

House Bill 1649

By: Representative Lim of the 99<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to housing  
2 generally, so as to provide that the use or existence of restrictive covenants based on race or  
3 certain other characteristics constitute unlawful discrimination; to provide that such  
4 covenants are void and contrary to public policy; to criminalize the recording of such  
5 covenants for the express purpose of discrimination; to require county recorders, real estate  
6 closing attorneys, real estate brokers, real estate agents, and property and condominium  
7 associations to provide certain notices, procedural information, and restrictive covenant  
8 modification forms when delivering certain real estate documents; to provide for and  
9 authorize a process for recording restrictive covenant modifications; to provide requirements  
10 for such process; to provide for the effect of such modifications; to require county recorders  
11 to establish a restrictive covenant program; to provide requirements for such program; to  
12 require reports and meetings; to provide exemptions from liability; to provide for definitions;  
13 to provide for construction; to amend Chapter 7 of Title 44 of the Official Code of Georgia  
14 Annotated, relating to landlord and tenant, so as to prohibit residential landlords from using  
15 certain credit information; to provide for the sealing of court files for certain dispossessory  
16 proceedings; to amend Chapter 8 of Title 50 of the Official Code of Georgia Annotated,  
17 relating to the Department of Community Affairs, so as to require the department to employ  
18 an individual to advise on available housing resources and another individual to accept, refer,

19 and report on residential landlord complaints; to require the department to provide translation  
20 services for such employees; to provide for applicability; to provide for related matters; to  
21 repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

24 Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to housing generally,  
25 is amended by revising paragraph (2) of subsection (a) of Code Section 8-3-202, relating to  
26 unlawful practices in selling or renting dwellings and exceptions, as follows:

27 "(2) To discriminate against any person in the terms, conditions, or privileges of sale or  
28 rental of a dwelling, or in the provision of services or facilities in connection therewith,  
29 because of race, color, religion, sex, disability, familial status, or national origin.  
30 Discrimination under this paragraph includes, but is not limited to, the use or existence  
31 of a restrictive covenant based on race, color, religion, sex, disability, familial status, or  
32 national origin, regardless of whether accompanied by a statement that such restrictive  
33 covenant is repealed or void;"

34 **SECTION 2.**

35 Said chapter is further amended by adding a new article to read as follows:

36 "ARTICLE 4A

37 8-3-250.

38 (a) As used in this article, the term:

39 (1) 'Association' has the same meaning as provided in paragraph (2) of Code Section  
40 44-3-71 or paragraph (16) of Code Section 44-3-221.

(2) 'County recorder' means the office of the clerk of the superior court of the county where the property is located.

(3) 'Declaration' has the same meaning as provided in paragraph (14) of Code Section 44-3-71 or paragraph (6) of Code Section 44-3-221.

(4) 'Governing document' means a declaration or any other document, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of an association.

(5) 'Redacted' means the result of the rerecording of a document that originally contained unlawfully restrictive language, and when presented to the county recorder for rerecording no longer contains the unlawfully restrictive language or the unlawful language is masked so that it is neither readable nor visible.

(6) 'Redaction' means the process of rerecording of a document that originally contained unlawfully restrictive language, and when presented to the county recorder for rerecording no longer contains the unlawfully restrictive language or the unlawful language is masked so that it is neither readable nor visible.

8-3-251.

(a) Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, sex, disability, familial status, or national origin, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, shall be declared to be void and contrary to the public policy of the state.

(b) Any person that records a document for the express purpose of adding a restrictive covenant based on race, color, religion, sex, disability, familial status, or national origin shall be guilty of a misdemeanor. No county recorder shall incur any liability for recording such a document.

8-3-252.

(a) A county recorder, real estate closing attorney, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14 point boldface type, the following:

'If this document contains any restriction based on race, color, religion, sex, disability, familial status, or national origin such restriction violates state and federal fair housing laws and is thereby considered to be void and may be removed pursuant to Code Section 8-3-253 by submitting a restrictive covenant modification form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The restrictive covenant modification form may be obtained from the county recorder's office or its website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.'

(b) The requirements of paragraph (a) of this Code section shall not apply to documents submitted for recordation to a county recorder.

(c) A real estate closing attorney or association that delivers a copy of a declaration, governing document, or deed directly to a person that holds an ownership interest of record in property shall also provide the restrictive covenant modification form provided for in Code Section 8-3-253 and shall include procedural information for appropriate processing along with the document.

8-3-253.

(a)(1) Any person that holds or is acquiring an ownership interest of record in property that such person believes is the subject of an unlawfully restrictive covenant in violation paragraph (2) of subsection (a) of Code Section 8-3-202 may record a restrictive covenant

92 modification form. A real estate closing attorney, county recorder, real estate broker, real  
93 estate agent, or other person may also record the restrictive covenant modification form  
94 provided for in subsection (f) of this Code section. A complete copy of the original  
95 document containing the unlawfully restrictive language with the unlawfully restrictive  
96 covenant language redacted shall be recorded with the restrictive covenant modification  
97 form.

98 (2) If a real estate closing attorney, real estate broker, or real estate agent has actual  
99 knowledge that a declaration, governing document, or deed that is being directly  
100 delivered to a person that holds or is acquiring an ownership interest in property includes  
101 an unlawfully restrictive covenant, such individual shall notify the person that holds or  
102 is acquiring the ownership interest in the property of the existence of such covenant and  
103 their ability to have it removed through the filing of the restrictive covenant modification  
104 form. There shall be no presumption that a party providing a document has read the  
105 document to be recorded or has actual knowledge of its content.

106 (3) If requested before the close of escrow, the real estate closing attorney directly  
107 involved in the pending transaction shall assist in the preparation of a restrictive covenant  
108 modification form pursuant to this article, but the real estate closing attorney shall have  
109 no liability associated with the recordation of any restrictive covenant modification form  
110 that contains modifications not authorized by this article on behalf of the person  
111 requesting such modification.

112 (b) Before recording a restrictive covenant modification form, a county recorder shall  
113 consult with the legal counsel for such county recorder's office to determine whether the  
114 language in the original document to be recorded contains an unlawful restriction based on  
115 race, color, religion, sex, disability, familial status, or national origin. The county recorder  
116 shall refuse to record the modification document if the county recorder in consultation with  
117 legal counsel finds that the original document to be recorded does not contain an unlawful

restriction as specified in this article or the modification document contains modifications not authorized by this article.

(c) If a person requests to record a restrictive covenant modification form, the person shall provide a return address in order for the county recorder to notify such person of the action taken by the county recorder in consultation with legal counsel on the respective property. The notice required pursuant to this subsection may be made on a postcard mailed by first-class mail.

(d) The restrictive covenant modification form shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number and date of the recording.

(e) Subject to covenants, conditions, and restrictions recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the restrictive covenant modification form, the restrictions in such form, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the document originally recorded.

(f) A restrictive covenant modification form shall be prepared and accepted for submission and recordation in all counties in substantially the following form:

#### 'RESTRICTIVE COVENANT MODIFICATION

The following reference document contains a restriction based on race, color, religion, sex, disability, familial status, or national origin as provided in Code Section 8-3-202. Pursuant to Code Section 8-3-253, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ (date) in book \_\_\_\_\_ and page \_\_\_\_\_ or

143 instrument number of the official records of the County of  
144 \_\_\_\_\_, State of Georgia.

145 Attached hereto is a true, correct, and complete copy of the document referenced above,  
146 with the unlawfully restrictive covenant redacted.

147 This modification document shall be indexed in the same manner as the original  
148 document being modified, pursuant to subsection (d) of Code Section 8-3-253.

149 The effective date of the terms and conditions of the modification document shall be the  
150 same as the effective date of the original document.

151 \_\_\_\_\_  
152 (Signature of submitting party)

153 \_\_\_\_\_ County Recorder, after consultation with legal counsel pursuant to  
154 subsection (b) of Code Section 8-3-253, hereby states that it has been determined that the  
155 original document referenced above contains an unlawful restriction and this modification  
156 may be recorded.

157 or

158 \_\_\_\_\_ County Recorder, after consultation with legal counsel pursuant to  
159 subsection (b) of Code Section 8-3-253, finds that the original document does not contain  
160 an unlawful restriction or that the modification document contains modifications not  
161 authorized and this modification may not be recorded.

162 \_\_\_\_\_  
163 (County Recorder)  
164 This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.'

165 (g) The county recorder shall make available to the public restrictive covenant  
166 modification forms onsite in an appropriately designated and accessible area or on the  
167 county recorder's website. Such forms shall permit multiple submissions on behalf of  
168 different homes and for processing submitted forms in batches with respect to a  
169 modification document that affects multiple homes or lots. The forms shall also permit the  
170 submission of a restrictive covenant modification form for an association to modify  
171 covenants, conditions, and restrictions that will correct unlawfully restrictive covenants for  
172 multiple dwellings within a subdivision.

173 (h) If a person causes to be recorded a modified document pursuant to this article that  
174 contains modifications not authorized by this article, the county recorder shall not incur  
175 liability for recording such document. The liability that may result from the unauthorized  
176 recordation is the sole responsibility of the person that caused the modified recordation as  
177 provided in subsection (a) of this Code section.

178 (i) A restrictive covenant modification that is approved by a county recorder in  
179 consultation with the office's legal counsel and recorded pursuant to this article removes  
180 the illegal covenant from all property affected by the original covenant regardless of who  
181 submits the modification.

182 8-3-254.

183 (a) Each county recorder shall establish a restrictive covenant program to assist in the  
184 redaction of unlawfully restrictive covenants in violation of paragraph (2) of subsection (a)  
185 of Code Section 8-3-202.

186 (b) Each county recorder as part of the restrictive covenant program shall:

(1) By July 1, 2023, prepare an implementation plan which shall be publicly available and may be posted on the website of the county recorder, that:

(A) Outlines how the county recorder will carry out the identification and redaction of unlawfully restrictive covenants;

(B) Provides timelines for when elements of the plan will be accomplished; and

(C) Provides how the county recorder's office plans to track and maintain a record of homes identified to have unlawfully restrictive covenants;

(2) Identify unlawfully restrictive covenants in violation of paragraph (2) of subsection (a) of Code Section 8-3-202 in the records of the county recorder's office;

(3) Beginning January 1, 2023, index all restrictive covenant modification documents under the title of 'Restrictive Covenant Modification' and make such index available to the public in the office of the county recorder; provided, however, that if the county recorder has such index online, such title shall be included as part of the online index; and

(4) Redact unlawfully restrictive covenants in the records of the respective county recorder's office, subject to approval by the office's legal counsel, by rerecording a copy of the original document with the unlawfully restrictive language redacted so that it is neither readable nor visible, using a restrictive covenant modification form substantially similar to the form set forth in subsection (f) of Code Section 8-3-253.

(c) The county recorder shall retain each nonredacted record for future reference and public request needs.

(d)(1) The Superior Court Clerks' Association of Georgia, Inc., shall annually submit to the General Assembly status reports on the progress of county recorders' restrictive covenant programs established pursuant to this article by January 1, 2024, and January 1, 2025. Each report shall describe the number of documents identified for redaction and the implementation timelines for actions taken by each county recorder's office.

(2) The Superior Court Clerks' Association of Georgia, Inc., shall convene a best practices meeting with all Georgia county recorder offices to share concepts on

implementation of this article no later than December 31, 2023, and shall meet annually thereafter until December 31, 2028.

(e) Nothing in this article shall be construed to restrict, delay, or modify access to any official record, or modify any existing agreements regarding access to any official record.

(f) The failure of a county recorder to identify or redact illegal restrictive covenants, as required by this section, or the county recorder's identification or redaction of any restrictive covenants that are later determined not to be illegal, shall not result in any liability against the county recorder or the county."

### SECTION 3.

Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and tenant, is amended by adding new Code sections to read as follows:

"44-7-25.

(a) No residential landlord shall:

(1) Refuse to rent, renew an existing rental agreement, negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any person solely on the basis of credit information or absence thereof without consideration of any other applicable factor independent of credit information;

(2) Base a tenant's rental rate solely upon credit information without consideration of any other applicable factor independent of credit information;

(3) Take an adverse action against a tenant or prospective tenant solely because he or she does not have a credit card account without consideration of any other applicable factor independent of credit information; or

(4) Use any of the following as a negative factor in determining the rental rate for a tenant or determining whether to rent to a prospective tenant or to renew a rental agreement:

(A) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(B) Inquiries relating to housing, if so identified on a consumer's credit report;

(C) Collection accounts related to housing, if so identified on the consumer's credit report;

(D) Multiple lender inquiries, if coded on the consumer's credit report by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another unless only one inquiry is considered; or

(E) Multiple lender inquiries, if coded on the consumer's credit report by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another unless only one inquiry is considered.

(b) A residential landlord may consider a consumer's history of residential rental payments as a factor in determining the rental rate for a tenant, or whether to rent to a prospective tenant, or renew a rental agreement."

"44-7-60.

(a) As used in this Code section, the term 'court file' means the files and records created when a dispossessory action is filed with the court.

(b) The court may order that a court file in a dispossessory action be placed under seal if the court finds that the plaintiff's action is sufficiently without a basis in fact or law, which may include a lack of jurisdiction, that placing the court file under seal is clearly in the interests of justice, and that those interests are not outweighed by the public's interest in knowing about the record.

(c) The court shall order that a court file in a dispossessory action be placed under seal if the action was based solely on the tenant becoming a tenant at sufferance by holding over in a foreclosed residential property and:

(1) The tenant vacated the property prior to the commencement of the dispossessionary action; or

(2) The landlord did not provide the tenant with a demand for possession of such property pursuant to Code Section 44-7-50 prior to the commencement of the dispossessionary action."

#### SECTION 4.

Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Community Affairs, is amended by adding a new Code section to read as follows:

"50-8-6.1.

(a) The department shall employ:

(1) A housing benefits specialist who shall advise the public regarding the affordable and fair housing resources available in this state; and

(2) A residential landlord complaint specialist who shall:

(A) Accept complaints regarding residential landlords in Georgia;

(B) Refer complainants to local, state, or federal agencies or programs, nonprofits, or other providers of relevant housing services, as applicable; and

(C) Publish annually on its website a report that provides the total number of residential landlord complaints received and an overall summary and description of such complaints received.

(b) The department shall provide the employees required by subsection (a) of this Code section with access to translation services."

#### SECTION 5.

Section 3 of this Act shall apply to residential lease agreements entered into or renewed on or after July 1, 2022.

288

**SECTION 6.**

289 All laws and parts of laws in conflict with this Act are repealed.