that in conducting an investigation, the Commission shall have  
41          access at all reasonable times to premises, records, documents,  
42          individuals, and other evidence or possible sources of evidence and may  
43          examine, record, and copy such materials and take and record the

1 testimony or statements of such persons as are reasonably necessary for  
2 the furtherance of the investigation. In aid of an investigation the  
3 Commission and the hearing board may issue subpoenas and order  
4 discovery. Such subpoenas and discovery may be ordered to the same  
5 extent and subject to the same limitations as would apply if the  
6 subpoenas or discovery were ordered or served in aid of a civil action in  
7 the general court of justice.

8 (14) Provide that after the Director of the Human Relations Department  
9 makes a finding of reasonable cause, the aggrieved person or respondent  
10 has the right to elect to proceed immediately to the Cumberland County  
11 Superior Court rather than proceed through the administrative hearing  
12 process. Such decision must be submitted in writing to the Human  
13 Relations Department within 20 working days of receipt of the  
14 Director's decision. If the right of election is exercised, upon approval  
15 of the City Council and findings consistent with subdivision (8) of this  
16 section of this Charter, the City will commence and maintain such  
17 action on behalf of the complainant(s) or aggrieved person and the  
18 Commission.

19 (15) Provide that an aggrieved person may commence a civil action in  
20 Cumberland County Superior Court not later than two years after the  
21 occurrence or the termination of an alleged discriminatory housing  
22 practice; the computation of such two-year period shall not include any  
23 time during which a complaint was being processed by the Commission  
24 or hearing board under this Article with respect to such discriminatory  
25 housing practice; an aggrieved person may commence a civil action  
26 under this section whether or not a complaint has been filed and without  
27 regard to the status of any such complaint, but if the aggrieved person  
28 has signed a conciliation no action may be filed under this section by  
29 such aggrieved person with respect to the alleged discriminatory  
30 housing practice which forms the basis for such complaint.

31 (16) Provide that in a civil action commenced pursuant to this section, the  
32 court may award, in addition to the relief specified in subdivision (11)  
33 of this section, reasonable attorneys' fees and court costs to the  
34 prevailing party.

35 "Sec. 8.31. **Exemptions.** Any ordinance enacted pursuant to this Article may provide  
36 for exemption from its coverage:

- 37 (1) The rental of housing accommodations in a building ~~which contains~~  
38 containing housing accommodations for not more than four families  
39 living independently of each other, if the owner or a member of his  
40 family resides in one of the housing accommodations;  
41 (2) The rental of ~~one room or one rooming unit in a housing accommodation by~~  
42 an individual if he or a member of his family resides therein; ~~a room or~~

- 1                    rooms in a private house, not a boarding house, if the lessor or a  
2                    member of his family resides therein;
- 3                    (3) ~~A landlord who refuses to rent to an unmarried couple;~~
- 4                    (4) ~~Discrimination by a religious organization, association or society, or any~~  
5                    ~~nonprofit institution or organization operated, supervised, or controlled~~  
6                    ~~by or in conjunction with a religious organization, association, or~~  
7                    ~~society, in limiting the sale, rental, or occupancy of dwellings which it~~  
8                    ~~owns or operates for other than a commercial purpose to persons of the~~  
9                    ~~same religion, or in giving preference to such persons, unless~~  
10                    ~~membership in such religion is restricted on account of race, color, sex,~~  
11                    ~~or national origin.~~
- 12                    (3) With respect to discrimination based upon sex, the rental or leasing of  
13                    housing accommodations in single-sex dormitory property;
- 14                    (4) The sale or rental of any single-family house by an owner provided such  
15                    private individual owner does not own or have any interest in more than  
16                    three such single-family houses at any one time; provided further, that  
17                    in the case of the sale of any such single-family house by a private  
18                    individual owner not residing in such house at the time of such sale or  
19                    who was not the most recent resident of such house prior to such sale,  
20                    the exemption granted may only apply with respect to one such sale  
21                    within any 24-month period; provided further, that any single-family  
22                    house under this exemption may not be sold or rented (i) with the use in  
23                    any manner of the sales or rental facilities of any real estate broker,  
24                    agent, salesman, or of any employee of any such broker, agent, or  
25                    salesman; or (ii) with the publication or posting of any advertisement in  
26                    violation of this Article. Nothing in this provision shall prohibit the use  
27                    of attorneys, escrow agents, abstractors, title companies, and other such  
28                    provisional assistance as necessary to perfect or transfer the title;
- 29                    (5) Housing accommodations owned and operated for other than a  
30                    commercial purpose by a religious organization, association or society,  
31                    or any nonprofit institution or organization; operated, supervised, or  
32                    controlled by or in conjunction with a religious organization, association  
33                    or society shall not be prohibited by this Article from limiting the sale,  
34                    rental, or occupancy of dwellings which it owns or operates to persons  
35                    of the same religion, or from giving preference to such persons unless  
36                    membership in such religion is restricted on account of race, color, or  
37                    national origin;
- 38                    (6) The sale, rental, exchange, or lease of commercial real estate, which is  
39                    not real estate intended for residential use;
- 40                    (7) A private club not, in fact, open to the public which as an incident to its  
41                    primary purpose or purposes, provides lodging which it owns or  
42                    operates for other than commercial purposes limiting the rental or

1 occupancy of such lodging to its members or gives preference to its  
2 members;

3 (8) The provisions in this Article regarding familial status shall not apply  
4 with respect to housing for older persons:

5 a. As used in this section 'housing for older persons' means,  
6 housing:

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

10 2. Intended for, and solely occupied by, persons 62 years of  
11 age or older; or

12 3. Intended and operated for occupancy by at least one  
13 person 55 years of age or older as shown by the following  
14 factors:

15 I. The existence of significant facilities and services  
16 specifically designed to meet the physical or social  
17 needs of older persons, or if the provision of such  
18 facilities and services is not practicable, that such  
19 housing is necessary to provide important housing  
20 opportunities for older persons; and

21 II. That at least eighty percent (80%) of the dwellings  
22 are occupied by at least one person 55 years of age  
23 or older per unit; and

24 III. The publication of, and adherence to, policies and  
25 procedures which demonstrate an intent by the  
26 owner or manager to provide housing for persons  
27 55 years of age or older.

28 b. Housing shall not fail to meet the requirements for 'housing for  
29 older persons' by reason of:

30 1. Persons residing in such housing as of the date of  
31 enactment of this Article who do not meet the  
32 requirements of subdivision (8)a.2. and 3. of this section.

33 2. Unoccupied units, provided that such units are reserved  
34 for occupancy by persons who meet the age requirements  
35 of subdivision (8)a.2. and 3. of this section.

36 c. Housing facilities newly constructed for first occupancy after the  
37 date of enactment of this Article shall satisfy the requirements of  
38 subdivision (8)a.2. and 3. of this section, if:

39 1. When twenty-five percent (25%) of the units are occupied,  
40 eighty percent (80%) of the occupied units are occupied  
41 by at least one person 55 years of age or older thereafter;  
42 and

1                   2.     Eighty percent (80%) of all newly occupied units are  
2                   occupied by at least one person 55 years of age or older  
3                   until such time as eighty percent (80%) of all units in the  
4                   housing facility are occupied by at least one person 55  
5                   years of age or older.

6     ~~Single-sex dormitory rental property shall be excluded from the provisions of this~~  
7 ~~Article which relate to discrimination based on sex.~~

8     "Sec. 8.32. **Complaints and other records.** The City Council may provide that  
9 neither complaints filed pursuant to the ordinance nor the results of any investigations,  
10 discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be  
11 subject to inspection, examination, or copying under the provisions of ~~what is now~~  
12 Chapter 132 of the General Statutes.

13     "Sec. 8.33. **Board meetings.** The City Council may provide that the statutory  
14 provisions relating to meetings of government bodies, presently embodied in Article 33C  
15 of Chapter 143 of the General Statutes, shall not apply to the activity of the board  
16 authorized to enforce the ordinance, to the extent that said board is receiving a complaint  
17 or conducting an investigation, discovery, or conciliation pertaining to a complaint filed  
18 pursuant to the ordinance.

19     "Sec. 8.34. **Conforming amendments.** The City Council may amend any ordinance  
20 adopted pursuant to the provisions of this Article to ensure that the ordinance remains  
21 substantially equivalent to Title VIII of the Civil Rights Act of 1968, as amended by the  
22 Fair Housing Amendments Act of 1988, or any amendment thereafter."

23             Sec. 2. This act becomes effective October 1, 1995, and ordinances under it  
24 may be adopted prior to that date, but such ordinances do not become effective prior to  
25 October 1, 1995.