

Public Law 100-430
100th Congress

An Act

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.

Sept. 13, 1988
[H.R. 1158]

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Housing Amendments Act of 1988".

SEC. 2. SHORT TITLE FOR 1968 ACT.

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

Fair Housing
Amendments
Act of 1988.
Discrimination,
prohibition.
42 USC 3601
note.
Civil Rights Act
of 1968.
42 USC 3601
note.

SEC. 3. REFERENCES TO 1968 ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968).

SEC. 4. SHORT TITLE FOR TITLE VIII.

Title VIII is amended by inserting after the title's heading the following new section:

"SHORT TITLE

"SEC. 800. This title may be cited as the 'Fair Housing Act'."

Fair Housing
Act.
42 USC 3601
note.

SEC. 5. AMENDMENTS TO DEFINITIONS SECTION.

(a) MODIFICATION OF DEFINITION OF DISCRIMINATORY HOUSING PRACTICE.—Section 802(f) is amended by striking out "or 806" and inserting in lieu thereof "806, or 818".

42 USC 3602.

(b) ADDITIONAL DEFINITIONS.—Section 802 is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person—

"(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

"(2) a record of having such an impairment, or

"(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(i) 'Aggrieved person' includes any person who—

"(1) claims to have been injured by a discriminatory housing practice; or

"(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"(j) 'Complainant' means the person (including the Secretary) who files a complaint under section 810.

"(k) 'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

"(1) a parent or another person having legal custody of such individual or individuals; or

"(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"(l) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

"(m) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

"(n) 'Respondent' means—

"(1) the person or other entity accused in a complaint of an unfair housing practice; and

"(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

"(o) 'Prevailing party' has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988)."

Handicapped
persons.
42 USC 3604.

SEC. 6. DISCRIMINATORY HOUSING PRACTICE AMENDMENTS.

(a) **ADDITIONAL DISCRIMINATORY HOUSING PRACTICES.**—Section 804 is amended by adding at the end the following:

"(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

"(A) that buyer or renter,

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that buyer or renter.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

"(A) that person; or

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that person.

"(3) For purposes of this subsection, discrimination includes—

"(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

“(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

“(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that—

“(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

“(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

“(iii) all premises within such dwellings contain the following features of adaptive design:

“(I) an accessible route into and through the dwelling;

“(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

“(III) reinforcements in bathroom walls to allow later installation of grab bars; and

“(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

“(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as ‘ANSI A117.1’) suffices to satisfy the requirements of paragraph (3)(C)(iii).

“(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

State and local governments.

“(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

“(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

“(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph (3)(C).

“(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to

State and local governments.

receive and process complaints or otherwise engage in enforcement activities under this title.

“(B) Determinations by a State or a unit of general local government under paragraphs (5) (A) and (B) shall not be conclusive in enforcement proceedings under this title.

“(7) As used in this subsection, the term ‘covered multifamily dwellings’ means—

“(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

“(B) ground floor units in other buildings consisting of 4 or more units.

State and local governments.

“(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

Safety.

“(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”.

42 USC 3606, 3604.

(b) **ADDITIONAL PROTECTED CLASSES.**—(1) Section 806 and subsections (c), (d), and (e) of section 804, are each amended by inserting “handicap, familial status,” immediately after “sex,” each place it appears.

(2) Subsections (a) and (b) of section 804 are each amended by inserting “familial status,” after “sex,” each place it appears.

42 USC 3602 note.

(3) For the purposes of this Act as well as chapter 16 of title 29 of the United States Code, neither the term “individual with handicaps” nor the term “handicap” shall apply to an individual solely because that individual is a transvestite.

(c) **DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.**—Section 805 is amended to read as follows:

“DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

42 USC 3605.

“**SEC. 805. (a) IN GENERAL.**—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

“(b) **DEFINITION.**—As used in this section, the term ‘residential real estate-related transaction’ means any of the following:

“(1) The making or purchasing of loans or providing other financial assistance—

“(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

“(B) secured by residential real estate.

“(2) The selling, brokering, or appraising of residential real property.

“(c) **APPRAISAL EXEMPTION.**—Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.”.

42 USC 3607.

(d) **ADDITIONAL EXEMPTION.**—Section 807 is amended—

(1) by inserting "(a)" after "Sec. 807."; and

(2) by adding at the end of such section the following:

"(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

"(2) As used in this section, 'housing for older persons' means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

"(B) intended for, and solely occupied by, persons 62 years of age or older; or

"(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

Regulations.
Aged persons.

"(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

"(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

"(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

"(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

Aged persons.

"(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2) (B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections (2) (B) or (C); or

"(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2) (B) or (C).

"(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)."

Drugs and drug
abuse.

(e) CLERICAL AMENDMENT.—The heading of section 804 is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

42 USC 3604.

SEC. 7. ADDITIONAL ADMINISTRATIVE AUTHORITY.

(a) COOPERATION WITH SECRETARY.—Section 808(d) is amended by inserting "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

42 USC 3608.

42 USC 3608.

(b) **ADDITIONAL FUNCTIONS OF SECRETARY.**—(1) Section 808(e) is amended—

Reports.

(A) in paragraph (2), by inserting before the semicolon at the end, the following: “, including an annual report to the Congress—

“(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

“(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

“(i) investigations are not completed as required by section 810(a)(1)(B);

“(ii) determinations are not made within the time specified in section 810(g); and

“(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g)”;

(B) by striking out “; and” at the end of paragraph (4);

(C) by striking out the period at the end of paragraph (5) and inserting in lieu thereof “; and”; and

(D) by adding at the end, the following:

Reports.

Public
information.
Records.

“(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).”

(2) Section 808 is amended by adding at the end the following:

“(f) The provisions of law and Executive orders to which subsection (e)(6) applies are—

“(1) title VI of the Civil Rights Act of 1964;

“(2) title VIII of the Civil Rights Act of 1968;

“(3) section 504 of the Rehabilitation Act of 1973;

“(4) the Age Discrimination Act of 1975;

“(5) the Equal Credit Opportunity Act;

“(6) section 1978 of the Revised Statutes (42 U.S.C. 1982);

“(7) section 8(a) of the Small Business Act;

“(8) section 527 of the National Housing Act;

“(9) section 109 of the Housing and Community Development Act of 1974;

“(10) section 3 of the Housing and Urban Development Act of 1968;

“(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and

“(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.”

SEC. 8. ENFORCEMENT CHANGES.

Title VIII is amended—

- (1) by redesignating sections 815 through 819 as sections 816 through 820, respectively; and
- (2) by striking out sections 810 through 813 and inserting in lieu thereof the following:

42 USC
3615-3619.
42 USC
3610-3613.

“ADMINISTRATIVE ENFORCEMENT; PRELIMINARY MATTERS

“SEC. 810. (a) COMPLAINTS AND ANSWERS.—(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint. 42 USC 3610.

“(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

“(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

“(B) Upon the filing of such a complaint—

“(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this title;

“(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this title, together with a copy of the original complaint;

“(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

“(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

“(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

“(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

“(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

“(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

Contracts.

"(b) INVESTIGATIVE REPORT AND CONCILIATION.—(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

"(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

"(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

Public information.

"(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this title.

Reports.

"(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

"(i) the names and dates of contacts with witnesses;

"(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

"(iii) a summary description of other pertinent records;

"(iv) a summary of witness statements; and

"(v) answers to interrogatories.

"(B) A final report under this paragraph may be amended if additional evidence is later discovered.

"(c) FAILURE TO COMPLY WITH CONCILIATION AGREEMENT.—Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814 for the enforcement of such agreement.

"(d) PROHIBITIONS AND REQUIREMENTS WITH RESPECT TO DISCLOSURE OF INFORMATION.—(1) Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned.

"(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

"(e) PROMPT JUDICIAL ACTION.—(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 812 of this title.

"(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any

respondent under sections 814(a) and 814(c) or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

“(f) REFERRAL FOR STATE OR LOCAL PROCEEDINGS.—(1) Whenever a complaint alleges a discriminatory housing practice—

“(A) within the jurisdiction of a State or local public agency; and

“(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

“(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

“(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

“(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

“(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

“(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

“(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

“(ii) the procedures followed by such agency;

“(iii) the remedies available to such agency; and

“(iv) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under this title.

“(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

“(4) During the period which begins on the date of the enactment of the Fair Housing Amendments Act of 1988 and ends 40 months after such date, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this title on the day before such date shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on that date. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

“(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

“(g) REASONABLE CAUSE DETERMINATION AND EFFECT.—(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with

respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

"(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 812.

"(B) Such charge—

"(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

"(ii) shall be based on the final investigative report; and

"(iii) need not be limited to the facts or grounds alleged in the complaint filed under section 810(a).

"(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814, instead of issuing such charge.

"(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

"(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

"(h) SERVICE OF COPIES OF CHARGE.—After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 812(a) and the effect of such an election, to be served—

"(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

"(2) on each aggrieved person on whose behalf the complaint was filed.

"SUBPOENAS; GIVING OF EVIDENCE

"SEC. 811. (a) IN GENERAL.—The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

Public
information.

"(b) WITNESS FEES.—Witnesses summoned by a subpoena under this title shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

"(c) CRIMINAL PENALTIES.—(1) 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 it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

Records.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this title—

"(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

"(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

"(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

"ENFORCEMENT BY SECRETARY

"SEC. 812. (a) ELECTION OF JUDICIAL DETERMINATION.—When a charge is filed under section 810, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 810(h) or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

42 USC 3612.

"(b) ADMINISTRATIVE LAW JUDGE HEARING IN ABSENCE OF ELECTION.—If an election is not made under subsection (a) with respect to a charge filed under section 810, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 810. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5, United States Code. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

"(c) RIGHTS OF PARTIES.—At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 811. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

"(d) EXPEDITED DISCOVERY AND HEARING.—(1) Discovery in administrative proceedings under this section shall be conducted as

expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

"(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

"(3) The Secretary shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

"(e) **RESOLUTION OF CHARGE.**—Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

"(f) **EFFECT OF TRIAL OF CIVIL ACTION ON ADMINISTRATIVE PROCEEDINGS.**—An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

"(g) **HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDER.**—(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

"(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

"(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

"(A) in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

"(B) in an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

"(C) in an amount not exceeding \$50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed

without regard to the period of time within which any subsequent discriminatory housing practice occurred.

"(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this title.

Contracts.

"(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

"(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

"(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

"(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

"(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

Public
information.

"(h) REVIEW BY SECRETARY; SERVICE OF FINAL ORDER.—(1) The Secretary may review any finding, conclusion, or order issued under subsection (g). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

"(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

"(i) JUDICIAL REVIEW.—(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28, United States Code.

"(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDER UPON PETITION BY SECRETARY.—(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

"(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

Records.

"(k) RELIEF WHICH MAY BE GRANTED.—(1) Upon the filing of a petition under subsection (i) or (j), the court may—

"(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

"(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

"(C) enforce such order to the extent that such order is affirmed or modified.

"(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

"(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

"(l) ENFORCEMENT DECREE IN ABSENCE OF PETITION FOR REVIEW.—If no petition for review is filed under subsection (i) before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

"(1) which is filed by the Secretary under subsection (j) after the end of such day; or

"(2) under subsection (m).

"(m) COURT ENFORCEMENT OF ADMINISTRATIVE ORDER UPON PETITION OF ANY PERSON ENTITLED TO RELIEF.—If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i), and the Secretary has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

"(n) ENTRY OF DECREE.—The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

"(o) CIVIL ACTION FOR ENFORCEMENT WHEN ELECTION IS MADE FOR SUCH CIVIL ACTION.—(1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28, United States Code.

"(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

"(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 813. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 813 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought

for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

“(p) **ATTORNEY’S FEES.**—In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

“ENFORCEMENT BY PRIVATE PERSONS

“SEC. 813. (a) **CIVIL ACTION.**—(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

Contracts.
42 USC 3613.

“(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

“(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

“(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

“(b) **APPOINTMENT OF ATTORNEY BY COURT.**—Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

“(1) appoint an attorney for such person; or

“(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

“(c) **RELIEF WHICH MAY BE GRANTED.**—(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging

in such practice or ordering such affirmative action as may be appropriate).

"(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

Contracts.

"(d) EFFECT ON CERTAIN SALES, ENCUMBRANCES, AND RENTALS.—Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

"(e) INTERVENTION BY ATTORNEY GENERAL.—Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) in a civil action to which such section applies.

"ENFORCEMENT BY THE ATTORNEY GENERAL

Courts, U.S.
42 USC 3614.

"SEC. 814. (a) PATTERN OR PRACTICE CASES.—Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

"(b) ON REFERRAL OF DISCRIMINATORY HOUSING PRACTICE OR CONCILIATION AGREEMENT FOR ENFORCEMENT.—(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g).

"(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

Contracts.

"(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c).

"(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c).

"(c) ENFORCEMENT OF SUBPOENAS.—The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(d) RELIEF WHICH MAY BE GRANTED IN CIVIL ACTIONS UNDER SUBSECTIONS (a) AND (b).—(1) In a civil action under subsection (a) or (b), the court—

"(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order

against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;

“(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

“(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

“(i) in an amount not exceeding \$50,000, for a first violation; and

“(ii) in an amount not exceeding \$100,000, for any subsequent violation.

“(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.

“(e) INTERVENTION IN CIVIL ACTIONS.—Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813.

“RULES TO IMPLEMENT TITLE

“SEC. 815. The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.”

42 USC 3614a.

Public
information.

SEC. 9. CONFORMING AMENDMENT TO TITLE IX.

Section 901 is amended by inserting “, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act),” after “sex” each place it appears.

42 USC 3631.

SEC. 10. TECHNICAL AMENDMENT RELATING TO CIVIL ACTION.

Section 818 (as so redesignated by section 8 of this Act) is amended by striking out the last sentence thereof.

42 USC 3617.

SEC. 11. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) JURISDICTION.—Section 2342 of title 28, United States Code, is amended—

- (1) by striking out “and” at the end of paragraph (4);
- (2) by striking out the period at the end of paragraph (5) and inserting “; and” in lieu thereof; and
- (3) by inserting after paragraph (5) but before the matter beginning “Jurisdiction is invoked” the following:

“(6) all final orders under section 812 of the Fair Housing Act.”

(b) DEFINITION.—Section 2341(3) of title 28, United States Code, is amended—

- (1) by striking out “and” at the end of subparagraph (B);
- (2) by striking out the period at the end of subparagraph (C) and inserting “; and” in lieu thereof; and
- (3) by adding at the end the following:

“(D) the Secretary, when the order is under section 812 of the Fair Housing Act.”.

42 USC 3601
note.

SEC. 12. DISCLAIMER OF PREEMPTIVE EFFECT ON OTHER ACTS.

Nothing in the Fair Housing Act as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.

SEC. 13. EFFECTIVE DATE AND INITIAL RULEMAKING.

42 USC 3601
note.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of the enactment of this Act.

(b) INITIAL RULEMAKING.—In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act. The Secretary shall give public notice and opportunity for comment with respect to such rules.

Public
information.

42 USC 3601
note.

SEC. 14. SEPARABILITY OF PROVISIONS.

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

SEC. 15. MODIFICATION OF RENTAL HOUSING BY HANDICAPPED PERSONS.

Section 804 (as amended by section 6 of this Act) is further amended by striking out the period at the end of subsection (f)(3)(A) and inserting in lieu thereof “except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.”.

Approved September 13, 1988.

LEGISLATIVE HISTORY—H.R. 1158:

HOUSE REPORTS: No. 100-711 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 134 (1988):

June 22, 23, 29, considered and passed House.

Aug. 1, 2, considered and passed Senate, amended.

Aug. 8, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):
Sept. 13, Presidential remarks.