

Legislative Analysis



HOUSING DISCRIMINATION BASED ON INCOME SOURCE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4062 as introduced
Sponsor: Rep. Jennifer A. Conlin

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4063 as introduced
Sponsor: Rep. Jason Morgan

Committee: Judiciary
Complete to 4-16-24

SUMMARY:

House Bills 4062 and 4063 would amend different acts to prohibit a landlord from taking certain actions based on the source of income of a current or prospective tenant, prohibit certain actions by a person engaging in a real estate transaction or a real estate broker or salesperson if based on an individual's source of income, and provide remedies for violations.

House Bill 4062 would amend 1972 PA 348, known as the landlord-tenant act, to prohibit a *landlord* from doing any of the following to a current or prospective *tenant* based on their *source of income*:

- Denying or terminating a tenancy.
- Otherwise denying them a rental unit or making it unavailable to them.
- Attempting to discourage the rental or lease of a rental unit to them.
- Falsely representing to them that a rental unit is not available for inspection or rental.
- Making a distinction or restriction against them in the price, terms, fees, privileges, or provision of facilities or services related to the rental, lease, or occupancy of a rental unit.

Landlord means either of the following:

- The owner, lessor, or sublessor of a rental unit or the property it is a part of.
- A person authorized to exercise any aspect of the management of the premises. (This includes a person that, directly or indirectly, acts as a rental agent or receives rent, other than as a bona fide purchaser, and has no obligation to deliver the receipts to another person.)

Tenant means an individual who occupies a rental unit for residential purposes with the landlord's consent for an agreed-upon consideration.

Source of income would include benefits or subsidy programs such as housing assistance, public assistance, emergency rental assistance, veterans benefits, Social Security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. It would not include income derived illegally.

A landlord that requires a prospective or current tenant to have a certain threshold level of income would have to subtract any income in the form of a rent voucher or subsidy from the monthly rent before calculating whether the income criteria are met.

In addition, a landlord could not (by their own action or through another's) publish, circulate, issue, or display a communication, notice, advertisement, or sign related to the rental or lease of a rental unit that indicates a preference, limitation, or requirement based on a source of income.

Finally, the bill would prohibit a landlord from doing either of the following:

- Assisting, inducing, inciting, or coercing another person to commit an act or engage in a practice that violates the bill.
- Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of a right granted or protected under the bill, because the person exercised or enjoyed a right granted or protected under the bill, or because the person aided or encouraged another person in the exercise or enjoyment of a right granted or protected under the bill.

Remedies

A person who suffers a loss as a result of a violation of the above provisions could bring an action to recover actual damages or up to 4.5 times the monthly rent of the rental unit or units at issue, whichever is greater, together with court costs and reasonable attorney fees.

Proposed MCL 554.601c

House Bill 4063 would amend the Elliott-Larsen Civil Rights Act. Article 5 of the act prohibits discrimination in real estate transactions based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status [having children], or marital status. The bill would amend Article 5 to additionally prohibit a person engaging in a *real estate transaction*, or a *real estate broker or salesperson*, from doing any of the following based on the *source of income* (defined as above) of an individual or of anyone residing with that individual:

- Refusing to engage in, or to negotiate for, a real estate transaction.
- Refusing to receive or transmit a bona fide offer to engage in a real estate transaction.
- Falsely representing that property is not available for inspection, sale, rental, or lease.
- Knowingly failing to bring a property listing to a person's attention, refusing to allow a person to inspect a property, or otherwise making a property unavailable or denying it to a person.
- Discriminating against a person in the terms, conditions, or privileges of a real estate transaction or the furnishing of facilities or services related to a real estate transaction.
- Discriminating against a person in brokering or appraising property.
- Making, printing, circulating, posting, mailing, or otherwise causing to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, that indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction on the basis of the source of income of an individual or of anyone residing with that individual.

- Offering, soliciting, accepting, using, or retaining a property listing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services related to a real estate transaction.
- Making a record of inquiry in connection with a prospective real estate transaction that indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction on the basis of the source of income of an individual or of anyone residing with that individual.

Real estate transaction means the sale, exchange, rental, or lease of real property, or an interest in ***real property***.

Real property includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

Real estate broker or salesperson means a licensed or unlicensed person who does any of the following:

- For or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property.
- Negotiates or attempts to negotiate any of the above activities.
- Holds themselves out as engaged in the above activities.
- Negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property.
- Is engaged in the business of listing real property in a publication.
- Is employed by or acting on behalf of a real estate broker or salesperson.

In addition, a person could not deny access to, membership in, or participation in a multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to selling or renting real property. and also could not discriminate against a person in the terms or conditions of that access, membership, or participation, based on source of income.

Exceptions

The bill would not apply to any of the following:

- The rental of a ***housing accommodation*** in a building that contains housing accommodations for up to two families living independently of each other (e.g., a duplex) if the owner or their spouse, parent, child, or sibling resides in one of the housing accommodations
- The rental of a room or rooms in a single-family dwelling if the lessor or their spouse, parent, child, or sibling resides in the dwelling.
- The rental of a housing accommodation for up to 12 months by the owner or lessor if it was occupied by the owner or lessor and maintained as their home for at least three months immediately before occupancy by the tenant and is maintained as the owner's or lessor's legal residence.

Housing accommodation includes improved or unimproved real property, or a part of improved or unimproved real property, that is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of one or more individuals.

Remedies

Generally speaking, the Elliott-Larsen Civil Rights Act is enforced by the Michigan Civil Rights Commission, which through the Michigan Department of Civil Rights investigates and acts on discrimination complaints. In addition, a person alleging a violation of the act may bring a civil action for appropriate injunctive relief or *damages*, or both, in the circuit court for the county where the alleged violation occurred or where the person the action is filed against resides or has their principal place of business. The court may award the person filing the action all or part of the costs of litigation, including reasonable attorney fees and witness fees, as it determines appropriate.

Damages means damages for injury or loss caused by each violation of the act, including reasonable attorney fees.

MCL 37.2502

FISCAL IMPACT:

House Bill 4062 would have an indeterminate fiscal impact on local court funding units. The fiscal impact would depend on how provisions of the bill affect court caseloads and related administrative costs. The bill could result in increased costs from an increase in the number of actions to recover damages brought to courts. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion, case types, and complexity of cases.

House Bill 4063 would have an indeterminate fiscal impact on the state and on local court funding units. The fiscal impact would depend on how provisions of the bills affect court caseloads and related administrative costs. Costs would be incurred if the bill results in an increase in the number of civil cases filed. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion, case types, and complexity of cases. An increase in civil case filings would result in additional filing fee revenue. Filing civil cases in court requires payment of a variety of fees which depend on the value of the case. A portion of filing fee revenue is transmitted to the state and deposited into the Civil Filing Fee Fund. Revenue from the Civil Filing Fee Fund is distributed to a variety of state programs and fund sources on a percentage basis according to statute.

The bill also would likely lead to an increase in costs to the Department of Civil Rights. The cost increase would be related to additional staffing to support an anticipated increase in civil rights complaint cases on the basis of source of income, which would be a new protected group category under Article 5 of the Elliott-Larsen Civil Rights Act as described above. The number of expected new cases and the corresponding number of staff needed to support the new caseload are not yet known. The annual salary costs for an additional complaint investigation investigator are approximately \$160,000. Complaint cases related to housing made up 250 cases, or 15% of all complaint cases received, in the 2022-23 fiscal year.

Legislative Analyst: Rick Yuille
Fiscal Analysts: Robin Risko
Michael Clossen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.