Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: [Fair Housing Act Amendments]
(1 of 3)
Box: 6

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

THE WHITE HOUSE
WASHINGTON

12.15.82

Bill —

I'd like to discuss the Fair Housing problem with you & Steve, Tomorrow at 8:00 am if best for you.

Mike

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410

December 14, 1982

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO:

Mr. Michael M. Uhlmann
Assistant Director for
Legal Policy
Office of Policy Development
Office of Management and Budget
Washington, D.C. 20503

Dear Mike:

Enclosed is a copy of a comparative analysis that was made a few weeks ago between our draft Fair Housing Amendments (the draft that I sent to you on November 2, 1981) and several bills that were then pending in Congress. Mr. Sensenbrenner, as far as I know, has not introduced a bill in this session, but based upon his stated views on the 1980 proposals (copy attached), I think that our proposal comes closer to his thinking than the administrative proceedings contemplated by the Fish and Railsback bills.

Also enclosed, as further background to our proposal, is a copy of the memorandum which Assistant Secretary Monroig and I submitted to the Secretary last year.

Sincerely yours,

John J. Knapp
General Counsel

Enclosures

SUPPLEMENTAL VIEWS TO H.R. 5200 BY MR. VOLKMER AND MR. SENSENBRENNER

Title VIII of the Civil Rights Act was enacted to prevent discrimination in the sale and leasing of housing. In recent years this act has been criticized because it does not provide sufficient enforcement powers to combat discrimination. H.R. 5200 is legislation which is aimed at meeting this criticism.

A major issue which remains to be resolved is what the most appropriate enforcement means will be. A choice will have to be made between the administrative enforcement procedures, which the reported bill establishes, and the Sensenbrenner-Volkmer approach, which utilizes the U.S. District Courts including U.S. Magistrates where possible and emphasizes a nonformal resolution of differences through conciliation. We offered such an amendment in the Committee markup but were defeated by a 10–20 vote.

This policy choice raises significant questions which must be answered:

1. Which approach improves an individual complainant's access to the system and speeds resolution of the issues?
2. Which approach will provide the best relief for a victim of discrimination while maintaining fairness?
3. Which approach provides the most incentive to settle disputes without resorting to formal procedures?

We believe that the Sensenbrenner-Volkmer approach provides the best answer to these questions.

H.R. 5200, as reported, envisions Administrative Law Judges as the enforcement mechanism. HUD officials have testified that they envision utilizing 7 ALJ's to handle the caseload for the entire nation. This is not even one ALJ for each of the 10 HUD regional offices. We find it hard to believe 7 individuals, who at best will ride circuit within the regions, can provide sufficient access to the enforcement system.

These 7 ALJ's must be compared with a court system to which we have recently added new judgeships and greatly expanded the powers of U.S. Magistrates. We believe the U.S. District Courts, which cover much smaller territorial area than HUD regions, are well staffed to handle the caseload within that particular district. When you consider that the District Courts are multi-judge, sit in more than one location, and that magistrates in appropriate situations may be utilized, the choice is clear.

Instead of HUD being the lead agency in actual enforcement proceedings, we would place Federal enforcement within the Department of Justice. This allows a more coordinated enforcement effort. In fact, the Civil Rights Commission in the recent report of the United States Civil Rights Commission "The State of Civil Rights: 1979" commended the Civil Rights Division of DOJ for its announced decision "to make a greater effort to focus on bringing (housing discrimination) cases that have a high impact in terms of number of units affected on the issues raised". The report goes on to state that DOJ's "interest in coordinating litigative action—makes a new and possibly useful future strategy."

The Sensenbrenner-Volkmer approach provides the best solution. By utilizing the courts we provide greater access. By spreading the caseload we provide greater speed. By allowing DOJ to be the lead Federal enforcement agency, we promote coordinated activity.

As reported, H.R. 5200 is deficient in providing relief for a victim of discrimination. The ALJ will not be able to award certain kinds of damages, i.e. pain and suffering and punitive damages. This can only be done by an article III court. Any administrative proceeding brought under the Act will benefit only the government (a civil penalty of up to $10,000.) while awarding the victim nothing.

Our amendment would not result in these deficiencies. Courts can award compensatory and punitive damages. The arbitration provision we will discuss later allows an award of up to $500, to be made by an arbitrator without a case going to court. These provisions will allow adequate monetary as well as specific relief to be granted a victim.

In addtion, the independence of the administrative forum, must be questioned. It must be remembered that the ALJ's will be employees of HUD. As written, the bill would allow HUD to assure the role of investigator, prosecutor and judge, all in the same case. We do not believe this is proper. Despite the Administrative Procedures Act, ALJ's will have a natural institutional bias. Utilization of the Courts under our amendment avoids a potential conflict.

We also believe that the Sensenbrenner-Volkmer approach better promoted the use of informal conciliation as a method of resolving disputes. While both present law and the reported bill do not in any way encourage conciliations we provide the necessary incentive by allowing sanctions to be imposed against those who refuse to make a good faith effort at conciliation. We allow the parties to submit, upon mutual consent, to binding arbitration of the dispute with HUD given administrative enforcement power over the arbitration award. An arbitrator will be able to award specific damages.

In the recent past HUD itself has been criticized in reference to its enforcement of fair housing laws by the Civil Rights Commission. These criticisms range from poorly trained staff, failure to issue guidelines and regulations to implement Title VIII and failure to promptly process discrimination complaints to failure to improve the conciliation rates for Title VIII complaints.

Because we believe many of these complaints are justified, we should not at this time create a new bureaucracy within HUD to enforce fair housing laws. The amendment which we will offer will provide a fair, speedy and effective enforcement mechanism while avoiding the problems inherent in the administrative procedure. We put teeth into fair housing enforcement without adding to the government bureaucracy.

HAROLD L. VOLKMER
JAMES F. SENSENBRENNER, Jr.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410

JUL 14 1981

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO:

MEMORANDUM FOR: Secretary Pierce

FROM: John J. Knapp, General Counsel, G
Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: Fair Housing Amendments

This presents our joint recommendation on the content of a Fair Housing Amendments Act to be proposed by the Administration. Briefly, we recommend that the proposal:

a) be limited solely to improving the enforcement mechanisms, with no amendments to the substantive coverage of the Act;

b) authorize the Secretary, upon failure of conciliation, to commence a District Court action for a civil penalty or injunctive relief or both;

c) not create any magistrate or administrative law judge procedures, either inside HUD or outside.

Our recommendations and their background, plus some comments on other proposals now pending in the Senate and House, are detailed below.

Scope of Proposal. The principal criticism of the Fair Housing Act has been of its enforcement mechanisms. The proposals that were considered last year also included several substantive coverage amendments, most of which created enough controversy to add to the difficulty of passage. One of these was to add the handicapped as a new class of protected persons, with complicated provisions regarding the type of accommodations that may be required to suit the handicapped and who should bear their cost. Since we have not yet come fully to grips with what's required even in Federal programs under Section 504 of the Rehabilitation Act of 1973, it seems to us inappropriate to push these burdens onto private owners at this time. It would not be consistent with the deregulatory thrust of this Administration. Other controversial amendments relating to hazard insurance and appraisal practices aroused strong

opposition. These proposals are raised again in the Fair Housing Amendments bills introduced this year in the Senate (Mathias) and House (Railsback). We recommend that the Administration make none of these proposals and that it resist having any of them added to its enforcement improvement legislation.*

Existing Mechanism. The existing enforcement mechanism can be summarized briefly. An "aggrieved person" may file a complaint with HUD, which must investigate (with subpoena powers and power to administer oaths) and attempt to resolve the complaint "by informal methods of conference, conciliation, and persuasion." If this fails, HUD has no place further to go. A person aggrieved may commence a District Court action within 60 days after the filing of a complaint with HUD if conciliation fails. Also, persons injured by an alleged discriminatory housing practice may file an independent action in District Court within 180 days after the discriminatory act regardless of whether a complaint is filed with HUD. In an action filed independent of prior resort to the conciliation process, the plaintiff can obtain equitable relief or actual damages and up to $1,000 punitive damages. There is some question as to whether a plaintiff who commences court action only after failure of conciliation can seek damages as well as equitable relief. Attorneys' fees may be granted to a prevailing plaintiff, but only if the plaintiff "in the opinion of the Court is not financially able to assume said attorney's fees."

The statute also provides that where a State or local law provides rights and remedies for discriminatory housing practices "substantially equivalent" to that provided under Title VIII, HUD must advise the local agency of any Title VIII complaint filed with it which appears to violate the local law, and HUD will abstain if the local agency then commences proceedings and "carries forward such proceedings

---

*We also are not recommending any provision directed either to the use or standing of testers. The Mathias bill carries forward a provision from last year's Senate bill providing that HUD would not utilize or fund testers other than for verification purposes. This would not restrict any current HUD practice (except the use of testers for purely research purposes) but there appears no reason to volunteer it. As for standing of testers as such to bring complaints, the position we are presenting to the Solicitor General for the current Supreme Court case is that the statute as presentlywritten provides such standing.

with reasonable promptness." However, HUD can proceed with its own processing if the Secretary "certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action."

In addition to the foregoing, the Attorney General is authorized to commence an injunctive action in District Court if he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance." These are the so-called "systemic discrimination" cases that are referred by HUD to Justice.

Prior Proposals. The bill introduced by Senator Mathias this year, which is substantially what was reported by the Senate Judiciary Committee last year, would create a system of administrative law judges appointed by a 3-member Fair Housing Commission appointed by the President. If the HUD conciliation effort fails, the Secretary would be authorized to file a complaint before an administrative law judge, who after hearing could grant "such relief as may be appropriate (including compensation for out of pocket costs incurred by the aggrieved person as the result of the discriminatory housing practice), and may impose a civil penalty of not to exceed $10,000." The order of the administrative law judge would be appealable by any party (including any "aggrieved person" who intervenes) to the Fair Housing Commission or directly to the Court of Appeals. The final order of the Fair Housing Commission, if appeal is taken there, is also appealable to the Court of Appeals. On judicial review, the "substantial evidence in the record considered as a whole" rule applies as to the findings of fact by the administrative law judge. The Chairman of the Fair Housing Commission is paid at Executive Level III and the two other members at Executive Level IV.

The Senate bill also continues the separate authority of the Attorney General to commence an action in District Court, expanded to include any single-victim complaint referred by HUD (as an alternative to an administrative complaint before an administrative law judge). Any aggrieved person may intervene, and the Court is authorized to award damages as well as equitable relief.

In addition, the right of an aggrieved person to bring an independent District Court action also is preserved, with the statute of limitations lengthened to two years.

The Senate bill also made a change in the area of attorneys' fees by providing that attorneys' fees could be awarded to the prevailing party - plaintiff or defendant, but not including the Government - without a finding of financial necessity. While no standards were stated in the bill, it was expected, on the basis of case law, that the standards for granting fees to prevailing plaintiffs would be somewhat more liberal than to defendants.

The bills also made the referrals to State agencies less discretionary from HUD's viewpoint, both by dictating the criteria for finding a State procedure "substantially equivalent" and by removing HUD's ability to take the case back if the Secretary certified that "in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action." Instead, after referral the Secretary could proceed only with the State agency's consent or if the State agency "has not acted in a timely fashion" or "no longer qualifies for certification."

The House bill last year was largely similar except that the administrative law judges were HUD employees, and their orders were reviewable by the District Court, which was to make a "de novo determination of the adequacy of the findings of fact and conclusion of law to which objection is made."

When the House bill went to the floor last year, it passed after an amendment which took the ALJ's out of HUD and gave them to the Attorney General. In the Senate, although the Judiciary Committee reported the bill with the ALJ's subject to the Fair Housing Commission, off-the-floor compromise during the late-session debate eliminated ALJ's in favor of a Magistrate system with de novo review by a District Court.

A major objection to hearings before HUD administrative law judges was the "judge-prosecutor-jury" argument. The conservative Senate Republicans (Thurmond, Laxalt, Hatch, Cochran), then in a minority on the Committee, objected to (i) a politically appointed adjudicator, including a panel appointed by the President, and (ii) imposition of civil penalties by any tribunal except an Article III court with a jury.

(An additional stumbling block last year was Senator Hatch's attempts to write an "intent test" requirement into the statute. It would be our hope that this extraneous issue can be kept out of the bill if it remains limited to enforcement mechanisms not strenuously objectionable to the Senate majority.)

As noted, the Mathias bill introduced this year is substantially the same as that reported last year by the Senate Judiciary Committee, including the Fair Housing Commission. The Railsback proposal in the House provides for administrative law judges appointed by the Attorney General, whose determinations would be subject to District Court "de novo" review. The Magistrate system has not been revived to date.

Recommendation. The major criticism of the existing mechanism has been that the conciliation process does not work because there is no sanction: the Secretary has no place to go if it fails. Thereafter, except in the "pattern or practice" cases that can be referred to the Attorney General, it is up to the private complainant to pursue the matter in Court. We recommend a simple proposal under which the Secretary, upon failure of conciliation, can go straight to Court for equitable relief or a civil penalty or both, thus skipping intervening administrative or magistrate hearings that remain subject to de novo review.

In further detail, we recommend the following procedures:

1. Upon filing of a complaint, the Secretary would investigate and attempt to conciliate, as now provided. (We would retain essentially the same provisions regarding State referrals, as well as recall from those proceedings, as now exist.)

2. Upon a determination by the Secretary not to continue conciliation attempts, the Secretary would be authorized to commence a District Court action for equitable relief or civil penalty. Supreme Court cases indicate clearly that civil penalty imposition by Court requires jury trial. Mathias legislation proposed civil penalty up to $10,000. This is a frequent upper limit in civil penalty statutes, but not universal. We recommend provision for up to $25,000 for second offense.

3. A private complainant would retain its right to commence an independent District Court action for damages or equitable relief, probably with an expanded statute of limitations.

4. An issue for consideration is whether the Secretary, in his District Court action, can seek damages on behalf of the private aggrieved person, in a parens patriae position similar to that considered last year for the Attorney General. We recommend against this, mainly because it detracts from the clear characterization of the Secretary's action as vindicating a public right. In addition, the

damage element in a single-victim case ordinarily is not significant enough to justify becoming an important issue. Further, because the Secretary's action requires jury trial, there should be liberal allowance of intervention in the action by the private complainant seeking damages.

5. We recommend that the statute provide for representation of the Secretary in the District Court action by HUD attorneys. (When a similar idea was raised several years ago Justice objected, but we don't know what the current Attorney General's reaction would be. Moreover, there is close precedent: EEOC has a parallel litigation authority under Title VII.)

6. "Pattern or practice" jurisdiction would be retained by the Attorney General (but not necessarily exclusively). In addition, it may be advisable that land-use cases be referred to the Attorney General. The Mathias and Railsback bills provide for mandatory referral of land-use cases, including challenges of validity of zoning, to Attorney General. This has the advantage of keeping HUD out of cases where cities or localities, our program participants, are defendants. Mathias bill also provides mandatory referral of cases involving "any novel issue of law or fact or other complicating factor"; this can only produce collateral hassles, and we recommend against it.

7. An issue to be considered is whether the Secretary should be given authority to seek appropriate preliminary or temporary judicial relief pending final disposition of an administrative complaint. The purpose would be to maintain status quo during the conciliation proceeding, and such provisions are contained in both the Mathias and Railsback bills. It may be questioned how important this is; presumably an inability to obtain voluntary agreement on maintaining status quo would be an adequate pretext for going from conciliation to a court proceeding anyway, whereupon temporary relief could be sought under the Federal rules. On balance, however, we recommend inclusion of such a provision in our proposed bill.

8. We recommend availability of attorney fees to a "prevailing party" without necessity of showing financial necessity. It is a fair criticism that Title VIII currently is the only civil rights statute requiring financial necessity for the award of attorney's fees to a successful plaintiff. At the same time, it may be difficult to ease this requirement for plaintiffs without providing availability of counsel fees, albeit on a less liberal standard, to defendants. This would be consistent with the Civil Right Attorney's Fee Awards Act.

We would like to discuss this with you at your convenience, to obtain your reaction and to expand upon our own views. If you approve this approach, we also would discuss how to go about obtaining clearance and support within the Administration (beginning with Justice) and, thereafter, in Congress (probably starting with Senator Baker).

John J. Knapp
General Counsel

Antonio Monroig
Assistant Secretary for Fair
Housing and Equal Opportunity

cc:
Antonio Monroig, 5100
Everett Wallace, 5204
Alan F. Coffey, 10214
Chron, 10214
Official, 10214

DIFFERENCES BETWEEN THE DOLE COMPROMISE
BILL AND LAST YEAR'S SENATE BILL

1. Sec. 4 §802(h): Definition of handicap supplemented by defining key terms.

2. Sec. 5 §803(d): Modification of exemptions, single-family homes exempted only if owner owns only one such dwelling and was the most recent occupant.

3. Sec. 6 §805 : Special provisions requiring "intent" for appraisers and minimum lot size requirements deleted in light of new standard of proof section.

4. Sec. 7 §810(a)(3): Referral to state agencies, modified House provision adopted. Specifies timeframes for referral and certification. Requires certification if the rights, remedies, and judicial review provided for by the statute are substantially equivalent to that of the state agency.

5. Sec. 7 §810(c): Secretary must make reasonable cause determination within 270 days. Two options available: initiate suit in district court pursuant to special procedures provided by §811, or refer to Attorney General.

6. Sec. 7 §811(a): Retains Magistrate concept, as was accepted as a compromise last year on the floor. However, there is a constitutional question as to whether parties can be forced to have interests adjudicated before a Magistrate. Thus, suit is brought directly in district court, but if parties consent, court is required to refer the case to a Magistrate. Secretary is required to give consent. Supreme Court is directed to develop procedures for prompt, informal Magistrate adjudication. Provision for $10,000 civil penalty is deleted. However, $10,000 cap is placed on punitive damages. (No cap if defendant(s) do not consent, and district court retains case.)

7. Sec. 7 §811(b): If consent is not given, district court retains the case. If not set for trial within 60 days, court is required to refer to a Master (who usually are magistrates) if the referral would

Copies to:
Mary
Goldhaber
Wallace
Knapp
Morris

promote the prompt, equitable resolution of the case.

8. Sec. 7 §811(c): Attorney General may represent Secretary in §811 proceedings. Protocol section used whenever a Department is authorized to initiate a civil action.

9. Sec. 7 §814(a): Standard of Proof section. Incorporates intent standard. According to a CRS study, in disparate treatment cases, courts use the "intent standard" applicable to Title VII (employment discrimination). Prima facie case is established by showing,

   a. Plaintiff is a member of a protected class;
   b. He applied and was qualified for housing;
   c. He was rejected;
   d. Housing opportunity remained available.

   To rebut, defendant need only articulate a legitimate, nondiscriminatory jusitification. Plaintiff must then show pretext. Dole bill will leave case law applicable to disparate treatment cases unchanged.

   Dole bill provides for new standard of proof for disparate impact cases, where various "effects" test are used. Under, Dole bill "effects" test may be used only to establish a prima facie case. May be rebutted by proving the existence of a legitimate, nondiscriminatory justification. Plaintiff must then show pretext. In proving pretext, plaintiff may introduce, and court must consider, evidence concerning the existence of reasonable alternative measures which would have had less discriminatory impact.

10. Sec. 7 §814(b): Secretary and AG prohibited from bringing actions unless cause to believe defendant's actions motivated by discriminatory intent.

DRAFT #2

97th CONGRESS

2nd SESSION

S. _____

(NOTE.—Fill in all blank lines except those provided for the date, number, and reference of bill.)

IN THE SENATE OF THE UNITED STATES

Mr. Dole

introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title VIII of the Act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

(Insert title of bill here)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Fair Housing Amendments Act of 1981".

SHORT TITLE FOR 1968 ACT

Sec. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SHORT TITLE FOR TITLE VIII

Sec. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

"SHORT TITLE

"Sec. 800. This title may be referred to as the 'Fair Housing Act'.".

AMENDMENTS TO DEFINITIONS SECTION

Sec. 4. (a) Section 802(f) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "section 804, 805, or 806" and inserting "this title" in lieu thereof.

(b) Section 802 of such Act is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. Such term does not include any current alcohol, drug abuse, or any other impairment which would be a direct threat to property or the safety of others. For purposes of this subsection, (i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. (iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation: (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; but is treated ~~by a recipient~~ as having such an impairment.

"(i) 'Aggrieved person' includes any person who claims to have

been injured by a discriminatory housing practice or who demonstrates a reasonable likelihood that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur, except that for the purpose of sections 810 and 811, the term 'aggrieved person' shall be limited to a person whose bona fide attempt or bona fide offer to purchase, sell, lease, or rent, or whose bona fide attempt to obtain financing for a dwelling has been denied, on the basis of race, color, religion, sex, handicap, or national origin, or made subject to terms of purchase, sale, lease, rental, or acquisition which discriminate on such basis; however, this exception shall not prevent the Secretary from making investigations, and attempting, to the extent feasible, to resolve charges by informal methods of conference, conciliation, and persuasion and from referring the matter to the Attorney General for filing of an appropriate civil action under section 813(b) of this title.".

MODIFICATION OF EXEMPTIONS

Sec. 5. Sec. 803 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-294, approved April 11, 1968) is amended--

(1) by striking out "Nothing in section 804 (other than subsection (c))" in subsection (b) and inserting in lieu thereof the following: "Nothing in section 804 (other than subsections (c) and (e))";

(2) by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (d)" in subsection (c);and

(3) by adding at the end the following:

"(d)(1) After the date of the enactment of the Fair Housing Amendments Act of 1982, subject to the provisions of section 807, the exemption provided in section 803(b)(1) shall be limited to any single-family house sold or rented by an owner provided, that such private individual owner does not own more than one such single family house at any one time, and resided in such house, or was the most recent resident of such house, prior to the sale or rental.

"(d)(2) After the date of the enactment of the Fair Housing Amendments Act of 1982, subject to the provisions of section 807, the exemption provided in section 803(b)(2) shall apply only if such rooms or units are sold or rented-

(A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(B) without the publication, posting, or mailing of any advertisement or written notice in violation of section 804(c) of this title.

"(d)(3) Nothing in subsection (d)(2) shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

DISCRIMINATORY HOUSING PRACTICE AMENDMENTS

Sec. 6. (a) The catchline of section 804 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

(b) Section 804 of such Act is amended by adding at the end the following:

"(f)(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of a handicap of a prospective buyer or renter or of a person or persons associated with such buyer or renter unless such handicap would prevent a prospective dwelling occupant from conforming to such rules, policies, and practices as are permitted by clause (2); or

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of handicap. For purposes of this subsection, (A) discrimination shall include: (i) refusal to permit reasonable modifications of premises occupied, or to be occupied, by persons with a handicap which are necessary to afford such handicapped persons access to premises substantially equal to that of nonhandicapped persons, if, with respect to the rental of premises regularly occupied as a landlord's personal residence, such handicapped persons have agreed to return such premises to their original condition if requested to do so by the landlord, or (ii) refusal to make reasonable accommodations in policies, practices, rules, services, or facilities when such accommodations are necessary to afford handicapped persons enjoyment of dwellings substantially equal to that of nonhandicapped persons; but (B) discrimination shall not include (i) refusal to make alterations in premises at the expense of sellers, landlords, owners, brokers, building managers, or persons acting on their behalf, (ii) refusal to make modification of generally applicable rules, policies, practices, services or facilities where such modification would result in unreasonable inconvenience to other affected persons, or (iii) refusal to allow architectural changes to, or modifications of, dwellings which would materially alter the marketability of a dwelling or the manner in which a dwelling or its environs has been, or is intended to be, used.

"(g) For any employee or agency of a State or local government to take any action, or to deny any privilege, license, or permit, and thereby prevent the establishment of any community residence operated for the purpose of providing residential services or supervision for eight or fewer persons

who have a handicap, unless such community residence or its proposed use--

"(1) would not meet an established, applicable Federal, State, or local health, safety, or program standard; or

"(2) violates, or would violate, a comprehensive land use plan or zoning ordinance for the geographical area for which the employee or agency has jurisdiction and such land use plan or zoning ordinance as enforced would permit the establishment of such community residence in other equally suitable locations. The granting or denial of variances in the past shall be deemed a part of such plan or ordinance.".

(d) Subsections (c), (d), and (e) of section 804 and section 806 are each amended by inserting "handicap" immediately after "sex," each place it appears.

(e) Section 805 of such Act is amended to read as follows:

Sec. 805. (a) After the date of enactment of the Fair Housing Amendments Act of 1982, it shall be unlawful for any person or other entity whose business includes the making, purchasing, or insuring of loans, or selling, brokering, or appraising of real property, to deny or otherwise make unavailable a loan or other financial assistance which is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of race, color, religion, sex, handicap, or national origin.

(b) Subject to section 814(a) of this title, it is not a violation of this title for a person engaged in the business of furnishing appraisals of real property to take into consideration or to report to the person for whom the appraisal is being done all factors relevant to the appraiser's estimate of the fair market value of the property.

ENFORCEMENT CHANGES

Sec. 7. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out sections 810 through 815, by redesignating sections 816, 817, 818, and 819, sections 817, 818, 819, and 820, and inserting in lieu of the matter stricken the following:

"ENFORCEMENT; PRELIMINARY MATTERS

"Sec. 810. (a)(1) Whenever an aggrieved person, or the Secretary on the Secretary's own initiative, files a charge alleging a discriminatory housing practice, the Secretary shall serve a notice of the alleged discriminatory housing practice on the party charged (hereinafter in this title referred to as the 'respondent') within ten days after such filing,

and shall make an investigation thereof. Upon receipt of such charge, the Secretary shall serve notice upon the aggrieved person acknowledging receipt of the charge and advising the aggrieved person of the time limits and choice of forums provided under this title. At any time after the filing of a charge, the Secretary shall attempt, to the extent feasible, to resolve such charge by informal methods of conference, conciliation, persuasion, and, if both the aggrieved person and the respondent consent to binding arbitration, the Secretary shall refer such charge to an arbitrator who shall be made available by the Community Relations Service of the Department of Justice. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year. Such charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Secretary requires. An aggrieved person shall file a charge under this section with the Secretary not later than one year after the alleged discriminatory housing practice occurred or terminated. The Secretary may also investigate housing practices to determine whether charges should be brought under this section. In consultation with other appropriate Federal agencies, the Secretary shall issue new rules and regulations to implement the policies, purposes, and provisions of this title within one hundred and eighty days of the enactment of the Fair Housing Amendments Act of 1981. Nothing contained in the amendments made by such Act adds to or detracts from the authority of Federal agencies to prescribe rules and regulations to carry out programs and activities pursuant to law.

"(2)(A) In connection with any investigation of such charge, the Secretary shall, at reasonable times, have access to, and the right to copy, any information that is reasonably necessary for the furtherance of the investigation. The Secretary may issue subpoenas to compel such access to or the production of such information, or the appearance of persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States

district court for the district in which the investigation is taking place. The Secretary may administer oaths.

"(B) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary under clause (A) of this paragraph.

"(C) Witnesses summoned by subpoena of the Secretary under this title shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts.

"(D) The Secretary or other party at whose request a subpoena is issued under this title may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(E) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in such person's power to do so, in obedience to the subpoena or lawful order of the Secretary under this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to the Secretary's subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(3) Whenever a charge alleges a discriminatory housing practice within the jurisdiction of a State or local public agency certified by the Secretary under this paragraph, the Secretary shall, within 30 days after receiving such charge and before taking any action with respect to such charge, refer such charge to that certified agency. Except with the consent of such certified agency, the Secretary shall, after that referral is made, take no further action with respect to such charge, if the appropriate State or local law enforcement official has, before ninety days after the date the alleged offense has been brought to such official's attention,

commenced proceedings in the matter, and, having so commenced proceedings, carries forward such proceedings with reasonable promptness. An agency shall be certified under this paragraph if the Secretary determines that the substantive rights protected by that agency, the remedies available to such agency, and the availability of judicial review of such agency's action, are substantially equivalent to those created by this title. Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency. Any State or local agency may submit a written request for certification to the Secretary. Unless the Secretary interposes a written objection within 90 days after such submission, such State or local agency shall be deemed certified within the meaning of this title. If the Secretary objects within the prescribed 90-day period, he shall provide the State or local agency with an explanation specifically outlining the reason for his decision, and such decision shall be subject to review by the appropriate United States district court.

"(4) The Secretary and other Federal agencies having authority to prevent housing discrimination shall cooperate and seek to avoid duplication of effort in the exercise of their several authority. The Secretary is authorized to enter into agreements to permit such other Federal agencies to carry out the provisions of this paragraph within their respective jurisdictions. Not later than 180 days after the date of enactment of the Fair Housing Amendments Act of 1982, the Secretary shall enter into agreements with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, to carry out this paragraph with respect to depository institutions which are subject to the jurisdiction of such agencies.

"(b) If the Secretary concludes on the basis of a preliminary investigation of a charge that the Secretary is unable to obtain voluntary compliance and that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may refer the matter to the Attorney General and the Attorney General may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary

relief shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this paragraph to assign such proceedings for hearing at the earliest practicable date and to cause such proceedings to be in every way expedited. An application for relief under this paragraph shall not affect the initiation or continuation of ~~administrative~~ proceedings initiated under this section and section 811 of this title.

"(c) (1) If the secretary determines, after an investigation under this section, that reasonable cause exists to believe the charge is true, the Secretary shall--

(A) file, on behalf of the aggrieved person filing the charge, a civil action under the procedures provided under section 811 of this title; or

(B) refer the matter to the Attorney General for the filing of an appropriate civil action under section 813(b). Such determination in the case of a charge made by an aggrieved person shall be made not later than 270 days after the filing of such charge.

"(2) Notwithstanding paragraph (1) of this subsection the Secretary shall refer charges involving the legality or validity of any State or local zoning, or other land use law or ordinance, or any novel issue of law or fact or other complicating factor, as determined by the Secretary, to the Attorney General for appropriate action under section 813(b) of this title.

"(3) After each investigation under this section, the Secretary shall provide to each aggrieved person and each respondent a copy of the report of such investigation.

"(d) Neither the Secretary nor any other officer or employee of the United States may utilize the services of any other person, or provide direct or indirect assistance to any individual or organization to induce violations of this title (testers), except where such action is undertaken for the purpose of verifying a violation of this title which the Secretary has reason to believe has occurred.

"(e) Any court having jurisdiction of an action brought under this title which enters a temporary restraining order or preliminary injunction sought by the Secretary, or by any other Federal agency, may, if a violation of this title is not ultimately found and incorporated in a final judgment on the merits, enter an order providing reimbursement from such agency to

the defendant for unavoidable economic losses incurred during the time when the temporary restraining order or preliminary injunction was in effect, as a direct result of such temporary restraining order or preliminary injunction.

"ENFORCEMENT: HEARING PROCESS

"Sec. 811. (a)(1) Upon the filing, by the Secretary, of a civil action with the appropriate United States district court pursuant to section 810(c)(1)(A) of this title, the clerk of the court shall notify the respondent(s) of his or her right to consent to the jurisdiction of a U.S. Magistrate. The decision of the respondent(s) shall be communicated to the clerk, and if consent is given, shall be binding.

"(a)(2) Upon the consent of the respondent(s), it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to refer the case to a U.S. Magistrate to conduct all proceedings in the matter and order entry of judgment in the case. The Magistrate to whom the case is referred shall be a full-time Magistrate or a part-time Magistrate who serves as a full-time judicial officer, and who has been designated to exercise civil jurisdiction as provided in 28 U.S.C. 636(c)(1). In the event that no such Magistrate is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a qualified magistrate of any district in the circuit to hear and determine the case.

"(a)(3) The right to trial by jury shall be preserved in cases referred under paragraph 2 of this subsection, provided that the jury shall consist of no more than six.

"(a)(4) The Supreme Court shall prescribe general rules of practice and procedure for the purpose of providing prompt, inexpensive, and informal resolution of cases referred under paragraph (2) of this subsection. Each district court, by action of a majority of its judges, may prescribe rules governing such proceedings not inconsistent with the rules prescribed by the Supreme Court.

"(a)(5) The magistrate may order such relief as may be appropriate (including compensation of out-of-pocket loss incurred by the aggrieved person as the result of the discriminatory housing practice) and may impose punitive damages not to exceed $10,000.

"Sec. 811. (b)(1) If any party does not consent to the jurisdiction of a U.S. magistrate as provided in subsection (a) of this section, it shall be the duty of the chief judge of the district court (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. It shall be the duty of the judge so designated to assign the case for hearing at the earliest practicable date. If such judge has not scheduled the case for trial within 60 days after issue has been joined, that judge shall consider referral of all or part of the case to a master, pursuant to Rule 53 of the Federal Rules of Procedure, and shall make such a referral where it would promote the prompt and equitable resolution of the case. If the case is so referred, the district court judge may direct the master to conduct all or part of the proceedings, as appropriate, in accordance with the procedures developed pursuant to section 811(a)(2).

"(b)(2) The district court may award such relief as is authorized in any civil action under this section in section 812(c) of this title, in cases brought under that section.

"Sec. 811. (c) The Attorney General may represent the Secretary in any proceedings brought pursuant to this section.

"PRIVATE ENFORCEMENT

"Sec. 812. (a)(1) An aggrieved person may commence a civil action in an appropriate United States district court or State court at any time not later than two years after the alleged discriminatory housing practice occurred or terminated.

"(2) After an aggrieved person has commenced a civil action under this section, the Secretary may not commence or continue proceedings toward the issuance of a remedial order based on such charge.

"(3) An aggrieved individual shall not commence a civil action under this subsection with respect to a charge made by that individual to the Secretary if the Secretary (or a State or local agency to which the Secretary refers such charge) has commenced a hearing on the record with respect to such charge.

"(4) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance.

"(b) Upon application by an aggrieved person, any trial or appellate court may, if in its opinion such person is financially unable to bear

the costs of such action, appoint an attorney for such person and may authorize the commencement or continuation of the action without the payment of fees, costs, or security.

"(c) If the court finds in a civil action under this section that an alleged discriminatory housing practice has occurred, is occurring, or is about to occur, the court shall award such relief as may be appropriate, which may include money damages, equitable and declaratory relief, and, punitive damages.

"ENFORCEMENT ROLE OF ATTORNEY GENERAL

"Sec. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in an appropriate United States district court.

"(b) The Attorney General may bring a civil action in an appropriate United States district court (1) to enforce any final order under this title that is referred for enforcement by the Secretary; and (2) to remedy any discriminatory housing practice (A) with respect to which the Secretary has made a finding that reasonable cause exists under this title and (B) which the Secretary refers to the Attorney General for enforcement under this subsection. Upon receipt of a referral from the Secretary, the Attorney General shall determine within thirty days whether to file a civil action under section 813(b) and shall promptly notify the Secretary, each aggrieved person, and each respondent of such determination.

"(c) The court may award such relief in any civil action under this section as is authorized in section 812(c) of this title in cases brought under that section.

"(d) A person may intervene in any civil action commenced under this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person.

"STANDARD OF PROOF

"Sec. 814. (a) Except as provided in section 804(f)(2) of this title, as amended, nothing in this title shall prohibit any action unless such action is motivated, in whole or in part, by an intent or purpose to discriminate against a person or persons on account of race, color, religion, sex, handicap, or national origin. Provided, that in actions brought

to enforce this title, a prima facie violation may be established by a showing that the defendant took actions having an actual and foreseeable discriminatory effect on a class of persons protected by this title. Provided further, that the plaintiff shall not be entitled to relief if the defendant is able to prove, by a preponderance of the evidence, the existence of a legitimate, nondiscriminatory justification for his or her actions and the plaintiff is unable to thereafter demonstrate that the proffered justification is a pretext for discrimination prohibited under this title. In determining whether the proffered explanation is pretextual, the court shall consider evidence concerning whether reasonable, alternative measures were available to the defendant which would have had less discriminatory impact.

(b) Except as provided in section 804(f)(2) of this title, as amended, the Attorney General, or the Secretary of Housing and Urban Development, as the case may be, shall not initiate proceedings to enforce this title unless they have cause to believe that the defendant's actions were, in whole or in part, motivated by an intent or purpose to discriminate against a person or persons on account of race, color, religion, sex, handicap, or national origin.

"ANCILLARY AND PROCEDURAL MATTERS RELATING TO ENFORCEMENT

"Sec. 815. (a) In any action or proceeding under this title, the court, or magistrate, as the case may be, in its discretion, may allow a prevailing party (other than the United States with respect to attorney fees) reasonable attorney and expert witness fees as part of the costs, and the United States shall be liable for such costs the same as a private person. Such costs may also be awarded upon the entry of any interlocutory order which determines substantial rights of the parties.

"(b) Any court or magistrate, as the case may be, having jurisdiction over proceedings instituted under this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

"(c) Any sale, encumbrance, or lease executed before the issuance of any order under this title, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under this title shall not be affected by such court order.

"EFFECT ON OTHER LAWS

"Sec. 816. (a) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any such law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

"(b) Nothing in this title shall be construed to repeal, supersede or diminish the protection provided to handicapped persons by any other Federal law.".

INTERFERENCE, COERCION, OR INTIMIDATION

Sec. 8. Section 818 (previously designated section 817) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "section 803, 804, 805, or 806." and inserting "this title." in lieu thereof.

CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL RIGHTS ACT

Sec. 9. Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting ", handicap (as defined in section 802 of this Act)," immediately after "sex" each place it appears.

RETROFITTING COST AND NEED STUDY

Sec. 10. (a) One year following the fiscal year ending September 30, 1981, the Architectural and Transportation Barriers Compliance Board shall provide a report to the Congress concerning -

(1) the extent to which architectural barriers and other obstacles to accessibility of housing are operating to deny handicapped persons access to a reasonable housing choice in the private market;

(2) the extent to which public, private, or cooperative public and private efforts have been undertaken to increase housing choice for the handicapped in the private market; and

(3) the projected cost of retrofitting an adequate supply of existing housing units to make such units suitable for occupancy by handicapped persons.

(b) The Board shall include in its report recommendations concerning further legislative or other action necessary to provide an adequate private market housing supply for handicapped persons, including the Board's recommendations regarding how costs associated with actions should be borne.

BUDGET AUTHORITY

Sec. 11. This Act and the amendments made by this Act shall not be construed to authorize the enactment of new budget authority for the fiscal year ending September 30, 1981. Effective October 1, 1982, there are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.