

Chapter 37. AN ACT EMPOWERING THE BOSTON FAIR HOUSING COMMISSION TO IMPOSE CIVIL PENALTIES AND ENFORCE BY JUDICIAL POWER THE PROVISIONS OF TITLE VIII.

Be it enacted, etc., as follows:

SECTION 1. The following words used in this act shall have the following meanings:

"Aggrieved person", any person who claims to have been injured by a discriminatory housing practice or believes such person will be injured by a discriminatory housing practice that is about to occur.

"Commission", the Boston Fair Housing Commission.

"Housing accommodations", any building, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more human beings 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.

"Person", includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and the commonwealth and all political subdivisions and boards or commissions thereof.

"Source of income", shall not include income derived from criminal activity.

SECTION 2. Subject to the provisions of section five, classes protected by this act shall include race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation and source of income.

SECTION 3. All housing accommodations in the city of Boston shall be subject to this act, except as hereinafter provided. Nothing in this act shall apply to housing accommodations which are specifically exempted from coverage by this act, Title VIII of the Civil Rights Act of 1988, as amended, 42 U.S.C. Sections 3601 et seq. or chapter one hundred and fifty-one B of the General Laws. Nothing in this act shall apply to the leasing or rental to two or fewer roomers, boarders, or lodgers who rent a unit in a licensed lodging house.

SECTION 4. Nothing in this act 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 housing accommodations 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, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income.

SECTION 5. In the city of Boston, discriminatory housing practices are prohibited; provided, however, that no practice shall be prohibited hereunder unless such practice is also prohibited by the federal Fair Housing Act or chapter one hundred and fifty-one B of the General Laws.

SECTION 6. Any person who violates the provisions of this act as to discriminatory housing practices shall, pursuant to the provisions of section seven, be subject to orders, temporary, equitable and legal, including compensatory damages, punitive damages or civil penalties and attorney's fees and costs.

SECTION 7. The commission, established pursuant to chapter ten of the city of Boston Ordinances of 1982, as amended, shall, in addition to every other power heretofore or

hereafter provided by statute or ordinance, have jurisdiction of all housing accommodations subject to this act. The commission shall have the following powers and duties as to such housing accommodations, except as to those housing accommodations in any building or structure containing one, two, three or four dwelling units, one of which is occupied by the owner thereof as his permanent residence.

At any time after the filing of a complaint, and before or after the final disposition of a complaint, the commission may file a petition in Suffolk superior court or the Boston housing court departments of the trial court of the commonwealth seeking appropriate preliminary, temporary and/or injunctive relief against such respondent including orders or decrees restraining and enjoining the selling, renting or otherwise making unavailable to the complainant any housing accommodations with respect to which the complaint is made, pending the final determination of proceedings under this act.

If the commission, after hearing, finds that a respondent has engaged in any unlawful practice as set forth in section five, it shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful practice or violation. Such cease and desist orders and orders for affirmative relief may be issued to operate prospectively. Any such cease and desist order shall be subject to judicial review pursuant to section eight of this act.

If the commission, after hearing, shall find that a respondent has engaged in any unlawful practice relative to housing or real estate, as set forth in section five, in addition to any other action it may take under this act, the commission may:

(1) Award damages to the aggrieved party which damages shall include, but shall not be limited to, the expense incurred by the aggrieved party for obtaining alternate housing or space, for storage of goods and effects, for moving and for other costs actually incurred as a result of such unlawful practice or violation. Damages for emotional distress may also be awarded to the aggrieved party. Any respondent aggrieved by such an award of damages may, within ten days of notice of such award, bring a petition in Suffolk superior court or the Boston housing court departments of the trial court of the commonwealth addressed to the justice of the court, praying that the action of the commission in awarding damages be reviewed by said court;

(2) Assess a civil penalty against the respondent, (a) in an amount not to exceed ten thousand dollars if the respondent has not been adjudged to have committed a prior discriminatory housing practice; (b) in an amount not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed one other discriminatory housing practice during the five year period ending on the date of the filing of the complaint; and (c) in an amount not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven year period ending on the date of the filing of the complaint. Any such penalties assessed hereunder shall be deposited in a trust fund to be administered by the city of Boston to be used solely for programs that benefit publicly assisted housing residents in the city of Boston;

(3) Arrange to have adjudicated in court, at the commission's expense, the award of punitive damages against such respondent; and

(4) Arrange to have adjudicated in court, the allowance of reasonable attorney's fees and costs to any prevailing aggrieved person unless special circumstances make the recovery of such fees and costs unjust. The complainant alleging violations of this act shall be liable for attorney's fees and costs to the extent that his participation was frivolous, vexatious or for the purpose of harassment.

The commission shall promulgate rules and regulations consistent with those of the Massachusetts commission against discrimination to effectuate the goals, policies and

provisions of this act. The Massachusetts law of evidence shall apply in all proceedings before the commission.

SECTION 8. The actions of the commission shall be subject to judicial review upon application as provided herein by any party aggrieved by a final order of the commission. Judicial review of a final commission order shall be in Suffolk superior court or the Boston housing court departments of the trial court of the commonwealth which shall have the authority to grant to any party, such temporary relief, restraining order, or other order as the court determines is just and proper. The reviewing court shall affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings and enforce the order to the extent that the order is affirmed or modified.

SECTION 9. An aggrieved person, with or without filing a complaint at the commission and without regard to the status of such complaint, may commence a civil action in a court of competent jurisdiction not later than two years after the occurrence or termination of a discriminatory housing practice, or the breach of a conciliation agreement entered into with the commission, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach; provided, however, that if an aggrieved person has consented to a conciliation agreement, such aggrieved person may not file a civil action with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing such agreement; and provided, further, that an aggrieved person may not commence a civil action with respect to an alleged discriminatory housing practice if a hearing commissioner determines that probable cause exists and a hearing has commenced before the commission. The computation of such two-year period as to an alleged discriminatory housing practice, but not as to a breach of a conciliation agreement, shall not include any time during which an administrative proceeding is pending with respect to a complaint based upon such discriminatory housing practice. If the court finds that a discriminatory housing practice has occurred or is about to occur, an aggrieved person shall have available any and all remedies pursuant to this act. This section does not preclude the right of any aggrieved person to seek relief under chapter one hundred and fifty-one B of the General Laws.

SECTION 10. This act is to be interpreted consistent with the provisions of Title VIII of the Civil Rights Act of 1988, as amended, 42 U.S.C. Sections 3601 et seq. and chapter one hundred and fifty-one B of the General Laws.

SECTION 11. This act shall take effect upon its passage.

Approved June 7, 1994.