

IN THE SENATE

SENATE BILL NO. 1263

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING SECTION 55-115, IDAHO CODE,
2 TO PROVIDE CERTAIN EXCEPTIONS REGARDING THE IMPOSITION OF FINES FOR
3 CERTAIN VIOLATIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFEC-
4 TIVE DATE.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 55-115, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 55-115. HOMEOWNER'S ASSOCIATION -- PROHIBITED CONDUCT. (1) As used in
10 this section:

11 (a) "Homeowner's association" shall have the same meaning as in section
12 45-810(6), Idaho Code.

13 (b) "Board" means the entity that has the duty of governing the associ-
14 ation that may be referred to as the board of directors, executive board
15 or any such similar name.

16 (c) "Member" or "membership" means any person or entity owning or pos-
17 sessed an interest in residential real property or lot within the phys-
18 ical boundaries of an established homeowner's association.

19 (2) No fine may be imposed for a violation of the covenants and restric-
20 tions pursuant to the rules or regulations of the homeowner's association
21 unless the authority to impose a fine is clearly set forth in the covenants
22 and restrictions and:

23 (a) A majority vote by the board shall be required prior to imposing any
24 fine on a member for a violation of any covenants and restrictions pur-
25 suant to the rules and regulations of the homeowner's association.

26 (b) Written notice by personal service or certified mail of the meeting
27 during which such vote is to be taken shall be made to the member at least
28 thirty (30) days prior to the meeting.

29 (c) In the event the member begins resolving the violation prior to the
30 meeting, no fine shall be imposed as long as the member continues to ad-
31 dress the violation in good faith until fully resolved.

32 (d) No portion of any fine may be used to increase the remuneration of
33 any board member or agent of the board.

34 (e) No part of this section shall affect any statute, rule, covenant,
35 bylaw, provision or clause that may allow for the recovery of attorney's
36 fees.

37 (f) For any violation involving endangerment to the safety of others,
38 destruction of common property, a disturbing of the peace, or the de-
39 struction of another member's property, the provisions of paragraphs
40 (b) and (c) of this section shall not apply.

41 (3) No homeowner's association may add, amend or enforce any covenant,
42 condition or restriction in such a way that limits or prohibits the rental,

1 for any amount of time, of any property, land or structure thereon within
2 the jurisdiction of the homeowner's association, unless expressly agreed to
3 in writing at the time of such addition or amendment by the owner of the af-
4 fected property. Nothing in this section shall be construed to prevent the
5 enforcement of valid covenants, conditions or restrictions limiting a prop-
6 erty owner's right to transfer his interest in land or the structures thereon
7 as long as that covenant, condition or restriction applied to the property at
8 the time the homeowner acquired his interest in the property.

9 (4) No homeowner's association may add, amend, or enforce any covenant,
10 condition, or restriction in such a way that prohibits the installation of
11 solar panels or solar collectors on the rooftop of any property or struc-
12 ture thereon within the jurisdiction of the homeowner's association; pro-
13 vided however, that a homeowner's association may determine the specific lo-
14 cation where solar panels or solar collectors may be installed on the roof
15 as long as installation is permitted within an orientation to the south or
16 within forty-five (45) degrees east or west of due south. A homeowner's as-
17 sociation may adopt reasonable rules for the installation of solar panels or
18 solar collectors consistent with an applicable building code or to require
19 that panels or collectors be parallel to a roof line, conform to the slope of
20 the roof, and that any frame, support bracket, or visible piping or wiring be
21 painted to coordinate with the roofing material. The provisions of this sub-
22 section shall apply only to rooftops that are owned, controlled, and main-
23 tained by the homeowner.

24 (5) (a) No homeowner's association may add, amend, or enforce any
25 covenant, condition, or restriction in such a way that prohibits or has
26 the effect of prohibiting the display of a political sign.

27 (b) For the purpose of this subsection, "political sign" means any
28 fixed, ground-mounted display in support of or in opposition to a candi-
29 date for office or a ballot measure.

30 (c) A homeowner's association may adopt reasonable rules, subject to
31 any applicable laws or ordinances, regarding the time, size, place,
32 number, and manner of display of political signs.

33 (d) A homeowner's association may remove a political sign without lia-
34 bility if the sign:

35 (i) Is placed within the common ground;

36 (ii) Threatens the public health or safety;

37 (iii) Violates an applicable law or ordinance;

38 (iv) Is accompanied by sound or music or if any other materials are
39 attached to the political sign.

40 (e) Except as provided in paragraph (d) of this subsection, a home-
41 owner's association shall not remove a political sign from the property
42 of a homeowner or impose any fine or penalty upon the homeowner unless
43 it has first provided the homeowner three (3) days' written notice that
44 specifically identifies the rule and the nature of the violation.

45 (6) (a) No homeowner's association may add, amend, or enforce any
46 covenant, condition, or restriction in such a way that prohibits or has
47 the effect of prohibiting the display of:

48 (i) The flag of the United States of America;

49 (ii) The flag of the state of Idaho;

50 (iii) The POW/MIA flag; or

- 1 (iv) An official or replica flag of any branch of the United States
2 armed forces.
- 3 (b) A homeowner's association may adopt reasonable rules, subject to
4 applicable laws or ordinances:
- 5 (i) That require:
- 6 1. The flag of the United States of America and the flag
7 of the state of Idaho to be displayed in accordance with 4
8 U.S.C. 5 et seq.;
- 9 2. A flagpole attached to a dwelling or a freestanding flag-
10 pole to be constructed of permanent, long-lasting materials
11 with a finish appropriate to the materials used in the con-
12 struction of the flagpole and harmonious to the dwelling;
- 13 3. The display of a flag, or the location and construction
14 of the supporting flagpole, to comply with applicable zoning
15 ordinances, easements, and setbacks of record; and
- 16 4. That a displayed flag and the flagpole on which it is
17 flown be maintained in good condition and that any deterio-
18 rated flag or deteriorated or structurally unsafe flagpole
19 be repaired, replaced, or removed;
- 20 (ii) That regulate the size, number, and location of flagpoles on
21 which flags are displayed, except that the regulation may not pre-
22 vent the installation or erection of at least one (1) flagpole per
23 property that:
- 24 1. Is not more than twenty (20) feet in height and, subject
25 to applicable zoning ordinances, easements, and setbacks of
26 record, is located in the front yard of the property; or
- 27 2. Is attached to any portion of a residential structure
28 owned by the property owner and not maintained by the home-
29 owner's association;
- 30 (iii) That govern the size of a displayed flag;
- 31 (iv) That regulate the size, location, and intensity of any lights
32 used to illuminate a displayed flag;
- 33 (v) That impose reasonable restrictions to abate noise caused by
34 an external halyard of a flagpole; or
- 35 (vi) That prohibit a property owner from locating a displayed flag
36 or flagpole on property that is:
- 37 1. Owned or maintained by the homeowner's association; or
38 2. Owned in common by the members of the association.
- 39 (c) A property owner who has a front yard and who otherwise complies
40 with any permitted homeowner's association regulation may elect to in-
41 stall a flagpole in accordance with paragraph (b) (ii) of this subsec-
42 tion.
- 43 (7) Attorney's fees and costs shall not accrue and shall not be assessed
44 or collected by the homeowner's association until the homeowner's associa-
45 tion has complied with the requirements of subsection (2) of this section and
46 the member has failed to address the violation as prescribed in subsection
47 (2) (c) of this section. A court of competent jurisdiction may determine the
48 reasonableness of attorney's fees and costs assessed against a member. In an
49 action to determine the reasonableness of attorney's fees and costs assessed

1 by the homeowner's association against a member, the court may award reason-
2 able attorney's fees and costs to the prevailing party.

3 SECTION 2. An emergency existing therefor, which emergency is hereby
4 declared to exist, this act shall be in full force and effect on and after
5 July 1, 2022.