

# Summary of the 1968 Civil Rights Act

**T**HE 90TH CONGRESS acted on three major problem areas in assuring equality of opportunity and treatment for minority people in America with the passage of the Civil Rights Act of 1968. The rights of persons participating in civil rights related activities are protected by Federal statute, equality of opportunity in acquiring decent housing is promoted, and certain Constitutional rights and protections are afforded American Indians.

Title I of the Civil Rights Act is divided into two parts. The first part is a criminal statute designed to offer protection against violent interference with activities protected by Federal law or the Constitution.

The statute prohibits the use of force or threats of force by private individuals or public officials to interfere with participation by others in specified areas of protected activity, including:

Voting and related activities as well as running for office; participating in or enjoying the benefits of Federal programs; Federal employment, and serving on Federal juries.

Other activities protected by the Title from interference when it is motivated by the participant's race, religion, or nationality, include:

Enrolling in or attending public schools; participating in or enjoying the benefits of programs, facilities or activities of State or local governments; enjoying

private, State, or local employment, union membership, or the services of employment agencies; serving on State juries; traveling in interstate commerce or using the vehicles or facilities of common carriers; enjoying the facilities of hotels, restaurants, gasoline stations, theaters, sports arenas and similar public accommodations (specifically exempted are rooms rented on the premises of the proprietor's residence).

Furthermore, the Title specifically protects from interference persons who urge or aid participation in the protected activities, as well as those who lawfully speak in favor of such participation, so long as riots or acts of physical violence are not encouraged. Interference during a riot with any person engaged in a business affecting commerce is also prohibited. Neither law enforcement officers lawfully carrying out their duties, nor law enforcement officers or members of the armed forces engaged in suppressing riots, are covered.

The penalties prescribed are graduated according to the seriousness of the results of the violation. If no physical harm results, the maximum penalty is a \$1,000 fine and one year imprisonment. If bodily injury results, the maximum penalty is a \$10,000 fine and 10 years imprisonment. If death results, the maximum penalty is life imprisonment.

Existing laws are amended to increase to life imprisonment the maximum penalty for conspiring

against the constitutional rights of citizens or depriving people of such rights where death results. The Title does not prohibit the enforcement of similar State or local laws and prosecution under this section may be made only upon the personal certification of the Attorney General or Deputy Attorney General that prosecution is in the public interest and necessary to secure substantial justice.

The second part of Title I makes criminal interstate or foreign travel or the use of interstate or foreign travel facilities, such as the radio, telephone, and the mail, for the purpose of promoting or inciting riots. Violation only occurs where such promotion actually occurs or is attempted.

A riot is defined as a public disturbance amongst an assemblage of three or more persons involving an act of violence or threatened violence to persons or property. The maximum punishment prescribed is a \$10,000 fine and five years imprisonment.

The Attorney General or other appropriate officer of the Department of Justice is directed to prosecute promptly all violations of the Title or to notify the Congress of the reasons for not doing so.

In no way are State or local officials prohibited from prosecuting acts which are violations of this part as well as local law. However, a conviction or acquittal in a State or local court is a bar to prosecution under this law for the same acts.

Closely related to the second part of Title I is Title X. This title prohibits (1) teaching the use of, or making of, firearms, explosives, or incendiary devices, knowing, having reason to know, or intending that they will be unlawfully employed in furtherance of a civil disorder which may adversely affect commerce or the performance of a federally protected function; (2) transporting or manufacturing for transportation in commerce any firearm, explosive or incendiary device, knowing, having reason to know, or intending that it will be used unlawfully in furtherance of a civil disorder, and (3) obstructing firemen, police or soldiers engaged in the suppression of a civil disorder affecting commerce. The penalty prescribed is a maximum \$10,000 fine and five years imprisonment.

Title II grants to the American Indian basic constitutional rights and protection from arbitrary tribal action. Tribal governments are prohibited from:

Abridging the freedom of religion, speech, press, or assembly; conducting unreasonable searches and seizures; subjecting persons to trial for the same crime twice; compelling a person to testify against himself in a criminal case; taking private property without just compensation; denying a defendant in a criminal case

the right to a speedy, public, and fair trial, including the right to counsel; requiring excessive bail or fines or imposing cruel and unusual punishment (maximum penalty in an Indian court for any offense is a \$500 fine and 6 months imprisonment); denying to any persons within their jurisdictions equal protection of the law or due process of law; passing bills of attainder or ex post facto laws; denying to any person accused of an offense punishable by imprisonment the right, upon request, to trial by jury of not less than six persons.

To insure the protection of these rights the legality of a person's detention by an Indian tribe may be tested in the United States courts by the writ of habeas corpus.

Title III implements the provisions of Title II by directing the Secretary of the Interior to propose to Congress a model code to govern the administration of justice by Indian courts. The new code will provide the same rights in Indian courts as are guaranteed in Federal courts and will assure that the defendant is made aware of these rights. Furthermore, the code will establish proper qualifications for judges and provide for their training.

Title IV provides for the assumption by States of jurisdiction over tribal affairs. It authorizes States to assert criminal and civil jurisdiction in Indian country with the consent, expressed by a majority vote, of the tribes concerned. State laws would have the same effect over Indians as they have elsewhere within the State, but would not interfere with any privileges and rights enjoyed by Indians under Federal treaties, laws, or agreements. Indian tribal laws, not inconsistent with State laws, would be applied in State civil courts.

States having obtained jurisdiction under earlier Federal law are permitted to cede such jurisdiction back to the Federal Government.

Criminal and civil cases pending in Federal courts at the time of session of jurisdiction by the United States to States under this Title will not be affected.

Since Indian courts cannot impose a penalty in excess of six months imprisonment, Federal courts under the "Major Crimes Act," have jurisdiction over major crimes committed by Indians, except where States have assumed criminal jurisdiction. The effect of Title V is to amend the "Major Crimes Act" by adding criminal assaults resulting in serious bodily injury.

Title VI provides that applications related to the employment of legal counsel made by Indian tribes and other Indian groups to the Secretary of the Interior or Commissioner of Indian Affairs are deemed approved

if no action is taken within 90 days from the date of filing.

Title VII attempts to assist Indians in achieving their legal rights by requiring the Secretary of the Interior to revise and bring up-to-date various publications and documents and compile opinions relating to Indian affairs.

Title VIII of the Act—the open housing title—forbids discrimination based on race, color, religion, or national origin in the sale, rental, financing and advertising of dwelling units and vacant land to be used for residential purposes. It also prohibits “blockbusting” and requires that membership in real estate boards and participation in multiple listing services shall be on a nondiscriminatory basis.

### COVERAGE

The provisions of Title VIII take effect in three stages:

1. As of the date the Act was signed (April 11, 1968), the Title applies to federally-assisted housing, with coverage substantially similar to the coverage of President Kennedy’s Executive Order on Equal Opportunity in Housing (No. 11063) issued November 20, 1962. At this stage coverage includes:

- (a) dwellings owned or operated by the Federal Government, such as homes and apartment buildings repossessed by the Federal Housing Administration or Veterans Administration for default on payment of mortgages guaranteed by those agencies;
- (b) dwellings provided by loans, grants, or contributions from the Federal Government, such as Federally-assisted low-rent public housing projects. (Although coverage of public housing projects is restricted to those built under agreements entered into after November 20, 1962, and where repayment has not been made prior to April 11, 1968, most public housing projects receive annual contributions from the Federal Government and discrimination is forbidden by Title VI of the Civil Rights Act of 1964.)
- (c) dwellings provided under a slum clearance or urban renewal program of a state or local public agency, where the program has received Federal assistance since November 20, 1962 (e.g. urban renewal housing);
- (d) dwellings provided by loans insured or guaranteed by the Federal Government unless the loans were fully paid off prior to April 11,

1968, e.g., one and two-family homes and multi-family buildings built in recent years and to be built in the future under FHA and VA mortgage insurance and guarantee programs.

2. The second stage goes into effect January 1, 1959, when coverage will be extended beyond federally-assisted housing to include, among other transactions, all apartment house rentals, sales of houses by subdivision developers, and sales of units in cooperative developments. Coverage in the second stage will include sales and rentals of residential property involving all buildings containing five or more dwelling units; buildings with two, three, and four dwelling units if the owner does not reside in the building, and one-family houses sold or rented by owners of more than three such houses. An owner of three or fewer such houses is covered at this stage if he sells more than one house, other than the house in which he resides, within any 24-month period.

In the second stage, the Act also prohibits discrimination by mortgage lending institutions. In addition, real estate boards and other organizations relating to the business of selling or renting dwellings are forbidden to discriminate in their membership policies and in participation in multiple listing services.

3. In the third stage, effective January 1, 1970, coverage will extend to all one-family houses sold or rented with the aid of a real estate broker or any other person engaged in the business of selling or renting dwellings. The law also will cover all one-family houses sold or rented by owners who have advertised the property offered for sale or rent in a discriminatory manner.

### PROHIBITED ACTS

The following acts are prohibited if they involve discrimination on account of race, color, religion, or national origin:

- (1) To refuse to sell or rent or negotiate for the sale or rental of a dwelling.
- (2) To discriminate against any person in the terms or conditions of sale, rental, or financing a dwelling;
- (3) To make any statement or advertisement with respect to sale or rental of housing, indicating any discrimination or intent to discriminate;
- (4) To represent falsely to any person that housing on the market is not available for inspection, sale, or rental;
- (5) For profit, to attempt to induce any person to

sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular race, color, creed, or national origin.

### *INTERFERENCE WITH RIGHTS*

One section of the Act makes it unlawful to coerce, intimidate, threaten, or interfere with any person exercising or encouraging others to exercise rights granted or protected by the Federal open housing law. This section authorizes civil suits against such interference.

Also, Title IX of the Act authorizes criminal prosecutions against persons who use or threaten to use force which injures, intimidates or interferes, or attempts to do so, with any person because of his race, color, religion, or national origin and because he has been selling, purchasing, renting, financing, or occupying a dwelling or exercising other rights granted under the Federal fair housing law, or lawfully aiding or encouraging others to exercise rights under the law.

### *ADMINISTRATION AND ENFORCEMENT*

The Act establishes three methods of enforcement: administrative conciliation by HUD, private civil suits by aggrieved persons, and lawsuits by the Attorney General of the United States.

The Department of Housing and Urban Development is primarily responsible for the administration of Title VIII. The Secretary of HUD is directed to conduct studies and issue reports and recommendations regarding the nature and extent of discriminatory housing practices in representative communities, cooperate with Federal, State, local, and private agencies in preventing or eliminating discriminatory housing practices, and administer the programs and activities relating to housing and urban development in a manner effectively to further the policies of the Act.

Conciliation efforts will be handled by the Secretary of HUD, who will refer the case to a State or local agency if State or local law provides rights and remedies similar to Federal provisions. Where State remedies do not exist or are not promptly implemented, the Secretary will proceed with his own investigation. The Secretary, who is authorized to subpoena witnesses and examine necessary records, may attempt to elimi-

nate discriminatory housing practices through informal conferences, conciliation, and persuasion.

An aggrieved person may bring a civil suit to secure rights granted by the Act. Such a lawsuit may be filed without filing a complaint with HUD or can be instituted after a failure of HUD or a State or local agency to settle the complaint satisfactorily. The court, however, must suspend proceedings if it thinks conciliation efforts by the Secretary of HUD or a State or local agency administering a fair housing law may resolve the matter.

A private civil suit must be brought within 180 days after the alleged discriminatory act. The action may be brought in a Federal court unless the aggrieved person has a judicial remedy under a State or local fair housing law which provides rights and remedies substantially equivalent to those provided in the Federal open housing law. In such a case the suit must be filed in a State court.

The court may appoint an attorney for the plaintiff and may authorize the commencement of the civil action upon proper showing without payment of fees or costs. If the plaintiff is successful, the court may award actual damages and up to \$1,000 as punitive damages, in addition to court costs and reasonable attorney fees (if the court finds that the plaintiff is not financially able to pay the attorney fees).

The court may also issue a temporary or permanent injunction or other appropriate order. However, a sale or rental of the housing in question, to a third party who is a bona fide purchaser or tenant, made before issuance of the court's order and without actual notice to the third party of the existence of the complaint or court action, cannot be affected.

The Attorney General may seek enforcement of the Title, through court action, in cases where he has reasonable cause to believe that there is a pattern or practice of resistance to the full enjoyment of rights granted by the law or that a group of persons has been denied rights under the law and such denial raises an issue of general public importance. □

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