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## BUILDINGS AND HOUSING Discriminatory Housing Practices: Establish Fair Housing Program and Complaint Process

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## BUILDINGS AND HOUSING

### *Discriminatory Housing Practices: Establish Fair Housing Program and Complaint Process*

CODE SECTIONS:	O.C.G.A. §§ 8-3-200 to -208 (amended), 8-3-209 to -215 (new)
BILL NUMBER:	HB 430
ACT NUMBER:	1246
SUMMARY:	The Act supercedes previous laws addressing discrimination in the selling, leasing, and financing of housing and establishes new provisions prohibiting housing discrimination. The new provisions are substantially equivalent to the provisions of the federal Fair Housing Act.
EFFECTIVE DATE:	July 1, 1988

#### *History*

The Georgia General Assembly has been unsuccessful in past attempts to enact laws which effectively address the problems of housing discrimination and which parallel the federal housing discrimination statutes.<sup>1</sup> Early fair housing measures<sup>2</sup> were considered inadequate because they did not provide a mechanism for investigation and enforcement.<sup>3</sup> Complainants were forced to institute private court actions to address allegations of discrimination and were not assisted in the investigation of the complaint by any state agency. However, most people alleging discriminatory housing practices lacked the resources necessary to pursue court action.<sup>4</sup>

Past legislation dealing with housing discrimination sought to assure "equal opportunity to all persons to live in decent housing accommodations and to prohibit discrimination because of race, color, sex, religion, or national origin by any person in a transaction involving a housing accommodation."<sup>5</sup> The measures were aimed at prohibiting discriminatory practices in the listing, selling, leasing, or financing of housing accommo-

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1. Telephone interview with Representative Lorenzo Benn, House District No. 38 (Apr. 28, 1988) [hereinafter Benn Interview].

2. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. §§ 8-3-200 to -208 (1982)).

3. Benn Interview, *supra* note 1.

4. *Id.*

5. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. § 8-3-200 (1982)).

dations.<sup>6</sup> The provisions did not apply to any person who did not use the services of a real estate broker and who was "not in the business of building, buying, or selling housing accommodations."<sup>7</sup> A complainant could institute a civil action and the court could grant relief as it saw fit.<sup>8</sup> The article provided that any person who violated the provisions was guilty of a misdemeanor.<sup>9</sup> The Georgia Real Estate Commission had authority to suspend the license of any real estate broker who violated the law.<sup>10</sup>

Advocates of new antidiscriminatory housing measures found fault with the early legislation because it lacked affirmative provisions for enforcement and did not allow for any assistance by a government agency in the investigation and prosecution of housing discrimination claims.<sup>11</sup> State-wide dissatisfaction with the legislation and efforts by the Department of Housing and Urban Development (HUD) led to the introduction of new legislation in the Georgia Legislature which tracked federal fair housing measures.<sup>12</sup> The federal Fair Housing Act stipulates that any state or local jurisdiction which has fair housing provisions "substantially equivalent" to the federal provisions will be afforded funds to assist in

6. Among other things, the Code sections prohibited owners, financial institutions, insurance companies, and real estate sales persons and brokers from discriminating in the provision of housing accommodations, the conditions of a sale or lease of a housing accommodation, the financing of a housing accommodation, and the advertising of a particular housing accommodation. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. §§ 8-3-201 to -208 (1982)).

7. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. § 8-3-206 (1982)). The prohibitions against discriminatory housing also did not apply to a housing accommodation which was occupied by the owner or by a religious or nonprofit organization in which membership was not restricted on the basis of race, color, sex, or national origin. *Id.*

8. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. § 8-3-207(a), (b) (1982)). The court was empowered to grant relief in the form of temporary or permanent injunctions, temporary restraining orders, and actual and punitive damages, as well as attorney's fees and court costs. *Id.*

9. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. § 8-3-208(a) (1982)).

10. 1978 Ga. Laws 1593 (formerly found at O.C.G.A. § 8-3-208 (1982)).

11. Telephone interview with Katheryn Harris, Staff Attorney, Metro Fair Housing (May 12, 1988) [hereinafter Harris Interview]. Few statewide or local agencies are available to help with housing discrimination claims. Metro Fair Housing of Atlanta is a nonprofit agency established in 1974 to deal with fair housing problems in South DeKalb County and since has expanded to include the entire Atlanta metropolitan area. The organization originally was funded by a coalition of local churches but now receives funds from a Community Development block grant. The organization helps those who believe they have been subject to discrimination by investigating the validity of complaints. Investigation is conducted by a series of tests and audits so as to determine only that discrimination had in fact occurred. Once investigation is completed, the complainant is informed of the rights which she possesses and the complaint is sent to the Federal Department of Housing and Urban Development (HUD) for further inquiry. Metro Fair Housing receives funding for all complaints investigated under Title VIII. *Id.*

12. The Fair Housing Act, 42 U.S.C. § 3601—3631 (1977 & Supp. 1988), is the federal provision prohibiting discrimination in housing on the basis of race, color, religion, sex, and national origin.

processing claims within the provisions of the Act.<sup>13</sup> Under the Fair Housing Act, the Fair Housing Office of HUD does not lose jurisdiction over any claim falling within the provisions of the Act, but defers to state agencies the opportunity to pursue the complaint.<sup>14</sup> Deference is given to state agencies because the state is in the best position to investigate complaints and to provide protection for its citizens. Additionally, the federal government lacks adequate resources to cover efficiently a fifty-state region.<sup>15</sup>

Several southeastern states recently adopted fair housing provisions substantially similar to the federal Fair Housing Act.<sup>16</sup> Affirmative action by these state legislatures is in response to state fair housing measures perceived to be ineffective and outdated.<sup>17</sup> The remaining southeastern states which do not have laws equivalent to the federal fair housing provisions<sup>18</sup> have received assistance from HUD in drafting and introducing similar legislation in their respective state legislatures.<sup>19</sup> HUD's goal is to assure that all states have measures addressing discriminatory housing which provide, at the very least, the same protection and enforcement mechanisms provided by the federal Fair Housing Act.<sup>20</sup> The new Georgia Act is the result of combined efforts on the part of concerned constituents, agencies, and HUD.<sup>21</sup>

The requirement that all state laws be "substantially equivalent" to the federal law to receive funding is an effort to ensure that the state law meets a minimum threshold in the protection of its citizens.<sup>22</sup> State measures can go further than the Fair Housing Act by including additional protected classes of people and by providing more strenuous remedies.<sup>23</sup>

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13. 42 U.S.C. § 3616 (Supp. 1988). The Act provides that HUD may "make grants to, or . . . enter into contracts or cooperative agreements with, State or local governments or their agencies . . . that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices." 42 U.S.C. § 3616(a) (Supp. 1988). The Act further provides that state programs and activities which "provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided" in the Fair Housing Act are those which are appropriately considered for federal funding. *Id.*

14. Telephone interview with Augustus Clay, Regional Director, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (May 11, 1988) [hereinafter Clay Interview].

15. *Id.*

16. These states are Kentucky, Tennessee, North Carolina, and Florida.

17. Clay Interview, *supra* note 14.

18. These states are Georgia, South Carolina, Alabama, and Mississippi.

19. Clay Interview, *supra* note 14.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* The federal Fair Housing Act was recently amended to protect the physically or mentally handicapped and households headed by females. Pub. L. No. 100-430, 102 Stat. 1619 (1988). The inclusion of these groups as protected classes requires that states with substantially equivalent fair housing measures will be given a reasonable

If the state and federal programs are substantially equivalent, the federal government will defer to the local jurisdiction to process both the federal and the state fair housing claims. The federal agency does not give up its jurisdiction over the claim, but rather gives the designated state agency ninety days to investigate and resolve the matter before intervening.<sup>24</sup> Local governments and municipalities which adopt similar measures may also obtain funding and perform dual processing of federal and local complaints.<sup>25</sup>

### HB 430

The Act substantially revises and completely supercedes the previous Georgia laws dealing with discrimination in selling, leasing, and renting housing accommodations. The Act prohibits certain activities regarding the sale, lease, or rental of housing accommodations; the financing or insuring of housing accommodations; and provision of other housing-related services.<sup>26</sup> Discrimination on the basis of race, color, religion, sex, or national origin is prohibited with regard to the provision of housing accommodations.<sup>27</sup> The Act provides for an administrative agency which is empowered to investigate complaints of discrimination in housing<sup>28</sup> and for

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time to adopt the new protection in order to retain their substantially equivalent status. Clay Interview, *supra* note 14. It is unlikely, however, that protection on the basis of sexual preference or acquired immune deficiency syndrome (AIDS) will be provided in the near future. *Id.*

The remedies provided for under the federal Fair Housing Act are not as strenuous as many fair housing advocates believe necessary. The weakness lies in the lack of actual enforcement by HUD. The complainant must go through a protracted process and is forced to bring her own civil action rather than investigation first being initiated by HUD. Harris Interview, *supra* note 11.

24. Clay Interview, *supra* note 14.

25. HUD "may make grants to . . . [s]tate or *local governments* or their agencies." 42 U.S.C. § 3616 (Supp. 1988) (emphasis added). For example, the passage by the Fulton County Board of Commissioners of a local fair housing ordinance will likely be found substantially equivalent to the federal provisions. The Board adopted the ordinance under the belief that discrimination occurs on the local level rather than state-wide and therefore is better attacked at the local level. Telephone interview with Gordon Joyner, Fulton County Commissioner (May 13, 1988).

The measure was introduced in December, 1987, prior to the introduction of similar measures in the Georgia General Assembly. Although the Board hoped that the state would adopt a similar measure, passage was attempted at the local level in an effort to "go on record in support of a fair housing law." *Id.* Once the ordinance is approved by HUD as "substantially similar," Fulton County will attempt to enter into a contract with the state and HUD whereby any complaint within Fulton County will be deferred to the agency designated by the county for processing. Such administrative responsibility is placed with the Office of County Manager. The City Attorney will perform the same functions as the State Attorney General on the state level or the Department of Justice on the federal level. *Id.*

26. O.C.G.A. §§ 8-3-200 to -204 (Supp. 1988).

27. O.C.G.A. § 8-3-202(a)(1)-(5) (Supp. 1988).

28. O.C.G.A. §§ 8-3-206 to -209 (Supp. 1988).

injunctive and monetary relief when a plaintiff is found to have been injured by discriminatory housing practices.<sup>29</sup>

The administrator of the new fair housing measure is empowered to make studies, disseminate reports, and provide education regarding the problems of housing discrimination within the state.<sup>30</sup> Complaints must be filed in writing within 180 days of the alleged discrimination at the office of the administrator, and the respondent may file an answer.<sup>31</sup> Within thirty days after the complaint is filed, the administrator must inform the aggrieved party of any "informal methods" by which the administrator will attempt to address the discriminatory practice.<sup>32</sup> If the administrator is unable to obtain compliance within thirty days after the complaint is filed, the aggrieved person may file a civil action.<sup>33</sup> The action must be commenced within 180 days of the alleged discriminatory practice and the court may grant relief as it sees fit, including injunctions, restraining orders, actual damages, punitive damages, and the grant of attorney's fees and costs if the plaintiff prevails.<sup>34</sup>

The new law grants broad investigatory power to the administrator of the fair housing laws. The administrator is given access to documents, records, premises, individuals, and other evidence which is deemed necessary.<sup>35</sup> The administrator also may issue subpoenas to compel access to or production of materials or to compel appearance of witnesses.<sup>36</sup> Civil and monetary penalties are available under the Act to provide for effective enforcement.<sup>37</sup>

As introduced, the bill designated the Georgia Real Estate Commission (GREC) to investigate and process all fair housing claims.<sup>38</sup> The House Committee on Special Judiciary substituted the Georgia Office of Fair Employment Practices (OFEP) to serve as administrator instead of the GREC.<sup>39</sup> Those opposed voiced concerns about the change in administrators, because OFEP was not sufficiently handling its current employment

29. O.C.G.A. § 8-3-210(b) (Supp. 1988).

30. O.C.G.A. §§ 8-3-206, -207 (Supp. 1988).

31. O.C.G.A. § 8-3-208(b) (Supp. 1988).

32. O.C.G.A. § 8-3-208(a) (Supp. 1988). Informal methods include conferences, conciliation, and persuasion. *Id.*

33. O.C.G.A. § 8-3-208(c) (Supp. 1988).

34. O.C.G.A. § 8-3-210 (Supp. 1988).

35. O.C.G.A. § 8-3-209(a) (Supp. 1988).

36. *Id.*

37. O.C.G.A. § 8-3-209(f) (Supp. 1988).

38. HB 430, as introduced, 1988 Ga. Gen. Assem.

39. HB 430 (CCS), 1988 Ga. Gen. Assem. The GREC is responsible for regulating real estate agents and brokers. The OFEP is responsible for investigating any employment discrimination complaint filed by a state employee against a state agency. The GREC was told that because the OFEP has a broader constituency and deals with similar claims, it would be better suited than the GREC for dealing with housing discrimination complaints. Telephone interview with Charles Clark, President, Georgia Real Estate Commission (May 2, 1988).

discrimination workload. The substitute, however, was adopted in the final version of the bill.<sup>40</sup>

Originally, the bill paralleled the federal Fair Housing Act regarding the adoption of similar measures by local governments or political subdivisions.<sup>41</sup> In response to an Attorney General's Opinion,<sup>42</sup> the House adopted a committee substitute floor amendment which limited the scope of local ordinance coverage.<sup>43</sup>

The limitation on the power of municipalities to govern discriminatory housing practices within their particular localities was the subject of much debate and opposition in the General Assembly. Those opposing the preemption theory believed that a limitation of this type would restrict municipalities to the minimum threshold provisions of the fair housing laws when broader measures would better suit the specific needs

40. O.C.G.A. § 8-3-206(a) (Supp. 1988). The OFEP responded to the criticism by asserting that it is the most appropriate state agency to handle the complaints. In response to the allegations that OFEP is not adequately handling its present workload, it stated that it handles 600 inquiries and approximately 300 employment discrimination complaints each year. Many of these do not result in any type of remedial measure because the complaint is in some way insufficient. Those complaining that the OFEP does not perform its job often are the complainants themselves. Practically, processing of fair housing complaints should be simpler than employment discrimination complaints because, in the latter, proof of intent is necessary in order to prosecute. Telephone interview with Jan Christian, Administrator, Office of Fair Employment Practices (May 13, 1988).

41. HB 430, as introduced, 1988 Ga. Gen. Assem. stated:

Nothing in this article shall be construed to invalidate or limit any ordinance of a political subdivision of this state that grants, guarantees, or protects the same rights as are granted by this article; but any ordinance of a political subdivision that purports to require or permit any action that would be a discriminatory housing practice under this article shall, to that extent be invalid.

*Id.*

42. 1980 Op. Att'y Gen. 150. The opinion was in response to an inquiry by the Georgia Department of Community Affairs regarding the permissible scope of county and municipal fair housing ordinances. The inquiry was made in response to HUD's indication that local ordinances on discrimination in housing would need to comply with the provisions of the federal laws. The Attorney General's office opined that local ordinances which exceeded the scope of the state laws addressing discriminatory housing practices would be contrary to the Georgia constitutional provisions regarding general laws. "[N]o special law shall be enacted in any case for which provision has been made by an existing general law." GA. CONST. art. I, § 2, ¶ 7 (1976, amended 1982). After classifying the fair housing measures as general laws which operated uniformly throughout the entire state, the Attorney General's office declared that the field of fair housing had been preempted and therefore was not open to special or local laws which differ in scope. Absent an express authorization for municipalities to pass ordinances subject to review, all such ordinances which exceed the scope of the state law coverage with regard to discriminatory housing would be void. 1980 Op. Att'y Gen. at 151.

43. "A political subdivision of this state may adopt verbatim the discriminatory housing practices of this article as a local ordinance but may not expand or reduce the rights granted by this article." O.C.G.A. § 8-3-213 (Supp. 1988).

of the locality.<sup>44</sup> Others felt that the process of assuring equality in housing is adequately served by the minimum federal standards.<sup>45</sup>

After a lengthy stay in the House, HB 430 was sent to the Senate where it underwent several revisions. The Senate passed a substitute which, among other changes, added the handicapped to the class of individuals protected by the fair housing measures.<sup>46</sup> The substitute was opposed in the House because of its provisions which protected the handicapped and because of a provision which required that the plaintiff pay attorney's fees and costs if she should not prevail.<sup>47</sup> The House amended the substitute by striking the provisions relating to the handicapped and to the provision of attorney's fees in cases resulting in a verdict for the defendant.<sup>48</sup> Revisions made by the Senate which required the filing of an affidavit setting forth the specific acts complained of in a civil action were retained in the final version of the Act.<sup>49</sup>

HB 430 became effective July 1, 1988.<sup>50</sup> The amendments and new Code sections provide investigative help and remedial measures for those who claim to have been injured by discriminatory housing practices. The Act as passed is "substantially similar" to the federal fair housing measures, at least for the present.<sup>51</sup> Changes are being introduced in Congress during this twentieth anniversary year of the Fair Housing Act which will increase the protection, assistance, and remedies provided for under the Fair Housing Act. The Georgia Legislature likely will be faced with the Act in the 1989 session as the legislators attempt to make the Act's provisions substantially similar to those of the new federal Act.

*D. Smith*

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44. Telephone interview with Kay Young, Georgia Legal Services (May 2, 1988).

45. Benn Interview, *supra* note 1.

46. HB 430 (SCSFA), 1988 Ga. Gen. Assem.

47. *Id.*

48. HB 430 (HFA), 1988 Ga. Gen. Assem. There was concern that including the handicapped would lead to much confusion and eventually would kill the measure in the House. The substitute lacked an adequate definition of "handicapped," a flaw which many legislators believed would be remedied by future amendments to the federal Fair Housing Act. These legislators preferred to wait for the federal amendments and revise Georgia's fair housing measures accordingly. Benn Interview, *supra* note 1.

49. O.C.G.A. § 8-3-208(c) (Supp. 1988).

50. Final Composite Status Sheet, Mar. 7, 1988.

51. *See supra* note 13 and accompanying text.