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# A BILL FOR AN ACT

RELATING TO PROPERTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 515-2, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4 "Discriminatory restrictive covenant" means any  
5 restrictive covenant on real property which, if enforced, would  
6 violate:

7 (1) The prohibition in the federal Fair Housing Act (42  
8 U.S.C. 3601 et seq.) against discrimination on the  
9 basis of race, color, sex, religion, familial status,  
10 disability, or national origin;

11 (2) The equal protection clause of the United States  
12 Constitution, under Shelly v. Kraemer, 334 U.S. 1  
13 (1984 holding enforcement of a racially restrictive  
14 covenant violates the equal protection clause); or

15 (3) The prohibition against discrimination on the basis of  
16 race, sex, including gender identity or expression,  
17 sexual orientation, color, religion, marital status,



1           familial status, ancestry, disability, age, or human  
2           immunodeficiency virus infection."

3           SECTION 2. Section 515-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§515-6 Restrictive covenants and conditions.** (a) Every  
6 provision in an oral agreement or a written instrument relating  
7 to real property that purports to forbid or restrict the  
8 conveyance, encumbrance, occupancy, or lease thereof to  
9 individuals because of race, sex, including gender identity or  
10 expression, sexual orientation, color, religion, marital status,  
11 familial status, ancestry, disability, age, or human  
12 immunodeficiency virus infection, is void.

13           (b) Every condition, restriction, or prohibition,  
14 including a right of entry or possibility of reverter, that  
15 directly or indirectly limits the use or occupancy of real  
16 property on the basis of race, sex, including gender identity or  
17 expression, sexual orientation, color, religion, marital status,  
18 familial status, ancestry, disability, age, or human  
19 immunodeficiency virus infection is void, except a limitation,  
20 on the basis of religion, on the use of real property held by a  
21 religious institution or organization or by a religious or



1 charitable organization operated, supervised, or controlled by a  
2 religious institution or organization, and used for religious or  
3 charitable purposes.

4 (c) It is a discriminatory practice to insert in a written  
5 instrument relating to real property a provision that is void  
6 under this section or to honor or attempt to honor [~~such a~~] the  
7 provision in the chain of title.

8 (d) Any person who discovers a recorded discriminatory  
9 restrictive covenant may:

10 (1) With the consent of all parties to a real estate  
11 transaction, include in any deed, mortgage, or other  
12 instrument filed for recording in connection with the  
13 transaction a statement that the discriminatory  
14 restrictive covenant is invalid and unenforceable; or

15 (2) Prepare and record a separate notice, cross-referenced  
16 to the discriminatory restrictive covenant, stating  
17 that the discriminatory restrictive covenant is  
18 invalid and unenforceable.

19 (e) The statement or notice described under subsection (d)  
20 shall be in a form substantially consistent with the following:



1       "The chain of title for the real property described  
2       herein contains a restrictive covenant that, if  
3       enforced, would discriminate against individuals based  
4       upon their race, color, sex, religion, familial  
5       status, disability, or national origin. The covenant  
6       is invalid, unenforceable, and antithetical to  
7       American values of equal justice and equality under  
8       the law."  
9       (f) A person who in good faith:  
10       (1) Prepares or causes to be prepared; or  
11       (2) Records or causes to be recorded;  
12       a statement or notice under subsection (d) is immune from  
13       liability for incorrectly stating that the restrictive covenant  
14       is discriminatory."

15       SECTION 3. Statutory material to be repealed is bracketed  
16       and stricken. New statutory material is underscored.

17       SECTION 4. This Act shall take effect upon its approval.

**Report Title:**

Property; Discriminatory Restrictive Covenants; Invalid;  
Immunity

**Description:**

Allows a person who discovers a recorded discriminatory restrictive covenant to take certain actions without liability, to invalidate the covenant. Defines discriminatory restrictive covenant. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

