
Wisconsin Legislative Council

AMENDMENT MEMO



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2023 Senate Bill 439

Senate Amendment 1

2023 SENATE BILL 439

2023 Senate Bill 439 generally prohibits the use of discriminatory restrictions in instruments and deeds of real property. First, the bill defines a discriminatory restriction to mean a restriction, covenant, or condition that prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use of real property on the basis of membership in a protected class as defined in s. 106.50 (1m) (nm), Stats.¹ The bill states that discriminatory restrictions are void and null, prohibits persons from filing or recording instruments with discriminatory restrictions, and prohibits drafting a discriminatory statement in an instrument.

The bill authorizes a county register of deeds to reject a new instrument with a discriminatory restriction and allows the register of deeds to either return the instrument unrecorded or obscure the discriminatory restriction so it is not discernable.

The bill also allows an owner of real property with an instrument that contains a discriminatory restriction to record a certificate to discharge and release the discriminatory restriction from the instrument. The bill details the information that must be in the certificate and includes a sample certificate form. Additionally, when a certificate to discharge and release is filed, the register of deeds must, if possible, include on the previously filed or recorded document a notation of the document number of the certificate, when the certificate was filed or recorded, and the volume and page number of the certificate if assigned.

Lastly, the bill allows a grantee or beneficiary of a deed to pursue a civil action for injunctive relief against a person that drafts an instrument affecting real property that includes a discriminatory restriction, in addition to any other remedies under current law. If the plaintiff prevails, the bill requires courts award the plaintiff costs including reasonable attorney fees.

SENATE AMENDMENT 1

Senate Amendment 1 makes two main changes to the bill. First, the bill removes the authority of a register of deeds to reject a new instrument with a discriminatory statement and removes the register of deeds' ability to either return the instrument unfiled or obscure the discriminatory statement. Second, the bill removes the civil action for injunctive relief against a drafter of an instrument with a discriminatory statement.

¹ "Member of a protected class" is defined as a group of natural persons or person who may be categorized because of sex, race, color, disability, sexual orientation, religion, national origin, marital status, family status, status as a victim of domestic abuse, stalking, lawful source of income, age, or ancestry. [s. 106.50 (1m) (nm), Stats.]

BILL HISTORY

Senate Amendment 1 was introduced by Senator Ballweg on January 22, 2024. On February 6, 2024, the Senate Committee on Government Operations, voted to recommend adoption of the amendment by a vote of Ayes, 3; Noes, 2; and passage of the bill, as amended, by a vote of Ayes, 5; Noes, 0.

For a full history of the bill, visit the Legislature's [bill history page](#).

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