



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KĪWILA O HAWAI‘I

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 586-8692

Thursday, March 20, 2025, at 2:00 p.m.
Conference Room 325 & Videoconference

To: COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair

From: Dr. William J. Puette, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: **S.B. No. 31 S.D. 2, H.D. 1**

SUPPORT

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC SUPPORTS S.B. 31 S.D. 2, H.D. 1

Section 515-6 of the Hawai‘i Revised Statutes currently prohibits discriminatory restrictive covenants and conditions based on Hawai‘i’s protected classes: race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.

Discriminatory restrictive covenants are more than just evidence of a painful past, but a formal, written history of discriminatory practices that have resulting in division and inequity in society today.

Hawai‘i’s fair housing laws provide protection for more protected classes than Federal law, therefore the HCRC appreciates S.D.2, H.D. 1, of this bill which specifies all the classes protected by Hawai‘i state law enumerated in Section 515-2(3) of the Hawai‘i Revised Statutes.

The HCRC SUPPORTS S.B. 31, S.D.2, H.D. 1.



**Statement of Jane Sternecky, Legislative Counsel for the Uniform Law Commission,
to the Hawaii Committee on Judiciary and Hawaiian Affairs Regarding
Senate Bill 31/SD2 HD1 Relating to Property.**

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

Thank you for considering Senate Bill 31/SD2 HD1, regarding the removal of unlawful restrictive covenants from property records. This bill is conceptually similar to a uniform act that aims to achieve the same goals: the Uniform Unlawful Restrictions in Land Records Act (the “Act”). However, the bill creates a distinct process for removal of discriminatory restrictive covenants that may not adequately address concerns that were brought up by the real estate and land title industries during the course of the Uniform Law Commission’s two-year drafting process. The purpose of my testimony today is to provide additional background and hopefully encourage the sponsors of SB 31/SD 2 to amend the bill to more closely align with the Act.

First, both the bill and the Act recognize that even though discriminatory restrictive covenants are no longer enforceable and are illegal to record, homeowners who encounter them nonetheless find them to be offensive and upsetting. Accordingly, both the bill and the Act aim to create a mechanism to allow the removal of these unlawful restrictions.

However, the bill creates two distinct processes for removal of a discriminatory restrictive covenant. One of these processes, in section 2(d)(1) of the bill, is more complex than the Act: it allows discriminatory restrictions to be removed by recording a statement in the property records during a real estate transaction, with the consent of all of the parties. The second process, described in section 2(d)(2) of the bill, allows *anyone* who discovers a discriminatory restriction to record a separate notice stating that the covenant is invalid and unenforceable.

By requiring the consent of all parties to a real estate transaction in order to remove a discriminatory restrictive covenant during the purchase or sale process, the bill creates a narrow window for removal and gives a seller or buyer the opportunity to stop a discriminatory restriction from being removed. Additionally, this process would likely prohibit Hawaiians who own property in co-ops, condominiums, or planned communities from being able to remove discriminatory restrictions because of the impracticability of gathering consent from all of the other members of their residential community, who could easily be viewed as parties to the real estate transaction.

On the other hand, allowing anyone who encounters a discriminatory restrictive covenant on

anyone's property to record an amendment to effectively remove it could complicate the chain of title for the property. Additionally, any such notice would likely not end up being indexed in a way that would be readily accessible to current or future owners of the property.

Instead of creating two different tracks for removal of a discriminatory restriction during a real estate transaction and outside of it, the Act empowers single-family homeowners and those who own property in condominiums, co-ops, and planned communities to record an amendment that effectively removes a discriminatory restriction. This process is broad enough to allow homeowners who encounter discriminatory restrictions the right to remove them without having to gather the consent of several parties, while still placing a reasonable limitation on which parties are able to modify a property's land records.

Furthermore, the Act contains a sample amendment form that can be used by property owners who wish to effectively remove a discriminatory restriction from their land records. This ensures that property owners do not break federal law and reprint the text of a discriminatory restrictive covenant, and creates a straightforward and inexpensive process that can be easily used by non-attorneys.

We sincerely appreciate that Hawaii is taking these steps to address our country's painful history of discrimination in housing, and we hope that reasonable amendments can be made to SB 31 to align with the straightforward, accessible, and thorough process created by the Uniform Unlawful Restrictions in Land Records Act. A copy of the Act is attached for this Committee's reference.

Thank you for your consideration. Please do not hesitate to get in touch with any questions.