

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 Bill [1983]
(1 of 2)
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/>

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Ninety-eighth Congress

January 13, 1983

MEMORANDUM

TO: Honorable F. James Sensenbrenner, Jr.

FROM: Thomas M. Boyd
Associate Counsel
TMB Subcommittee on Civil and Constitutional Rights

RE: Proposed Republican Fair Housing Bill

In accordance with the consensus reached in our meeting on January 6, I have prepared a draft bill for sponsorship by the Administration and the Republican Leadership in the Congress. I used as my model, H.R. 5200, adopted by the House on June 12, 1980. Since time was of the essence, I did not utilize the Senate alternative, S. 506, which was reported by the Senate Judiciary Committee on July 30, 1980, but was withdrawn on the floor when a motion to invoke cloture and limit debate failed on December 9, 1980 by a 54-43 margin. I believe, however, that what I have prepared compares in all necessary respects to the Republican position on S. 506 as articulated in 1980. The format I have created, however, provides room for further alterations to the model draft as consideration continues.

Besides the draft, which incorporates amendments which attracted significant Republican and conservative Democratic support in 1980, I have prepared a section-by-section analysis and several proposed amendments, each numbered, for consideration. Further circulation will surely produce additional proposed amendments which can, with ease, be appended to what I have drafted. Each section of the draft is accompanied by a discussion of the degree to which it was supported in 1980, together with floor comments from representatives of both parties.

H.R. 5200, as adopted by the House, contained a refined enforcement mechanism, the principal centerpiece of the legislation. This was due largely to the state of current law, represented by Title VIII of the 1968 Civil Rights Act, which is almost totally dependent on private resources for enforcement of its provisions. Alternative enforcement through the Federal Government is limited to "pattern and practice" jurisdiction

within the Department of Justice.¹ During the twelve-year period between initial passage and consideration of the 1980 amendments, only 300 cases were ever brought by the Attorney General.²

Representing the Ford Administration, former Secretary of HUD Carla Hills argued that ". . . the most serious obstacle to an effective title VIII program is the lack of adequate enforcement powers" within the Federal Government.³ Similarly, Secretary of HUD Patricia Roberts Harris, during the Carter Administration, described the 1968 law as "truncated," leaving the Federal Government no power to resolve complaints of housing discrimination except through conference, conciliation, and persuasion.⁴

The bill which passed the House contained an administrative enforcement mechanism within HUD, subject to a "de novo determination" in the federal courts, which, as a practical matter, means the federal courts in the District of Columbia. This standard of review was a compromise between Republican Members of the Judiciary Committee, specifically Messrs. McClory, Railsback, Fish and Butler,⁵ and the Democratic Leadership. It was a standard which, at the time, was undefined, but which, subsequent to House consideration, was interpreted by the Supreme Court in United States v. Raddatz, 447 U.S. 667 (decided June 23, 1980).⁶ When it was offered on the floor as a substitute for your judicial enforcement alternative, it won by a vote of 205-204, but seven out of the eleven Republicans then on the Judiciary Committee voted against passage.⁷ Accordingly, the judicial approach sponsored by you and Congressman Volkmer (D-Mo.) has been integrated into the attached draft.

The Senate bill, S. 506, retained the administrative mechanism, without review based on a de novo determination, instead creating a Fair Housing Review Commission with the power to review and modify any decision of an administrative law judge.⁸ Otherwise, it was generally similar to what I have drafted.

Both bills extended the protection of title VIII to the handicapped, an additional class for civil rights protection.⁹ [N.B.: I have had the draft printed for inclusion with this memorandum. Unfortunately, you may find typos which have not yet been corrected.]

SECTION-BY-SECTION ANALYSIS

Section 1

This section merely restates the short title for the 1980 bill, updating it to 1983.

Section 2

This section amends the short title for the 1968 Act, by including the provisions of this bill.

Section 3

This section amends the short title for title VIII, consistent with the 1980 bill.

Section 4

This section amends the definitions section, §802, of title VIII by extending the coverage of the law to handicapped individuals, and defining them as persons who (1) are "substantially" limited by physical or mental impairment in one or more of their "major life activities," (2) have a record of such an impairment, or (3) are regarded as having such an impairment. During full Committee consideration, Congressman M. Caldwell Butler (R-Va.) was successful in passing an amendment which excluded those whose current impairment consists of alcoholism or drug abuse, or whose impairment "would be a direct threat to the property or the safety of others."

This section also defines "aggrieved person" in a fashion consistent with the Supreme Court's 1979 decision in Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979). The language is identical to that which already appears in section 810(a) of existing law. Moreover, this amendment broadens present law by expanding "discriminatory housing practice" to include any violation of the Act and not merely those outlawed by sections 804, 805, or 806.

Amendments

The only amendment offered to this section was a Butler proposal to eliminate coverage for the handicapped. It received lukewarm support, and was defeated by a division vote of 6-9.¹⁰ I have attached it, however, as Proposed Amendment No. 1, for consideration, infra, and have included, below, excerpts from the floor debate.

(In support) Mr. Butler:¹¹

Those who are concerned about the need to improve the existing protections against racial and sex discrimination should bear in mind that this new class of protected persons will command a substantial, and perhaps disproportionate, amount of Federal resources committed to the fight against discrimination in housing.

The reason we can expect protecting the handicapped to be so expensive is the easily predictable and extensive explanations which will be required by Federal regulations, guidelines, and the like.

(In opposition) Mr. Hyde:¹²

You balance [a prolixity of regulations against a denial of protection from discrimination] and you have to come down in favor of helping the handicapped to be treated like other people when it comes to housing.

Section 5

This section amends existing law to continue the "Mrs. Murphy" exemption to title VIII coverage after passage of this bill.

Amendments

This portion of the draft reflects the House's adoption of an amendment to strike the original language removing the "Mrs. Murphy" exemption to individuals who do not actively participate in the real estate business but who rent rooms or own additional houses for income or retirement purposes. Under this amendment, offered by Congressman Sam Hall (D-Tx.) and adopted by voice vote,¹³ the current language protecting such persons is restored.

(In support) Mr. Hall:¹⁴ [Citing Mr. Butler's supplemental views in the Committee report]

The reasons for these two exceptions are clear: Private persons not engaged in the business of renting or selling houses are not themselves the causes of housing discrimination; they are not suited to extensive federal regulation and control; and they do not generally have the sophistication or the resources to understand fully what is expected of them.

(In opposition) Mr. Edwards (D-Ca.):¹⁵

Now, we are talking about a sale where there is no legitimate right of privacy, which there is in Mrs. Murphy's boarding house, and we are preserving that. What legitimate interest is protected by the Hall amendment? It would exempt almost all sales of single-family homes where brokers are not utilized. Since the owner will no longer be living there, there is no privacy interest.

Section 6

This section amends the coverage catchline for section 804 of title VIII, and includes new coverage provisions for the handicapped. These will be deleted, of course, if Proposed Amendment No. 1 is adopted.

As it now reads, this section would create a new subsection (f) to existing section 804 of title VIII, which sets out the

housing practices which the Act outlaws. In subsection (f)(1), it would be illegal to refuse to rent or sell a dwelling to a buyer merely because that buyer is handicapped within the meaning of the word as defined in section 4, supra. Subsection (f)(2) outlines the circumstances which would qualify as discrimination. In order, they are (1) a refusal to permit "reasonable modifications . . . which are necessary to afford . . . access . . . , but, in the case of a rental, only if the renter makes an agreement to restore" the premises to their prior condition, and (2) refusal to make "reasonable accommodations in policies, practices, rules, services, or facilities" when necessary to afford a handicapped person a living standard "substantially equal" to that of non-handicapped persons.

Discrimination does not include (1) refusal to make alterations at the owner's or landlord's expense, (2) refusal to modify rules, policies, etc., when such action would cause "unreasonable inconvenience" to others, or (3) refusal to allow architectural changes which reduce market value.

This section also amends section 805 by creating a protection for appraisers who must accurately estimate fair market value, so long as the methods they use do not discriminate, and also specifically itemizes the lending chain, including banks and insurers, among others, who "make unavailable" loans because of race, color, religion, sex, handicap, or national origin.

Amendments

Two amendments offered by Republicans appear in this section. The first, offered by Congressman John Ashbrook in full Committee, would have deleted specific coverage for the insurance industry. When proposed, it failed by a 9-19 vote, with all but two of the eleven Republicans (yourself and Mr. Fish) voting in support of passage. The argument in favor of the amendment, briefly, was that the insurance industry is already over-regulated and virtually each State has created, as Mr. McClory noted during floor debate,¹⁶ a FAIR plan to meet complaints, made chiefly by minorities, that insurance is unavailable; Mr. McClory compared FAIR plans with uninsured motorist coverage. Since the Senate protected the industry in its bill, and Republican support seemed to be on the side of the insurance industry in 1980, I included the Ashbrook amendment in the draft, even though the industry requested that the amendment not be offered on the House floor.

The second amendment incorporated into the draft is the appraiser's amendment, offered by Mr. Hyde in full Committee, where it lost by a 12-17 vote, and on the floor, where it was supplanted by a substitute offered by Congressman Andy Jacobs (D-Ind.); the vote was 257-157 in favor of the Jacobs substitute.¹⁷ The Committee vote attracted an 8-3 Republican majority, with

Messrs. McClory, Railsback, and Fish dissenting. Support on the floor vote included the Republican Leadership.

(In support) Mr. Hyde:¹⁸

. . .In short, it is designed to permit appraisers of real estate to take into consideration in their appraisal all relevant and documentable factors which affect the fair market value of the property he or she is asked to examine.

* * *

During the markup, the subcommittee agreed that appraisers should be allowed to make such references where documental evidence exists to support their use. Staff was instructed to draft report language to accomplish this end, but in the interim this proved to be impossible.

(In opposition) Mr. Edwards:¹⁹

This bill does not create any new law insofar as the appraisers are concerned. It codifies the existing [regulatory] law.

Section 7

This section only contains a minor conforming amendment.

Amendments

Originally, this section contained several provisions referring to the administrative process, replaced in the draft by the Sensenbrenner/Volkmer Judicial Alternative, and sought to provide mandatory federal funding to State and local housing agencies. In addition, a provision of the original section would have extended to the Federal Reserve the present requirement that all Executive Branch officials administer their housing programs "in a manner affirmatively to further" the Act. Both these provisions were addressed in two separate amendments drafted for Mr. Butler at full Committee, but never offered. I took the liberty of resurrecting them for purposes of this draft.

The principal focus of this section was its inclusion of a one-House veto, adopted by a 15-3 division at full Committee. Though offered by a Republican, Congressman Thomas Kindness, I chose to delete it from this draft because of the Executive Branch's long-standing opposition to one-House vetoes. If there is a consensus to re-introduce it as a part of the draft, an amendment is appended as Proposed Amendment No. 2, for consideration, infra.

Section 8

This section details the mechanism by which title VIII will be enforced in the future. The draft, for reasons outlined earlier, reflects the judicial approach historically preferred by conservatives. It does not attempt to articulate a test, whether "intent" or "effects," because the current law is unsettled. There is a danger, however, that the "effects" test is incorporated by reference, in section 807 on page 7 of the draft, through the specific inclusion of an intent test where minimum lot sizes are involved. This language was part of an amendment successfully offered by Mr. Butler at full Committee. As a consequence, there may be a desire to directly address the problem of what test should apply by way of an amendment which utilizes "totality of the circumstances," or like language, to infer an intent test to the reviewing court. The Department of Justice has indicated an interest in such an amendment, which would be labeled Proposed Amendment No. 4, for consideration, but to date none has been forthcoming.

As you know, the Supreme Court has consistently required a showing of discriminatory intent as a basis for recovery under a charge of constitutional deprivation. This has been true in the housing area as well, where cases alleging a violation of the Equal Protection Clause have been mixed with cases brought under title VIII, with the result uncertain. In Washington v. Davis, 426 U.S. 266 (1976), a case cited by the Court in its 1980 ruling in City of Mobile v. Bolden, 446 U.S. 55 (1980), which you will recall dealt with the Voting Rights Act, the Majority determined that "discriminatory purpose" was a prerequisite to relief in an Equal Protection claim involving an employment claim. Similarly, the Court, in its subsequent consideration of Village of Arlington Heights v. Metropolitan Housing Department Corp., 429 U.S. 252 (1976), ruled that the refusal by local officials to accommodate a proposed low and moderate income housing project did not constitute a violation of the Constitution because there was no showing of discriminatory intent or purpose. However, the Court remanded the case to the Seventh Circuit on the issue of whether discriminatory effect alone would violate title VIII. The Seventh Circuit thereupon held that the fair housing claim under title VIII could be sustained if a discriminatory effect were present. The Supreme Court, the second time around, denied certiorari,²⁰ a decision which did not constitute a decision on the merits.

Ever since, the circuits have been divided, with an edge to "effects." The Sixth Circuit, for example, rejected the effects test upheld by Arlington Heights II²¹ (certiorari was similarly denied), as did the Fourth Circuit.²² In United States v. City of Black Jack,²³ the Eighth Circuit ignored evidence of a discriminatory purpose and embraced the effects of discrimination.

The first case to reach the appellate level following Arlington Heights was the Third Circuit's decision in Resident Advisory Board v. Rizzo,²⁴ in which it held that title VIII was violated because certain practices by the City of Philadelphia had had a discriminatory effect. By contrast, in June of 1980, the federal court for the Northern District of Ohio ruled that evidence of discriminatory intent was "overwhelming" in satisfying²⁵ the necessary proof requirement for a violation of title VIII.

The likely result, if and when the Supreme Court ever reviews a title VIII case, is that a hybrid test, not unlike that articulated in White v. Register, 412 U.S. 755 (1973) or Rogers v. Lodge, ___ U.S. ___ (decided July 1, 1982) will be constructed. The actual use of "intent" in any bill will probably ignite a major confrontation, one in which we probably cannot politically prevail.

In the event the de novo determination alternative is seriously considered, I have incorporated into Proposed Amendment No. 3 several additional amendments, numbered 3(a)-3(g), which were prepared for Mr. Butler's use at full Committee but were never offered. If fused with No. 3, they will probably improve the House-passed version from the Republican standpoint.

(In support of the Judicial Approach) Mr. Sensenbrenner:²⁶

Basically what these amendments, . . . do is eliminate the administrative enforcement mechanism contained in this bill and provide for enforcement in the Federal district court, with the encouragement of the use of magistrates pursuant to the Magistrates Act of 1980 recently enacted into law.

* * *

. . . , these amendments provide direct relief to the actual victims of discrimination. These amendments provide for direct relief to the actual victims by allowing a court to award compensatory and punitive damages, thereby avoiding the constitutional problems in this respect contained in the administrative law judge approach contained in the committee bill.

* * *

First, these amendments provide for mandatory referral of fair housing complaints to a State or local agency within 30 days after receipt of a complaint. Under the amendments HUD is not permitted to take any further action for 90 days after a referral so as to give the State and local agencies time to commence and carry forward proceedings.

* * *

Second, in support of the Sensenbrenner-Volkmer amendments, there is mandatory conciliation language. The conciliation is mandatory on the part of HUD. Under the Sensenbrenner-Volkmer amendments, if any party refuses in good faith to submit to conciliation, the Government is allowed to advance to the alleged victim of discrimination \$500 in order to commence a lawsuit in the Federal district court.

The Sensenbrenner-Volkmer amendments allow for binding arbitration in a conciliation agreement and, furthermore, if a party breaches a conciliation agreement that provides for binding arbitration, the Secretary of HUD can also give \$500 for legal expenses to the non-breaching party. Furthermore, any arbitration agreement that results from a conciliation agreement may award appropriate specific relief to the aggrieved person and up to \$500 for actual loss, insult, or emotional distress.

Finally, the Sensenbrenner-Volkmer amendments say that it is the sense of Congress that U.S. magistrates should be used by the courts to the maximum extent feasible to expedite this litigation. This is contrasted to the 270-day maximum period that the Department of Housing and Urban Development is allowed to process fair housing complaints under the committee's bill.

(In support of the Administrative
Alternative--de novo determination)
Mr. McClory²⁸ and Mr. Fish:²⁹

Mr. McCLODY. Mr. Chairman, I just want to point out that the thing that the gentleman and I worked on so hard was the subject of the court review. We specifically wrote into the bill that the court would have the right to receive additional evidence and to have other great latitude, and we called this a de novo determination. It is not a decision on the record, but it is a de novo decision with opportunities to receive additional evidence and to review a broad base of evidence in adjudicating the case.

Mr. FISH. Mr. Chairman, I am glad the gentleman from Illinois brought that up, because it is the answer to what the previous speakers were talking about, that behind every ALJ's findings is this de novo determination option in Federal court by a party that wishes to take it there. At the discretion of the court, you could have an entire trial. It is a very broad power.

(In support of the Administrative
Alternative--de novo determination)
Mr. Synar:²⁷

First of all, my amendment would require the Secretary to certify that conciliation was tried prior to a hearing by the ALJ. Now, we are going to have some success in this—not a great amount of success. As I said, only 1 out of every 12 cases brought to HUD today ever work, but we are going to alleviate some of the problems in that process by, second, after the hearing by the ALJ, after these two people have had their day in court and the evidence has been presented, we want to give them a 5-day cooling off period by which both parties can come together and say that we now know the facts and the problems and the causes.

Section 9

This section contains a conforming change (see section 4(a)).

Section 10

This section contains a conforming change to Title IX of the 1968 Civil Rights Act.

TMB:mjh

Attachments

cc: Mr. Fish
Mr. Lungren
Mr. Shaw
Mr. McConnell, Justice
Mr. Reynolds, Justice
Mr. Uhlmann, The White House
Mr. Scruggs, The White House

FOOTNOTES

1. 42 U.S.C. §3613 (1976).
2. House Report No. 96-865, Subcommittee on Civil and Constitutional Rights, April 1, 1980, at footnote 12.
3. Equal Opportunity in Housing: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 94th Congress, Second Session, Serial Number 40, part 2, at 118.
4. Hearings [on H.R. 2540] Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 96th Congress, First Session, Serial No. 12, at 70.
5. See Statement of Hon. Robert McClory, Cong. Rec., June 11, 1980, at H4745.
6. See Discussion on Proposed Amendment No. 3, for consideration, infra.
7. Cong. Rec., June 11, 1980, at H4806. It is also noteworthy that the Republican Leader, Mr. Michel; the Republican Whip, Mr. Lott; and then-Congressman David Stockman voted against the compromise proposal.
8. See Congressional Quarterly, August 9, 1980, at page 2288.
9. See Proposed Amendment No. 1, for consideration, infra.
10. Cong. Rec., June 11, 1980, at H4770.
11. Id., at H4767.
12. Id., at H4769.
13. Id., at H4774.
14. Id., at H4771
15. Id.
16. Id., at H4745.
17. Id., at H4783.
18. Id., at H4774-H4775.
19. Id., at H4776.

20. 558 F.2d 1283, 1290 (7th Cir., 1977), cert. denied, 434 U.S. 1025 (1978).
21. Skillken and Co. v. City of Toledo, 528 F.2d 867 (6th Cir., 1975), vacated and remanded, 429 U.S. 1068 (1977); 558 F.2d 350 (6th Cir., 1977), cert. denied, 434 U.S. 985 (1978).
22. Madison v. Jeffers, 494 F.2d 114 (4th Cir., 1973).
23. 508 F.2d 1179 (8th Cir., 1974), cert. denied, 422 U.S. 1042 (1975).
24. 564 F.2d 126 (3d Cir., 1977), cert. denied, 435 U.S. 908 (1978).
25. 494 F.Supp. 1049 (N.D., Ohio, 1980).
26. Cong. Rec., supra, at H4788.
27. Id., at H4793.
28. Id., at H4804.
29. Id.

I N D E X

Subject

Tab Identifier

Existing Title VIII

"Title VIII"

Draft Proposal

"Draft"

Proposed Amendment No. 1, for Consideration

"1"

Proposed Amendment No. 2, for Consideration

"2"

Proposed Amendment No. 3, for Consideration

"3"

TITLE VII—MATERIALS RELATING TO CONSTITUTIONAL
RIGHTS OF INDIANS

SECRETARY OF INTERIOR TO PREPARE

SEC. 701. (a) In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treaties entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) There is authorized to be appropriated for carrying out the provisions of this title, with respect to the preparation but not including printing, such sum as may be necessary.

[Public Law 93-625]

[25 U.S.C. 1341]

TITLE VIII—FAIR HOUSING

POLICY

SEC. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

[42 U.S.C. 3601]

DEFINITIONS

SEC. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) " Dwelling " means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) " Family " includes a single individual.

(d) " Person " includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

(e) " To rent " includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) " Discriminatory housing practice " means an act that is unlawful under section 804, 805, or 806.

(g) " State " means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

[Public Law 95-598]

[42 U.S.C. 3602]

EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is 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, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

[42 U.S.C. 3603]

DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

(a) 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 race, color, religion, sex, or national origin.

【Public Law 93-383】

(b) 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 race, color, religion, sex, or national origin.

【Public Law 93-383】

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

【Public Law 93-383】

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

【Public Law 93-383】

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

【Public Law 93-383】

【42 U.S.C. 3604】

DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm, or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b).

【Public Law 93-383】

【42 U.S.C. 3605】

DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin.

【Public Law 93-383】

【42 U.S.C. 3606】

EXEMPTION

SEC. 807. Nothing in this title shall prohibit 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, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental of occupancy of such lodgings to its members or from giving preference to its members.

【42 U.S.C. 3607】

ADMINISTRATION

SEC. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. 【Amends the Housing and Urban Development Act (Public Law 89-174), sections 4(a) and 7.】

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance

with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

[Public Law 95-454]

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

[42 U.S.C. 3608]

EDUCATION AND CONCILIATION

SEC. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

[42 U.S.C. 3609]

SEC. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. 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.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he 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.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of refer-

ence under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

[42 U.S.C. 3610]

INVESTIGATION; SUBPENAS; GIVING OF EVIDENCE

SEC. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however*, That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such 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 himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement 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.

(f) 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 his power to do so, in obedience to the subpoena or lawful order of the Secretary, 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 submitted to the Secretary pursuant to his 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.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

[42 U.S.C. 3611]

ENFORCEMENT BY PRIVATE PERSONS

SEC. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however*, That any sale, encumbrance, or rental consummat-

ed prior to the issuance of any court order issued under the authority of this Act, 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 the provisions of this Act shall not be affected.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

[42 U.S.C. 3612]

ENFORCEMENT BY THE 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, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

[42 U.S.C. 3613]

EXPEDITED OF PROCEEDINGS

SEC. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

[42 U.S.C. 3614]

EFFECT ON STATE LAWS

SEC. 815. 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 law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

[42 U.S.C. 3615]

COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

[42 U.S.C. 3616]

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

[42 U.S.C. 3617]

APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

[42 U.S.C. 3618]

SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

[42 U.S.C. 3619]

[COMMITTEE PRINT]

JANUARY 13, 1983

98TH CONGRESS
1ST SESSION

H. R.

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY , 1983 —

Mr. introduced the following bill; which was 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION. 1. This Act may be cited as the "Fair Hous-
5 ing Amendments Act of 1983".

DRAFT

1 SHORT TITLE FOR 1968 ACT

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

8 SHORT TITLE FOR TITLE VIII

9 SEC. 3. Title VIII of the Act entitled "An Act to pre-
10 scribe penalties for certain acts of violence or intimidation,
11 and for other purposes" (Public Law 90-284, approved April
12 11, 1968) is amended by inserting immediately after the
13 title's catchline the following new section:

14 "SHORT TITLE

15 "SEC. 800. This title may be referred to as the 'Fair
16 Housing Act'."

17 AMENDMENTS TO DEFINITIONS SECTION

18 SEC. 4. (a) Section 802(f) of the Act entitled "An Act to
19 prescribe penalties for certain acts of violence or intimidation,
20 and for other purposes" (Public Law 90-284, approved April
21 11, 1968) is amended by striking out "section 804, 805, or
22 806" and inserting "this title" in lieu thereof.

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

1 “(h) ‘Handicap’ means, with respect to a person, (1) a
2 physical or mental impairment which substantially limits one
3 or more of such person’s major life activities, (2) a record of
4 having such an impairment, or (3) being regarded as having
5 such an impairment; but such term does not include any cur-
6 rent impairment that consists of alcoholism or drug abuse, or
7 any other impairment that would be a direct threat to the
8 property or the safety of others.

9 “(i) ‘Aggrieved person’ includes any person who claims
10 to have been injured by a discriminatory housing practice or
11 who believes that he will be irrevocably injured by a discrimi-
12 natory housing practice that is about to occur.”.

13 MODIFICATION OF OWNER-OCCUPIED EXEMPTION

14 SEC. 5. Section 803 of the Act entitled “An Act to
15 prescribe penalties for certain acts of violence or intimidation,
16 and for other purposes” (Public Law 90-284, approved April
17 11, 1968) is amended—

18 (1) by inserting “and before the date of the enact-
19 ment of the Fair Housing Amendments Act of 1980,”
20 immediately after “1968,” in subsection (a)(2);

21 (2) by inserting “and (e)” after “subsection (c)” in
22 subsection (b); and

23 (3) by adding at the end of subsection (a) the fol-
24 lowing new paragraph:

1 "After the date of the enactment of the Fair Housing
2 Amendments Act of 1983, to all dwellings except as
3 exempted by subsection (b).".

4 DISCRIMINATORY HOUSING PRACTICE AMENDMENTS

5 SEC. 6. (a) The catchline of section 804 of the Act enti-
6 tled "An Act to prescribe penalties for certain acts of vio-
7 lence or intimidation, and for other purposes" (Public Law
8 90-284, approved April 11, 1968) is amended by adding at
9 the end the following: "AND OTHER PROHIBITED PRAC-
10 TICES".

11 (b) Section 804 of such Act is amended by inserting ^{["},
12 803(d)," immediately after "803(b)".

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

15 "(f)(1) To refuse to sell or rent after the making of a
16 bona fide offer, or to refuse to negotiate for the sale or rental
17 of, a dwelling to any person because of a handicap of a pro-
18 spective buyer or renter or of any person associated with
19 such buyer or renter unless such handicap would prevent a
20 prospective dwelling occupant from conforming to such rules,
21 policies, and practices as are permitted by paragraph (2) of
22 this subsection.

23 "(2) To discriminate against any person in the terms,
24 conditions, or privileges of sale or rental of a dwelling, or in

1 the provision of services or facilities in connection therewith,
2 because of handicap. For purposes of this paragraph—

3 “(A) discrimination includes—

4 “(i) refusal to permit reasonable modifications
5 of premises occupied, or to be occupied, by per-
6 sons with a handicap which are necessary to
7 afford such handicapped persons access to prem-
8 ises substantially equal to that of nonhandicapped
9 persons, but in the case of a rental, only if the
10 renter makes an agreement to restore the prem-
11 ises to the condition which existed before such
12 modification, reasonable wear and tear excepted;
13 and

14 “(ii) refusal to make reasonable accommoda-
15 tions in policies, practices, rules, services, or facil-
16 ities, when such accommodations are necessary to
17 afford handicapped persons enjoyment of dwellings
18 substantially equal to that of nonhandicapped per-
19 sons; and

20 “(B) discrimination does not include—

21 “(i) refusal to make alterations in premises at
22 the expense of sellers, landlords, owners, brokers,
23 building managers, or persons acting on their
24 behalf;

1 “(ii) refusal to make modification of generally
2 applicable rules, policies, practices, services, or
3 facilities where such modification would result in
4 unreasonable inconvenience to other affected per-
5 sons; or

6 “(iii) refusal to allow architectural changes
7 to, or modifications of, buildings which would ma-
8 terially decrease the marketability or value of a
9 building or alter the manner in which a building
10 or its environs has been, or is intended to be,
11 used.”.

12 (d) Subsections (c), (d), and (e) of section 804, and sec-
13 tion 806 of such Act are each amended by inserting “handi-
14 cap,” immediately after “sex,” each place it appears.

15 (e) Section 805 of such Act is amended to read as fol-
16 lows:

17 “DISCRIMINATION IN CERTAIN TRANSACTIONS THAT
18 AFFECT HOUSING FINANCING

19 “SEC. 805. (a) It shall be unlawful for any person
20 whose business includes the making, purchasing, or insuring
21 of loans, or selling, brokering, or appraising of real property,
22 to deny or otherwise make unavailable a loan or other finan-
23 cial assistance which is for the purpose of purchasing, con-
24 structing, improving, repairing, or maintaining a dwelling, or
25 to discriminate in the fixing of the amount, interest rate, du-

1 ration, or other terms or conditions of such loan or other
2 financial assistance, because of race, color, religion, sex,
3 handicap, or national origin.

4 “(b) Notwithstanding any other provisions of this title, it
5 is not a violation of this title for a person engaged in the
6 business of furnishing appraisals of real property to take into
7 consideration or to report to the person for whom the
8 appraisal is being performed all factors shown by documenta-
9 tion to be relevant to the appraiser’s estimate of the fair
10 market value of the property, if such factors are not used by
11 the appraiser to discriminate against any person for the pur-
12 pose of denying rights guaranteed by this title.”

*see & intent
standards*

13 (f) Section 807 of such Act is amended by adding at the
14 end the following: “Nothing in this title shall prohibit a mini-
15 mum lot size requirement for residences unless such require-
16 ment is imposed with intent to discriminate against a class
17 protected by this title.”

18 SEC. 7. Section 808(c) of the Act entitled “An Act to
19 prescribe penalties for certain acts of violence or intimidation,
20 and for other purposes” (Public Law 90-284, approved April
21 11, 1968), is amended by striking out “5362” and inserting
22 “5372” in lieu thereof.

23 ENFORCEMENT CHANGES

24 SEC. 8. The Act entitled “An Act to prescribe penalties
25 for certain acts of violence or intimidation, and for other pur-

1 poses" (Public Law 90-284), approved April 11, 1968) is
2 amended by striking out sections 810 through 815 and insert-
3 ing in lieu of the matter so stricken the following:

4 "ENFORCEMENT BY SECRETARY; PRELIMINARY MATTERS

5 "SEC. 810. (a) Whenever an aggrieved person, or the
6 Secretary on the Secretary's own initiative, files a charge
7 alleging a discriminatory housing practice, the Secretary
8 shall serve a notice of the alleged discriminatory housing
9 practice on the party charged (hereinafter in this title referred
10 to as the 'respondent') within ten days after such filing, and
11 shall make an investigation thereof. Upon receipt of such
12 charge, the Secretary shall serve notice upon the aggrieved
13 person acknowledging receipt of the charge and advising the
14 aggrieved person of the time limits and choice of forums pro-
15 vided under this title. Such charges shall be in writing under
16 oath or affirmation and shall contain such information and be
17 in such form as the Secretary requires. An aggrieved person
18 shall file a charge under this section with the Secretary not
19 later than one year after the alleged discriminatory housing
20 practice occurred or terminated. The Secretary may also in-
21 vestigate housing practices to determine whether charges
22 should be brought under this section or new rules should be
23 made under this title.

24 "(b)(1) In connection with any investigation of such
25 charge, the Secretary shall, at reasonable times, have access

1 to, and the right to copy, any information that is reasonably
2 necessary for the furtherance of the investigation. The Secre-
3 tary may issue subpoenas to compel such access to or the
4 production of such information, or the appearance of persons,
5 and may issue interrogatories to a respondent, to the same
6 extent and subject to the same limitations as would apply if
7 the subpoenas or interrogatories were issued or served in aid
8 of a civil action in the United States district court for the
9 district in which the investigation is taking place. The Secre-
10 tary may administer oaths.

11 “(2) Upon written application to the Secretary, a re-
12 spondent shall be entitled to the issuance of a reasonable
13 number of subpoenas by and in the names of the Secretary to
14 the same extent and subject to the same limitations as sub-
15 poenas issued by the Secretary under paragraph (1) of this
16 subsection.

17 “(3) Witnesses summoned by subpoena of the Secretary
18 under this title shall be entitled to the same witness and mile-
19 age fees as are witnesses in proceedings in United States
20 district courts.

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

1 “(5) Any person who willfully fails or neglects to attend
2 and testify or to answer any lawful inquiry or to produce
3 records, documents, or other evidence, if in such person’s
4 power to do so, in obedience to the subpoena or lawful order of
5 the Secretary under this title, shall be fined not more than
6 \$1,000. Any person who, with intent thereby to mislead the
7 Secretary shall make or cause to be made any false entry or
8 statement of fact in any report, account, record, or other doc-
9 ument produced pursuant to the Secretary’s subpoena or other
10 order, or shall willfully neglect or fail to make or cause to be
11 made full, true, and correct entries in such reports, accounts,
12 records, or other documents, or shall willfully mutilate, alter,
13 or by any other means falsify any documentary evidence,
14 shall be fined not more than \$1,000.

15 “(c) Whenever a charge alleges a discriminatory hous-
16 ing practice within the jurisdiction of a State or local public
17 agency certified by the Secretary under this paragraph, the
18 Secretary shall, within thirty days after receiving such
19 charge and before taking any action with respect to such
20 charge, refer such charge to that certified agency. The Secre-
21 tary shall, after that referral is made, take no further action
22 with respect to such charge, if the appropriate State or local
23 law enforcement official has, before ninety days after the date
24 the alleged offense has been brought to such official’s atten-
25 tion, commenced proceedings in the matter, and, having so

1 commenced proceedings carries forward such proceedings
2 with reasonable promptness. An agency shall be certified
3 under this subsection if the Secretary determines that the
4 substantive rights protected by that agency, the procedures
5 followed by that agency, the remedies available to such
6 agency, and the availability of judicial review of such agen-
7 cy's action, are substantially equivalent to those created by
8 and under this title. Before making such certification, the
9 Secretary shall take into account the current practices and
10 past performance, if any, of such agency. Any State or local
11 agency may submit a written request for certification to the
12 Secretary. Unless the Secretary interposes a written objec-
13 tion within ninety days after such submission, such State or
14 local agency shall be deemed certified within the meaning of
15 this title. If the Secretary objects within the prescribed
16 ninety-day period, he shall provide the State or local agency
17 with an explanation specifically outlining the reason for his
18 decision, and such decision shall be subject to review by the
19 appropriate United States district court.

20 “(d) The Secretary and other Federal agencies having
21 authority to prevent housing discrimination shall cooperate
22 and seek to avoid duplication of effort in the exercise of their
23 several authority. The Secretary and such other Federal
24 agencies shall notify each other of any allegation of housing
25 discrimination which may be within their respective responsi-

1 bilities. The Secretary of such other Federal agency shall,
2 upon such notification, take additional appropriate action.

3 "REFERENCE FOR FURTHER ENFORCEMENT

4 "SEC. 811. (a) If the Secretary concludes on the basis of
5 a preliminary investigation of a charge that prompt judicial
6 action is necessary to carry out the purposes of this title, the
7 Secretary may refer the matter to the Attorney General and
8 the Attorney General may bring an action for appropriate
9 temporary or preliminary relief pending final disposition of
10 such charge. Any temporary restraining order or other order
11 granting preliminary or temporary relief shall be issued in
12 accordance with rule 65 of the Federal Rules of Civil
13 Procedure.

14 "(b) At any time after the filing of a charge, the Secre-
15 tary shall endeavor to resolve such charge by conciliation. If
16 any party against whom a charge is filed refuses to partici-
17 pate in the conciliation process, the Secretary may grant to
18 the aggrieved person not more than \$500 for the legal fees
19 and other expenses of commencing a civil action under this
20 title against that party so refusing. Nothing said or done in
21 the course of conciliation may be made public or used as
22 evidence in a subsequent proceeding under this title without
23 the written consent of the persons concerned. Any employee
24 of the Secretary who makes public any information in viola-
25 tion of the immediately preceding sentence shall be fined not

1 more than \$1,000. A conciliation agreement may provide for
2 binding arbitration of the dispute arising from the complaint.
3 If the conciliation agreement provides for such arbitration,
4 the Secretary may issue such orders as are necessary to en-
5 force such agreement, including an order that the breaching
6 party pay to the other party not more than \$500, after deter-
7 mining that there has been a breach of that agreement. Any
8 arbitration that results from a conciliation agreement under
9 this section may award appropriate specific relief to the
10 person aggrieved and damages of not more than \$500 for
11 actual loss, insult, or emotional distress.

12 “(c) If the Secretary determines, after an investigation
13 under this section, that reasonable cause exists to believe the
14 charge is true, the Secretary shall refer the matter to the
15 Attorney General for the filing of an appropriate civil action
16 under section 813(b) of this title. Such determination in the
17 case of a charge made by an aggrieved person may not be
18 made later than two hundred and seventy days after the filing
19 of such charge. After each investigation under this section,
20 the Secretary shall provide to each aggrieved person and
21 each respondent a copy of the findings of such investigation.

22 “PRIVATE ENFORCEMENT

23 “SEC. 812. (a)(1) An aggrieved person may commence a
24 civil action in an appropriate United States district court or
25 State court at any time not later than two years after the

1 alleged discriminatory housing practice occurred or
2 terminated.

3 “(2) Upon timely application, the Attorney General may
4 intervene in such civil action, if the Attorney General certi-
5 fies that the case is of general public importance.

6 “(b) Upon application by an aggrieved person, any trial
7 or appellate court may, in such circumstances as it deems
8 just, appoint an attorney for such person and may authorize
9 the commencement or continuation of the action without the
10 payment of fees, costs, or security.

11 “(c) In a civil action under this section, a court may
12 award such relief as may be appropriate, which may include
13 money damages, equitable and declaratory relief, and, in the
14 case of a willful violation, punitive damages not to exceed
15 \$10,000.

16 “(d)(1) It is the sense of the Congress that United States
17 magistrates should be used by the courts to the maximum
18 feasible extent to expedite litigation under this section.

19 “(2) The Secretary shall to the maximum feasible extent
20 provide technical assistance to persons requesting it who an-
21 ticipate they may file charges under this title or commence
22 civil actions under this section. Such assistance shall include
23 the filling out of forms, investigation, and evidence gathering.

1 "ENFORCEMENT ROLE OF ATTORNEY GENERAL

2 "SEC. 813. (a) Whenever the Attorney General has rea-
3 sonable cause to believe that any person or group of persons
4 is engaged in a pattern or practice of resistance to the full
5 enjoyment of any of the rights granted by this title, or that
6 any group of persons has been denied any of the rights grant-
7 ed by this title and such denial raises an issue of general
8 public importance, the Attorney General may bring a civil
9 action in an appropriate United States district court.

10 "(b) The Attorney General may bring a civil action in
11 an appropriate United States district court to remedy any
12 discriminatory housing practice (1) with respect to which the
13 Secretary has made a finding that reasonable cause exists
14 under this title and (2) which the Secretary refers to the At-
15 torney General for enforcement under this subsection.

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

19 "(d) A person may intervene in any civil action com-
20 menced under this section which involves an alleged discrimi-
21 natory housing practice with respect to which such person is
22 an aggrieved person.

1 "ANCILLARY AND PROCEDURAL MATTERS RELATING TO
2 ENFORCEMENT

3 "SEC. 814. (a) In any action or proceeding under this
4 title, the court, in its discretion, may allow a prevailing party
5 (other than the United States with respect to attorney fees)
6 reasonable attorney and expert witness fees as part of the
7 costs, and the United States shall be liable for such costs the
8 same as a private person. Such costs may also be awarded
9 upon the entry of any interlocutory order which determines
10 substantial rights of the parties.

11 "(b) Any court in which a proceeding is instituted under
12 this title shall assign the case for hearing at the earliest prac-
13 ticable date and cause the case to be in every way expedited.

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

20 "EFFECT OF OTHER LAWS

21 "SEC. 815. (a) Nothing in this title shall be construed to
22 invalidate or limit any law of a State or political subdivision
23 of a State, or of any other jurisdiction in which this title shall
24 be effective, the grants, guarantees, or protects the same
25 rights as are granted by this title; but any such law that

1 purports to require or permit any action that would be a dis-
2 criminatory housing practice under this title shall to that
3 extent be invalid.

4 “(b) Nothing in this title shall be construed to repeal,
5 supersede, or diminish the protection provided to handi-
6 capped persons by any other Federal law.”.

7 INTERFERENCE, COERCION, OR INTIMIDATION

8 SEC. 9. Section 817 of the Act entitled “An Act to
9 prescribe penalties for certain acts of violence or intimidation,
10 and for other purposes” (Public Law 90-284, approved April
11 11, 1968) is amended by striking out “section 803, 804, 805,
12 or 806.” and inserting “this title.” in lieu thereof.

13 CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL

14 RIGHTS ACT

15 SEC. 10. Section 901 of the Act entitled “An Act to
16 prescribe penalties for certain acts of violence or intimidation,
17 and for other purposes” (Public Law 90-284, approved April
18 11, 1968) is amended by inserting “, handicap (as defined in
19 section 802 of this Act),” immediately after “sex” each place
20 it appears.

PROPOSED AMENDMENT NO. 1, FOR CONSIDERATION

This is a block amendment which was offered by Mr. Butler at both full Committee and on the floor, failing in both cases. It would have eliminated coverage for the handicapped throughout the bill. The remaining protected categories would remain as under current law, namely race, color, religion, sex or national origin.

Text of The Amendment

On page 3, strike out line 1 and all that follows through line 8.

On page 3, line 9, strike "(i)" and insert in lieu thereof "(h)".

On page 4, strike out line 13 and all that follows through line 11 on page 6.

On page 6, line 12, strike out "(d)" and insert in lieu thereof "(c)".

On page 6, line 15, strike out "(e)" and insert in lieu thereof "(d)".

On page 7, line 3, strike out "handicap,".

On page 17, strike out line 13 and all that follows through line 20.