

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 874

Short Title: Durham County Fair Housing.

(Local)

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Sponsors: Representatives Luebke; and Mosley.

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Referred to: Ways and Means, if favorable, Judiciary I.

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April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW DURHAM COUNTY TO ADOPT A FAIR HOUSING  
ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. **Equal Housing.** A county board of commissioners may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, familial status, or handicap 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 a county 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, attorneys' fees and punitive damages, and the court shall have jurisdiction to grant such remedies.

Section 2. **Exemptions.** Any ordinance enacted pursuant to this act may provide for exemption from its coverage:

- (1) a. Any single-family house sold or rented by an owner; provided, however, that such private individual owner does not own more

1 than three such single-family houses at any one time; provided  
2 further, however, that in the case of the sale of any such single-  
3 family house by a private individual owner not residing in such  
4 house at the time of such sale or who was not the most recent  
5 resident of such house prior to such sale, the exemption granted  
6 by this subdivision shall apply only with respect to one such sale  
7 within any 24-month period; provided further, however, that such  
8 bona fide private individual owner does not own any interest in,  
9 nor is there owned or reserved on his or her behalf, under any  
10 express or voluntary agreement, title to or any right to all or a  
11 portion of the proceeds from the sale or rental of, more than three  
12 such single-family houses at any one time; provided further,  
13 however, that the sale or rental of any such single-family house  
14 shall be exempted from the application of an ordinance adopted  
15 pursuant to this act only if such house is sold or rented (i) without  
16 the use in any manner of the sales or rental facilities or the sales  
17 or rental services of any real estate broker, agent, or salesman, or  
18 of such facilities or services of any person in the business of  
19 selling or renting housing accommodations, or of any employee  
20 or agent of any such broker, agent, salesman, or person and (ii)  
21 without the publication, posting, or mailing, after notice, of any  
22 advertisement or written notice in violation of the provisions of  
23 the ordinance.

- 24 b. Nothing in this subdivision shall prohibit the use of attorneys,  
25 escrow agents, abstractors, title companies, or other such  
26 professional assistance as necessary to perfect or transfer the  
27 title.
- 28 c. For the purposes of this subdivision, a person shall be deemed to  
29 be in the business of selling or renting accommodations if:
- 30 1. That person has, within the preceding 12 months,  
31 participated as principal in three or more transactions  
32 involving the sale or rental of any housing  
33 accommodations or interest therein, or
  - 34 2. That person has, within the preceding 12 months,  
35 participated as agent other than in the sale of his own  
36 personal residence in providing sales or rental facilities or  
37 sales or rental services in two or more transactions  
38 involving the sale or rental of any housing  
39 accommodation or interest therein, or
  - 40 3. That person is the owner of any housing accommodation  
41 designed or intended for occupancy by, or occupied by,  
42 five or more families.

- 1           (2) Rooms or units in housing accommodations containing living quarters  
2 occupied or intended to be occupied by no more than three families  
3 living independently of each other, if the owner actually maintains and  
4 occupies one of such living quarters as his residence.
- 5           (3) With respect to discrimination based on sex, to the rental or leasing of  
6 housing accommodations in a single-sex dormitory property.
- 7           (4) With respect to discrimination based upon religion, to housing  
8 accommodations owned and operated for other than a commercial  
9 purpose by a religious organization, association, or society, or any  
10 nonprofit institution or organization operated, supervised, or controlled  
11 by or in conjunction with a religious organization, association, or  
12 society, the sale, rental, or occupancy of such housing accommodation  
13 being limited or preference being given to persons of the same religion,  
14 unless membership in such religion is restricted because of race, color,  
15 national origin, sex, handicap, familial status, or age.
- 16           (5) With respect to discrimination based on age, to any bona fide senior  
17 citizen or retirement community, provided, however, that this exemption  
18 shall be subject to the following limitations:
- 19           a. The covenants, conditions, and restrictions or other documents or  
20 written policy pertaining to such community shall not limit  
21 occupancy more proscriptively than to require that one person in  
22 each residence be a senior citizen and that each other resident, if  
23 any, except the spouse or cohabitant of, or a person who resides  
24 with and provides primary physical or economic support to the  
25 senior citizen, shall be at least 45 years of age;
- 26           b. The covenants, conditions, and restrictions or other documents or  
27 written policy pertaining to such community shall permit  
28 temporary residency by a person less than 45 years of age for  
29 specified periods of not less than 60 days in any calendar year;
- 30           c. Upon the death or dissolution of marriage, or upon  
31 hospitalization, or other prolonged absence of the qualifying  
32 resident, any other person who was a qualified permanent  
33 resident pursuant to the provisions of this subdivision shall be  
34 entitled to continue in residence;
- 35           d. The senior citizen or retirement community shall have been  
36 developed for, and initially put to use as, housing for senior  
37 citizens, or shall have been substantially rehabilitated or  
38 renovated for, and immediately afterward put to use as, housing  
39 for senior citizens;
- 40           e. Any person who has the right to reside in, occupy, or use the  
41 housing subject to this section prior to the date of its enactment  
42 shall not be deprived of the right to continue that residency,  
43 occupancy, or use as the result of the enactment of this section.

- 1           (6) Any person subject to this act who adopts and carries out a plan to  
2           eliminate present effects of past discriminatory practices or to assure  
3           equal opportunity in real estate transactions if the plan is part of a  
4           conciliation agreement entered into by that person under the provisions  
5           of an ordinance adopted pursuant to this act.

6           Section 3. **Enforcement.** (a) A county board of commissioners may create or  
7           designate a committee or committees to assume the duty and responsibility of enforcing  
8           ordinances adopted pursuant to this act. Such committee(s) may be granted the necessary  
9           authority by the county for the proper enforcement of any fair housing ordinance,  
10          including, but not limited to, the power to:

- 11           (1) Promulgate rules for the receipt, initiation, investigation, and  
12           conciliation of complaints of violations of the ordinance;  
13           (2) Require answers to interrogatories, the production of documents and  
14           things, and the entry upon land and premises in the possession of a party  
15           to a complaint alleging a violation of the ordinance; compel the  
16           attendance of witnesses at hearings; administer oaths; and examine  
17           witnesses under oath or affirmation;  
18           (3) Apply to the Superior Court Division of the General Court of Justice,  
19           upon the failure of any person to respond to or comply with a lawful  
20           interrogatory, request for production of documents and things, request to  
21           enter upon land and premises, or subpoena, for an order requiring such  
22           person to respond or comply;  
23           (4) Upon finding reasonable cause to believe that a violation of the  
24           ordinance has occurred, to petition the General Court of Justice,  
25           Superior Court Division, for appropriate civil relief on behalf of the  
26           aggrieved person or persons;  
27           (5) Sit as arbitrators in binding arbitration pursuant to the Uniform  
28           Arbitration Act, embodied in Article 45A of Chapter 1 of the General  
29           Statutes, provided that the time within which a party may apply to the  
30           General Court of Justice to vacate, modify, or correct an award may be  
31           limited to 60 days.

32          (b) Judicial Review of Committee Orders. Judicial review of committee orders  
33          other than arbitration awards shall be in accordance with Article 4 of Chapter 150B of the  
34          General Statutes; provided, however, that the provisions of G.S. 150B-45  
35          notwithstanding, petitions for judicial review shall be filed in the superior court of the  
36          county; provided, further, the provisions of G.S. 150B-51(b) notwithstanding, the trial  
37          court judge may grant to the petitioner, or to any other party, such temporary relief,  
38          restraining order, or other order as the court determines is just and proper and the trial  
39          court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or  
40          remand the order for further proceedings and enforce the order to the extent that the order  
41          is affirmed or modified. The term "Agency," whenever used in Article 4 of the Chapter  
42          150B of the General Statutes, shall mean the committee(s) as authorized or created by the  
43          board of commissioners of a county under the authority of this act.

1 (c) Enforcement of Committee Orders.

2 (1) Decisions of a committee sitting as arbitrators shall be enforced as  
3 provided in Article 45A of Chapter 1 of the General Statutes.  
4 Otherwise, if within 60 days after entry of an order of the committee, a  
5 respondent has neither complied with nor sought review of such order,  
6 any aggrieved person or the committee may apply to the superior court  
7 of the county for an order of the court enforcing the order of the  
8 committee.

9 (2) Within 30 days after the court's receipt of the petition for enforcement  
10 of the agency's order or within such additional time as the court may  
11 allow, the committee shall transmit to the court the original or a certified  
12 copy of the entire record of the proceedings leading to the order. With  
13 the permission of the court, the record may be shortened and testimony  
14 submitted by tape recording by stipulation of all parties. Any party  
15 unreasonably refusing to stipulate to limit the record may be taxed by  
16 the court for such additional cost as may be occasioned by the refusal.  
17 The court may require or permit subsequent corrections or additions to  
18 the record when deemed desirable.

19 (3) The hearing on the petition for enforcement of the committee's order  
20 shall be conducted by the court without a jury. The court shall hear oral  
21 arguments and receive written briefs, but shall take no evidence not  
22 offered at the committee's hearing; except that in cases of alleged  
23 irregularities in proceedings before the committee not shown in the  
24 record, testimony thereon may be taken by the court; and except that  
25 where no record was made of the proceedings or the record is  
26 inadequate, the judge in his discretion, may hear all or part of the matter  
27 de novo; provided that if the order imposed includes punitive damages,  
28 then as to that portion of the order, the respondent shall have a right to a  
29 trial de novo on that issue.

30 (4) The court shall issue the order requiring compliance with the  
31 committee's order unless it finds that enforcement of the committee's  
32 order would prejudice substantial rights of the party against whom the  
33 order is sought to be enforced because the committee's findings,  
34 inferences, conclusions, or decisions are:

- 35 a. In violation of constitutional provisions; or  
36 b. In excess of the statutory authority of jurisdiction of the  
37 committee; or  
38 c. Made upon unlawful procedure; or  
39 d. Affected by other error of law; or  
40 e. Unsupported by substantial evidence in view of the entire record  
41 as submitted; or  
42 f. Arbitrary or capricious.

1 (5) If the court declines to enforce the committee's order for one of the  
2 reasons specified in subdivision (4) of this section, it shall either:

- 3 a. Dismiss the petition; or  
4 b. Modify the committee's order and enforce it as modified; or  
5 c. Remand the case to the committee for further proceedings.

6 (6) Any party to the hearing on the petition for enforcement of the  
7 committee's order may appeal the court's decision to the Appellate  
8 Division of the General Court of Justice under the rules of procedure  
9 applicable to other civil cases.

10 Section 4. **Enforcement.** (a) Civil Action for Unlawful Housing Practice. An  
11 ordinance adopted pursuant to this act may permit any complainant to bring a civil action  
12 in the Superior Court Division of the General Court of Justice of the county against the  
13 person allegedly engaging in the unlawful practice. Such civil action for a housing  
14 practice shall be brought no later than one year after an alleged discriminatory housing  
15 practice has occurred or terminated.

16 (b) Injunctions; Equitable Relief. If the court finds that the respondent has  
17 engaged in or is engaging in an unlawful housing practice charged in the complaint, the  
18 court may enjoin the respondent from engaging in such unlawful housing practice, award  
19 special damages, actual damages, and punitive damages.

20 Section 5. **Attorneys' Fees.** An ordinance adopted pursuant to this act may  
21 provide for an award of attorneys' fees to the prevailing party in any action or  
22 proceedings under such ordinance other than the committee in the discretion of the  
23 committee or court.

24 Section 6. **Complaints and Other Records.** A county board of  
25 commissioners may provide that neither complaints filed with any committee pursuant to  
26 the ordinance nor the discovery, or attempts at conciliation, in whatever form prepared  
27 and preserved, shall be subject to inspection, examination, or copying under the  
28 provisions of what is now Chapter 132 of the General Statutes.

29 Section 7. **Committee Meetings.** The provisions relating to meetings of  
30 governmental bodies as set forth in Article 33C of Chapter 143 of the General Statutes  
31 shall apply to the activities of any committee authorized to enforce the ordinance.  
32 Provided, however, that county may provide that said statutory provisions shall not apply  
33 to the activity of a committee to the extent that the committee is:

- 34 (1) Receiving a complaint; or  
35 (2) Conducting an investigation, discovery, or conciliation pertaining to a  
36 complaint filed pursuant to the ordinance.

37 Section 8. This act applies to Durham County only.

38 Section 9. This act is effective when it becomes law.