



Bill Title: House Bill 1561, Discriminatory Housing Practices – Intent

Committee: Health & Government Operations

Date: March 6, 2020

Position: Unfavorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

This bill prohibits a person from acting in a manner, regardless of intent, that has a discriminatory effect against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, or national origin. The bill provides that a person who unintentionally violates a provision has not committed a discriminatory housing practice if the violation was justified by a legitimate business necessity and there was no other less discriminatory means of accomplishing that business necessity.

The legal theory of disparate impact is the law of the land. As defined by Merriam-Webster Legal Dictionary, “disparate impact” is an “unnecessary discriminatory effect on a protected class caused by a practice or policy (as in employment or housing) that appears to be nondiscriminatory.” This theory was upheld by the Supreme Court. Specifically, in Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. ___ (2015), the United States Supreme Court analyzed whether disparate impact claims are cognizable under the Fair Housing Act. In Justice Anthony Kennedy's majority opinion, the Court held that Congress specifically intended to include disparate impact claims in the Fair Housing Act, but that such claims require a plaintiff to prove it is the defendant's policies that cause a disparity. The majority noted “antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions.” Given the Supreme Court’s ruling, MMHA contends that House Bill 1561 is unnecessary.

For these reasons, MMHA therefore respectfully requests an **unfavorable report** on House Bill 1561.

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