

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 690

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Campbell

SUBJECT: The Fair Housing Act

DATE: March 29, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises the “housing for older persons” exemption to the “familial status” requirements of the Fair Housing Act by providing that, if otherwise qualified, any housing facility or community may qualify for the exemption, despite specific deed restrictions which may otherwise disqualify the facility or community from obtaining the exemption.

This bill substantially amends the following sections of the Florida Statutes: s. 760.29.

II. Present Situation:

Federal Housing Acts

The Federal Fair Housing Act was enacted by the U.S. Congress as Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) to establish a clear national policy against discriminatory housing practices. The intent of the act is to prohibit discrimination against individuals on the basis of race, color, religion, national origin, sex, handicap, or familial status. These prohibitions apply in the sale or rental of housing, in the financing of housing, and in the provision of brokerage services.

The Fair Housing Amendments Act of 1988 (P.L. 100-430) was enacted by the U.S. Congress, in part, to mandate handicapped accessibility construction requirements for new multifamily properties, to permit handicapped tenants to modify existing housing at their expense, and to provide specific exemptions for certain types of adult-only housing.

The Federal Fair Housing Act states that:

“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.”

The Housing for Older Persons Act (P.L. 104-76) became effective December 1995 and modified the definition of the term “housing for older persons” used in the Fair Housing Act, and modified the exemptions from the original provisions. The act also established a good-faith defense against imposing monetary damages if there is no actual knowledge that the facility or community is not eligible as housing for older persons, and the facility or community has stated formally, in writing, that it complies with the requirements for such exemption.

State of Florida Housing Acts

Part II of chapter 760, F.S., contains the provisions of Florida Fair Housing Act. The act establishes the state’s policy on fair housing, defines various terms, prohibits discrimination in the sale or rental of housing, the provision of brokerage services, and the financing of housing or residential real estate transactions. The Act also contains exemptions. The Commission on Human Relations administers and enforces the provisions of the act, which also specified the powers and duties of the Commission, and administrative procedures.

The Legislature enacted chapter 89-321, L.O.F., to conform Florida’s Fair Housing Law to the Federal Fair Housing Amendments Act of 1988. Like the federal law, the bill expanded the coverage of Florida’s law and strengthened its enforcement. In April 1990, the Florida Commission on Human Relations received the results of the substantial equivalency review conducted by the U.S. Department of Housing and Urban Development. Chapter 90-275, L.O.F., made changes to the act which brought the Florida law into “substantially equivalency” with the federal law. Chapter 96-191, L.O.F., incorporated the modifications to the Federal Fair Housing Act made pursuant to the Housing for Older Americans Act of 1995 into Florida’s Fair Housing Law.

Section 760.23(1), F.S., states that it is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. “Familial status,” as specified in s. 760.22(5), F.S., is established when a person under the age of 18 is domiciled with “a parent or other person having legal custody of such individual, or a designee or a parent or other person having legal custody, with the written permission of such parent or other person.”

Section 760.29 (4), F.S., provides an **exemption** to the prohibition of discrimination based on familial status for housing for older persons, and sets criteria for qualifying for the exemption.

In 1989, the Westwood Community Two Homeowners Association amended its by-laws in an attempt to qualify for the “housing for older persons” exemption to the familial status provisions of the Fair Housing Act. However, the court found that Westwood’s declaration of restrictions did not reserve to the association the right to amend the covenant or provide for amendment of the covenants by a vote of lot owners. The court concluded that the association was exercising authority it did not have. *Westwood v. Lewis*, 687 So.2d 296 (Fla. 4th DCA 1997)

III. Effect of Proposed Changes:

Section 1 revises the “housing for older persons” exemption to the “familial status” requirements of the Fair Housing Act. Sub-subparagraph 760.29(4)(b)3.b., F.S., is amended to provide that, if a housing facility is otherwise qualified, and the recording documents state or suggest an intent to create an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then the housing facility or community may qualify for the exemption. If those documents contain a prohibition against residents 16 years old and under, that prohibition must be construed to residents 18 years old or less. Governing documents which can be amended at a future date must be amended within 1 year after that date to reflect the requirements for consideration as housing for older persons, if the community wants to continue as a community for older persons. The bill specifies that this sub-subparagraph is intended to be remedial.

Section 2 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent that this bill attempts to circumvent provisions in any restrictive covenant to property, it may be viewed as unconstitutional. In *Griffin v. Sharpe*, 65 So.2d 751 (Fla. 1953), the court ruled that such legislative actions are considered an impairment of contract. Also see *Pompanio v. Claridge of Pompano Condominium* 378 So.2d 774 (Fla. 1979).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons under the age of 55 will be prohibited from purchasing property in those housing facilities or communities that would be deemed exempt from the Florida Fair Housing Act by this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
