

IN THE SENATE

SENATE BILL NO. 1263, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING SECTION 55-115, IDAHO CODE,
2 TO ESTABLISH PROVISIONS REGARDING FINES FOR VIOLATIONS OF COVENANTS
3 AND RESTRICTIONS THAT INVOLVE ENDANGERMENT TO THE SAFETY OF OTHERS,
4 DESTRUCTION OF COMMON PROPERTY, DISTURBING OF THE PEACE, OR DESTRUCTION
5 OF ANOTHER MEMBER'S PROPERTY; AND DECLARING AN EMERGENCY AND PROVIDING
6 AN EFFECTIVE DATE.
7

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

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

11 55-115. HOMEOWNER'S ASSOCIATION -- PROHIBITED CONDUCT. (1) As used in
12 this section:

13 (a) "Homeowner's association" shall have the same meaning as in section
14 45-810(6), Idaho Code.

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

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

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

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

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

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

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

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

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

1 erning documents, written notice of the fine must be sent to the member
2 within three (3) days of the board's vote. Notwithstanding this excep-
3 tion, the board or the board's agent shall make a reasonable effort to
4 contact the member prior to imposition of the fine. Any member who is
5 assessed a fine under this paragraph may petition the board for a hear-
6 ing to dispute or appeal the fine within thirty (30) days after the day
7 on which the member receives notice that the fine has been assessed.

8 (3) No homeowner's association may add, amend or enforce any covenant,
9 condition or restriction in such a way that limits or prohibits the rental,
10 for any amount of time, of any property, land or structure thereon within
11 the jurisdiction of the homeowner's association, unless expressly agreed to
12 in writing at the time of such addition or amendment by the owner of the af-
13 fected property. Nothing in this section shall be construed to prevent the
14 enforcement of valid covenants, conditions or restrictions limiting a prop-
15 erty owner's right to transfer his interest in land or the structures thereon
16 as long as that covenant, condition or restriction applied to the property at
17 the time the homeowner acquired his interest in the property.

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

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

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

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

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

- 44 (i) Is placed within the common ground;
- 45 (ii) Threatens the public health or safety;
- 46 (iii) Violates an applicable law or ordinance;
- 47 (iv) Is accompanied by sound or music or if any other materials are
- 48 attached to the political sign.

49 (e) Except as provided in paragraph (d) of this subsection, a home-
50 owner's association shall not remove a political sign from the property

1 of a homeowner or impose any fine or penalty upon the homeowner unless
2 it has first provided the homeowner three (3) days' written notice that
3 specifically identifies the rule and the nature of the violation.

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

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

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

9 (iii) The POW/MIA flag; or

10 (iv) An official or replica flag of any branch of the United States
11 armed forces.

12 (b) A homeowner's association may adopt reasonable rules, subject to
13 applicable laws or ordinances:

14 (i) That require:

15 1. The flag of the United States of America and the flag
16 of the state of Idaho to be displayed in accordance with 4
17 U.S.C. 5 et seq.;

18 2. A flagpole attached to a dwelling or a freestanding flag-
19 pole to be constructed of permanent, long-lasting materials
20 with a finish appropriate to the materials used in the con-
21 struction of the flagpole and harmonious to the dwelling;

22 3. The display of a flag, or the location and construction
23 of the supporting flagpole, to comply with applicable zoning
24 ordinances, easements, and setbacks of record; and

25 4. That a displayed flag and the flagpole on which it is
26 flown be maintained in good condition and that any deterio-
27 rated flag or deteriorated or structurally unsafe flagpole
28 be repaired, replaced, or removed;

29 (ii) That regulate the size, number, and location of flagpoles on
30 which flags are displayed, except that the regulation may not pre-
31 vent the installation or erection of at least one (1) flagpole per
32 property that:

33 1. Is not more than twenty (20) feet in height and, subject
34 to applicable zoning ordinances, easements, and setbacks of
35 record, is located in the front yard of the property; or

36 2. Is attached to any portion of a residential structure
37 owned by the property owner and not maintained by the home-
38 owner's association;

39 (iii) That govern the size of a displayed flag;

40 (iv) That regulate the size, location, and intensity of any lights
41 used to illuminate a displayed flag;

42 (v) That impose reasonable restrictions to abate noise caused by
43 an external halyard of a flagpole; or

44 (vi) That prohibit a property owner from locating a displayed flag
45 or flagpole on property that is:

46 1. Owned or maintained by the homeowner's association; or

47 2. Owned in common by the members of the association.

48 (c) A property owner who has a front yard and who otherwise complies
49 with any permitted homeowner's association regulation may elect to in-

1 stall a flagpole in accordance with paragraph (b) (ii) of this subsec-
2 tion.

3 (7) Attorney's fees and costs shall not accrue and shall not be assessed
4 or collected by the homeowner's association until the homeowner's associa-
5 tion has complied with the requirements of subsection (2) of this section and
6 the member has failed to address the violation as prescribed in subsection
7 (2) (c) of this section. A court of competent jurisdiction may determine the
8 reasonableness of attorney's fees and costs assessed against a member. In an
9 action to determine the reasonableness of attorney's fees and costs assessed
10 by the homeowner's association against a member, the court may award reason-
11 able attorney's fees and costs to the prevailing party.

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