

Judiciary Committee

JOINT FAVORABLE REPORT

Bill No.: HB-6665

AN ACT CONCERNING THE REMOVAL OF RESTRICTIVE COVENANTS
BASED ON RACE AND ELIMINATION OF THE RACE DESIGNATION ON

Title: MARRIAGE LICENSES.

Vote Date: 4/6/2021

Vote Action: Joint Favorable Substitute

PH Date: 3/31/2021

File No.: 582

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SPONSORS OF BILL:

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Rep. Robyn A. Porter
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Rep. Doug Dubitsky
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REASONS FOR BILL:

This bill voids “unlawful restrictive covenants,” which are covenants or provisions in instruments affecting the title to real property that purport to restrict ownership or occupancy based on race. Under the provisions of this bill, after receiving a form or affidavit notifying them of an unlawful restrictive covenant, town clerks are required to record such, and, to the extent practicable, notate the land records. This bill further requires the Office of Policy and Management to develop a standardized form to report unlawful restrictive covenants to town clerks, and makes a conforming change allowing the affidavits by December 1, 2021.

This bill requires town clerks to (1) make the form available on the municipality’s website and in the town clerk’s office where land records are kept and (2) post a notice informing the public of the bill’s provisions in the town clerk’s land records office. In accordance with current law, marriage licenses must include certain demographic information on the applicants (i.e., the people getting married). This bill effectively removes “race” as one of those categories.

SUBSTITUTE LANGUAGE

The substitute language changes the procedure for when an unlawful restrictive covenant is identified on a deed. When an individual discovers an unlawful covenant, they may report it to the town clerk, who must then record it and to the extent practicable notate the land records. The language also requires OPM to adopt a form for such reporting and for Town Clerks to make the form available on their website.

RESPONSE FROM ADMINISTRATION/AGENCY:

Commission on Human Rights and Opportunities; is in strong support of this bill. The CHRO emphasizes that despite intervention by the United States Supreme Court and the United States Congress, racially restrictive covenants remain within the land records in Connecticut. Support is stated for the removal of race from the demographic information required on Connecticut marriage licenses. It stresses that Connecticut is one of only eight states that still requires this identification of individuals upon applying for a marriage license, and that there is no legitimate reason for such a requirement. The CHRO believes that the current license requirement harkens to the time of miscegenation laws that prohibited individuals of different races from marrying.

NATURE AND SOURCES OF SUPPORT:

Connecticut General Assembly, Speaker of the House, State Representative, Matthew Ritter; supports this bill underscoring the existence of covenants that restrict the use of property based on race within the deeds of properties across the State of Connecticut. It is stated that while these clauses have no legal effect today, they serve as a testament to racism's historic pervasiveness in our laws, its effect on our housing policies, and the persistent inequalities we see today. It is stated that the declaration of race upon an application for a marriage license recalls prohibitions of interracial marriage. At present, this requirement has no legal purpose or practical effect, and therefore the continued use of such a declaration exposes Connecticut to constitutional challenges. It is also stated that Connecticut will be one of the final states in the country to remove the license requirement.

Connecticut General Assembly, House Majority Leader, State Representative, Jason Rojas; supports this bill including the establishment of a mechanism for homeowners to clear the land record associated with their home(s) from racially restrictive covenants. The current requirement for identification of race prior to obtaining a marriage license was enacted within the context of regarding interracial marriage as a public health crisis. It is stated that the Department of Public Health does not use this racial data, nor do they collect such data. This outdated statute should therefore be amended under the provisions of this bill.

Connecticut Chapter of the Community Associations Institute, Executive Director, Kim K.V. McClain; supports this bill and requests that the bill is amended for community association boards to also have a simplified process to remove discriminatory restrictions contained within covenants without a vote of the owners. Such an amendment would be congruous to ten other states that have passed simplified processes for association boards, and nine other states that have introduced consideration of such provisions. Support is also stated for the proposal of complementary legislation that would mandate the removal of discriminatory restrictions of an individual owner's petition to the government.

University of Connecticut School of Law, David K. Ware; supports this bill stating the continued existence of racially restrictive covenants within Connecticut's land records is an irritant that cannot escape the attention of groups and individuals who care about equality, fairness, and inclusion. As covenants announce a formal legal norm that reinforces social norms of racial exclusion, it is imperative to amend these provisions. It is stated that even though the present-day demographic of Connecticut and its town are more diverse than when these racially restrictive covenants were enacted, this does not permit the denial, excusal, or justification to forget how racial segregation and inequalities have shaped history.

West Hartford, Connecticut, Town Historian, Tracey Wilson: supports this bill stating that in order to remove racially restrictive wording from covenants and deeds a lawyer is required, of which is costly. It is stated that this bill provides a way for homeowners to remove this wording more effectively. It is also stated that it provides a method for researchers to study restrictive covenants by stipulating that the original deeds are sent to the State Library for filing.

NATURE AND SOURCES OF OPPOSITION:

Connecticut State Library, State Librarian, Deborah Schander; opposes the procedure of this bill and while the Library supports the intent of this bill, it will require the development of workable procedures in order to successfully carry out, as well as the formation of a working committee. Three concerns regarding this bill are stated: (1) the procedures appear in direct conflict with state statutes on land recording; (2) the State Library and municipalities will be unable to carry out the procedures contained within this bill; and (3) the procedures may lead to unanticipated results. It is stated that for the content of this bill to be written effectively, the procedures for Connecticut require input from many stakeholders. The State Library offers to join a working group established by the Judiciary Committee to develop these procedures for Connecticut.

Connecticut Town Clerks Association, Inc., North Haven Town Clerk and Tax Collector, J. Stacey Yarbrough; Supports the provision of this bill related to removing race designation from all future marriage licenses However strong concerns are expressed related to the procedure prescribed under this bill that would seek to remove/redact parts of land record documentation from what was originally presented for recording. It is stated that these land records are historical documents that assist in telling a narrative of how each town, the State, and the Country, have grown. Removal of racially based restrictive covenants needs to be addressed in a way that does not destroy the authenticity of the record, nor impede normal business activities. It is recommended that it should be mandatory for the Grantee's attorney to review and modify the objectionable restrictive covenants with the consent of the Grantor's attorney for the property sales to remove offensive language. The addition of a such a procedure will effectively eliminate the discriminatory language from carrying forward, as well as being careful to avoid setting a precedent that land records can be altered and eliminated, thus forever removing and losing a part of a municipality's history.

Reported by: Jessica Topper

Date: April 28, 2021