

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 373
HOUSE BILL 887

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM, BY ADDING
PROVISIONS RELATING TO FAIR HOUSING.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671, Session Laws of 1975, as amended, is further amended by adding a new Chapter to read:

"Chapter VIII.

"Fair Housing.

"Sec. 121. Equal Housing. The City Council shall have the power to adopt ordinances, prohibiting discrimination on the basis of race, color, sex, religion, or national origin in real estate transactions. Such ordinances may 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; may provide that violations constitute a misdemeanor, and shall be punishable under G.S. 14-4; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to the General Court of Justice, Superior Court Division, for appropriate legal and equitable remedies, including but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and not more than one thousand dollars (\$1,000) punitive damages, and the court shall have jurisdiction to grant such remedies.

"Sec. 122. Exemptions. Any ordinance enacted pursuant to this Chapter may provide for exemption from its coverage:

- (1) the rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations;
- (2) the rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there;
- (3) with respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property;
- (4) with respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or

society, the sale, rental or occupancy of such housing accommodation being limited or preference being given to persons of the same religion, unless membership in such religion is restricted because of race, color, national origin, or sex;

- (5) any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.

"Sec. 123. Enforcement. (a) The City Council may create or designate a committee or committees to assume the duty and responsibility of enforcing ordinances adopted pursuant to this Chapter. Such committee(s) may be granted the necessary authority by the City Council for the proper enforcement of any fair housing ordinance, including, but not limited to, the power to:

- (1) promulgate rules for the receipt, initiation, investigation and conciliation of complaints of violations of the ordinance;
- (2) require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation;
- (3) apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring such person to respond or comply;
- (4) upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the General Court of Justice, Superior Court Division, for appropriate civil relief on behalf of the aggrieved person or persons;
- (5) sit as arbitrators in binding arbitration pursuant to the Uniform Arbitration Act, embodied in Article 45A of Chapter 1 of the North Carolina General Statutes, provided that the time within which a party may apply to the General Court of Justice to vacate, modify or correct an award may be limited to 60 days.

(b) Judicial Review of Committee Orders. Judicial review of Committee orders other than arbitration awards shall be in accordance with Article 4 of Chapter 150A of the North Carolina General Statutes provided, however, that the provisions of G.S. 150A-45 notwithstanding, petitions for judicial review shall be filed in the Superior Court of Durham County. The term "Agency," whenever used in Article 4 of the Chapter 150A of the North Carolina General Statutes, shall mean the Committee(s) as authorized or created by the City Council of the City of Durham under the authority of this act.

(c) Enforcement of Committee Orders;

- (1) Decisions of a committee sitting as arbitrators shall be enforced as provided in Article 45A of Chapter 1 of the General Statutes. Otherwise, if within 60 days after entry of an order of the Committee, a respondent has neither complied with nor sought review of such order, any aggrieved person or the Committee may apply to the Superior Court of Durham County for an order of the court enforcing the order of the Committee.
- (2) Within 30 days after the court's receipt of the petition for enforcement of the agency's order or within such additional time as the court may allow, the Committee shall transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened and testimony submitted by tape recording by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.
- (3) The hearing on the petition for enforcement of the Committee's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the Committee's hearing; except that in cases of alleged irregularities in proceedings before the Committee not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the proceedings or the record is inadequate, the judge in his discretion, may hear all or part of the matter *de novo*; provided that if the order imposed includes punitive damages, then as to that portion of the order, the respondent shall have a right to a trial *de novo* on that issue.
- (4) The court shall issue the order requiring compliance with the Committee's order unless it finds that enforcement of the Committee's order would prejudice substantial rights of the party against whom the order is sought to be enforced because the Committee's findings, inferences, conclusions, or decisions are:
 - a. in violation of constitutional provisions; or
 - b. in excess of the statutory authority of jurisdiction of the committee; or
 - c. made upon unlawful procedure; or
 - d. affected by other error of law; or
 - e. unsupported by substantial evidence in view of the entire record as submitted; or
 - f. arbitrary or capricious.
- (5) If the court declines to enforce the Committee's order for one of the reasons specified in paragraph 4 of this section, it shall either:
 - a. dismiss the petition; or

- b. modify the Committee's order and enforce it as modified; or
- c. remand the case to the Committee for further proceedings.

(6) Any party to the hearing on the petition for enforcement of the Committee's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

"Sec. 124. (a) Civil Action for Unlawful Housing Practice.

An ordinance adopted pursuant to this act may permit any complainant dissatisfied with the Committee's final disposition of a matter to bring a civil action in the Superior Court Division of the General Court of Justice of Durham County against the person allegedly engaging in the unlawful practice. Such civil action for a housing practice may not be brought more than 60 days after the complainant's receipt of notification of the Committee's final disposition of the matter.

(b) Injunctions; Equitable Relief. If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the compliant, the court may enjoin the respondent from engaging in such unlawful housing practice, award special damages, actual damages and award not more than one thousand dollars (\$1,000) for additional punitive damages.

"Sec. 125. An ordinance adopted pursuant to this act may provide for an award of attorney's fees to the prevailing party in any action or proceedings under such ordinance other than the Committee in the discretion of the Committee or court.

"Sec. 126. Complaints and Other Records. The City Council may provide that neither complaints filed with any committee pursuant to the ordinance nor the discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

"Sec. 127. Committee Meetings. The provisions relating to meetings of governmental bodies as set forth in Article 33C of Chapter 143 of the General Statutes shall apply to the activities of any committee authorized to enforce the ordinance. Provided, however, that the City Council may provide that said statutory provisions shall not apply to the activity of a committee to the extent that the committee is:

- (1) receiving a complaint; or
- (2) conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of May, 1983.