



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

JAN 12 2016

Mr. Jamal Smith
Executive Director
Indiana Civil Rights Commission
100 North Senate Ave
Indianapolis, IN 46204

RE: Proposed legislation affecting the Indiana Fair Housing Act (SB 100)

Dear Mr. Smith:

It has come to my attention that there is a legislative bill (SB 100) pending in the Indiana General Assembly that would make certain changes to the Indiana Civil Rights Law (IC 22-9-1) that would affect the Indiana Fair Housing Act (IC 22-9.5), as well as changes directly to the IFHA itself. Having reviewed SB 100, it raises a very significant concern with respect to the continued status of Indiana's fair housing law as substantially equivalent to the federal Fair Housing Act.

Unfounded charges of discrimination / civil penalty:

The current version of the Indiana Civil Rights Law (IC 22-9-1-2) identifies the protection of persons from "unfounded charges of discrimination" as a matter of public policy. The listing of persons and entities covered (*e.g.*, property owners, real estate brokers, builders, lending institutions...) makes it clear that this public policy extends to the IFHA as well. The proposed changes to SB 100, however, attempt to operationalize this public policy by requiring the Indiana Civil Rights Commission (ICRC) to "establish policies and procedures to protect ... property owners, real estate brokers, builders, lending institutions and other persons from unfounded charges of discrimination." (SB 100, Section 6 (amending IC 22-9-1-6(g))).¹

A troubling expression of the "protection" requirement appears at Section 7, which would amend the ICRL by adding an entirely new section, IC 22-9-1-9.7, that would authorize the ICRC to impose a civil penalty of up to \$1,000 on a person who files a complaint that the Commission determines is "frivolous and intended to harm the subject of the complaint." This proposed amendment expressly applies to complainants under Indiana's fair housing law as well.

Aside from obvious concerns related to vagueness and due process, the regulations governing substantial equivalence expressly require that a state or local law "[must] not place excessive burdens on the aggrieved person that might discourage the filing of complaints, such as ... provisions that could subject the aggrieved person to costs, criminal penalties, or fees in connection with the filing of complaints." 24 C.F.R. § 115.204 (a)(3)(iii). Because of the obvious chilling effect on potential victims of housing discrimination, HUD has consistently rejected state or local laws with similar provisions.

¹ This proposed mandate is further extended to local agencies (SB 100, Section 10 (amending IC 22-9-1-12.1(f))).


Effect on local laws

I note additionally that SB 100 would both repeal IC 22-2-16-4 (SB 100, Section 1), which permits political subdivisions to adopt civil rights ordinances that go beyond the ICRL and, as an affirmative roadblock to expanded protections, would preclude any local government from enacting an ordinance that establishes “requirements that are more stringent or otherwise in conflict with” the ICRL or the IFHA. The bill goes on to state that “Any ordinance, resolution, regulation, standard, or other legal action by a county, city, town, or other political subdivision is preempted to the extent that it is more stringent or otherwise conflicts with [ICRL] or [IFHA].” (SB 100, Section 10 (amending IC 22-9-1-12.1(b))).

There are currently six localities² in Indiana that administer fair housing laws that HUD has certified under 42 U.S.C. § 3610 (f) as “substantially equivalent” to the federal Fair Housing Act. Whether SB 100 is meant to immediately invalidate conflicting provisions that may exist in any of these six local laws is not clear. I note, however, that the bill does not appear to make any exception for existing local laws.

In summary, were SB 100 to be enacted the provision authorizing the imposition of a civil penalty against a complainant would create a very significant concern with respect to the continued status of Indiana’s fair housing law and ICRC’s continued participation in the Fair Housing Assistance Program. If you have any questions, please contact me at Joseph.A.Pelletier@hud.gov or at (202) 402-2126.

Sincerely,



Joseph A. Pelletier, Esq.
Director, Fair Housing Assistance Program

cc: Maury McGough, FHEO Region V Director

² The six localities are the cities of Elkhart, Ft. Wayne, Gary, Hammond, South Bend, and the combined jurisdiction of Evansville-Vanderburgh County.