

DISPARATE IMPACT LEGISLATION

Bills: [S.860](#), *An Act prohibiting discriminatory effects in housing and community development*

Sponsor: Senator Joseph Boncore

Prior History: 02/19/2021: Legislation Filed
03/29/2021: Referred to Joint Committee on Housing
10/12/2021: Hearing before Joint Committee on Housing

Summary: This legislation creates a state fair housing disparate impact standard. This will allow people to challenge a housing policy or program that has a discriminatory impact on them because of their race, sex, gender identity, disability, family status, or other protected class — even if the policy or program appears on its face to apply to everyone equally.

Explicitly Prohibiting Disparate Impact Housing Discrimination in Ch. 151B

The legislation makes it explicitly unlawful in the state’s anti-discrimination law, Chapter 151B, for any person to adopt any housing, community development, lending or insurance decision, program, policy or practice that has a discriminatory effect on members of protected groups or that creates, increases, reinforces, or perpetuates segregated housing patterns independently of the extent to which it produces a disparate impact on protected groups.

Creating a Disparate Impact Standard in Ch. 151B

The legislation explicitly allows complainants to use a disparate impact standard in the state’s anti-discrimination law to prove housing discrimination.

Establishing a Burden-Shifting Disparate Impact Standard

The legislation creates a burden-shifting standard to prove a disparate impact:

- The complainant (the party alleging disparate impact) has the burden of proving that a policy or practice caused or predictably will cause a discriminatory effect.
- If the complainant satisfies that burden of proof, the burden shifts to the respondent (the business, government, or other entity) to prove that the challenged policy or practice has a legally sufficient justification and that no other policy or practice with a less discriminatory effect could serve the substantial, legitimate, nondiscriminatory interest identified.

Definition of Legally Sufficient Justification

Defines “legally sufficient justification” as a justification for a challenged policy or practice that:

- (a) is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant;
- (b) effectively carries out the identified interest,

- (c) is sufficiently compelling to override the discriminatory effect;
- (d) there is no feasible alternative policy or practice that would equally or better accomplish the identified interest with a less discriminatory effect; and
- (e) is supported by evidence and may not be hypothetical or speculative.

Standing to Bring a Disparate Impact Claim

The legislation allows a single person to bring a claim against a policy or practice that has a disparate impact on a group of individuals in a protected class if that person has or predictably will be injured by the policy or practice.