

CHAMBER ACTION

1 The Insurance Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community associations; directing the
7 Advisory Council on Condominiums to hold public hearings
8 and prepare and present a report to the Legislature
9 regarding certain issues relating to the powers of
10 condominium associations during catastrophic windstorm
11 events and the recovery and rebuilding following such
12 events; amending s. 720.305, F.S.; providing that a fine
13 levied by a homeowners' association against a homeowner
14 shall not become a lien against a parcel unless it is
15 imposed for violations of use restrictions on the land;
16 amending s. 720.311, F.S.; providing that the failure of a
17 party to make payment of fees and costs or appear for a
18 mediation session or arbitration proceeding acts as an
19 impasse in the proceeding and entitles the other party to
20 proceed in court and to receive and enforce an award of
21 costs and fees associated with the mediation or
22 arbitration; deleting the training hours required for
23 certification of mediators and arbitrators; providing that

24 | qualifications for certification as a mediator or
 25 | arbitrator will be established by the Florida Supreme
 26 | Court; deleting a provision requiring the initial costs of
 27 | educating homeowners and other parties about homeowners'
 28 | associations and the use of alternative dispute resolution
 29 | techniques to be paid from moneys and filing fees
 30 | generated by the arbitration of recall and election
 31 | disputes and by the mediation of those disputes; creating
 32 | s. 712.11, F.S.; providing for the revival of certain
 33 | declarations that have been extinguished; providing an
 34 | effective date.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. The Advisory Council on Condominiums is
 39 | directed to hold public hearings, study available options and
 40 | proposals, and prepare a report to the Legislature, including
 41 | recommended legislation, dealing with the protection and
 42 | preservation of condominium property at the time of anticipated
 43 | catastrophic windstorm events and the recovery and rebuilding
 44 | following such events. Recommendations should consider the
 45 | communication options with condominium owners in times of
 46 | anticipated and declared emergencies, financial planning for
 47 | protecting and rebuilding condominium property following such
 48 | events, and the powers and responsibilities of unit owners and
 49 | the board of directors of the condominium association before,
 50 | during, and after such occurrences.

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51 Section 2. Subsection (2) of section 720.305, Florida
52 Statutes, is amended to read:

53 720.305 Obligations of members; remedies at law or in
54 equity; levy of fines and suspension of use rights; failure to
55 fill sufficient number of vacancies on board of directors to
56 constitute a quorum; appointment of receiver upon petition of
57 any member.--

58 (2) If the governing documents so provide, an association
59 may suspend, for a reasonable period of time, the rights of a
60 member or a member's tenants, guests, or invitees, or both, to
61 use common areas and facilities and may levy reasonable fines,
62 not to exceed \$100 per violation, against any member or any
63 tenant, guest, or invitee. A fine may be levied on the basis of
64 each day of a continuing violation, with a single notice and
65 opportunity for hearing, except that no such fine shall exceed
66 \$1,000 in the aggregate unless otherwise provided in the
67 governing documents. A fine shall not become a lien against a
68 parcel unless it is imposed for violations of use restrictions
69 on the land. In any action to recover a fine, the prevailing
70 party is entitled to collect its reasonable attorney's fees and
71 costs from the nonprevailing party as determined by the court.

72 (a) A fine or suspension may not be imposed without notice
73 of at least 14 days to the person sought to be fined or
74 suspended and an opportunity for a hearing before a committee of
75 at least three members appointed by the board who are not
76 officers, directors, or employees of the association, or the
77 spouse, parent, child, brother, or sister of an officer,
78 director, or employee. If the committee, by majority vote, does

79 | not approve a proposed fine or suspension, it may not be
80 | imposed.

81 | (b) The requirements of this subsection do not apply to
82 | the imposition of suspensions or fines upon any member because
83 | of the failure of the member to pay assessments or other charges
84 | when due if such action is authorized by the governing
85 | documents.

86 | (c) Suspension of common-area-use rights shall not impair
87 | the right of an owner or tenant of a parcel to have vehicular
88 | and pedestrian ingress to and egress from the parcel, including,
89 | but not limited to, the right to park.

90 | Section 3. Paragraphs (b) and (c) of subsection (2) and
91 | subsection (3) of section 720.311, Florida Statutes, are amended
92 | to read:

93 | 720.311 Dispute resolution.--

94 | (2)

95 | (b) If mediation as described in paragraph (a) is not
96 | successful in resolving all issues between the parties, the
97 | parties may file the unresolved dispute in a court of competent
98 | jurisdiction or elect to enter into binding or nonbinding
99 | arbitration pursuant to the procedures set forth in s. 718.1255
100 | and rules adopted by the division, with the arbitration
101 | proceeding to be conducted by a department arbitrator or by a
102 | private arbitrator certified by the department. If all parties
103 | do not agree to arbitration proceedings following an
104 | unsuccessful mediation, any party may file the dispute in court.
105 | A final order resulting from nonbinding arbitration is final and
106 | enforceable in the courts if a complaint for trial de novo is

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107 | not filed in a court of competent jurisdiction within 30 days
108 | after entry of the order. The failure of any party to make
109 | payment of fees and costs within the time established by
110 | department rule or to appear for a scheduled mediation session
111 | or arbitration proceeding shall operate as an impasse in the
112 | proceeding between the parties, entitling the other party to
113 | proceed in court and to receive and enforce an award of costs
114 | and fees associated with the mediation or arbitration.

115 | (c) The department shall develop a certification and
116 | training program for private mediators and private arbitrators
117 | which shall emphasize experience and expertise in the area of
118 | the operation of community associations. A mediator or
119 | arbitrator shall be certified by the department only if he or
120 | she has met the qualifications for a mediator established for
121 | circuit court mediators ~~has attended at least 20 hours of~~
122 | ~~training in mediation or arbitration, as appropriate, and only~~
123 | ~~if the applicant has mediated or arbitrated at least 10 disputes~~
124 | ~~involving community associations within 5 years prior to the~~
125 | ~~date of the application, or has mediated or arbitrated 10~~
126 | ~~disputes in any area within 5 years prior to the date of~~
127 | ~~application and has completed 20 hours of training in community~~
128 | ~~association disputes. In order to be certified by the~~
129 | ~~department, any mediator must also be certified by the Florida~~
130 | Supreme Court. The department may conduct the training and
131 | certification program within the department or may contract with
132 | an outside vendor to perform the training or certification. The
133 | expenses of operating the training and certification and
134 | training program shall be paid by the moneys and filing fees

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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135 generated by the arbitration of recall and election disputes and
 136 by the mediation of those disputes referred to in this
 137 subsection and by the training fees.

138 (3) The department shall develop an education program to
 139 assist homeowners, associations, board members, and managers in
 140 understanding and increasing awareness of the operation of
 141 homeowners' associations pursuant to this chapter and in
 142 understanding the use of alternative dispute resolution
 143 techniques in resolving disputes between parcel owners and
 144 associations or between owners. Such education program may
 145 include the development of pamphlets and other written
 146 instructional guides, the holding of classes and meetings by
 147 department employees or outside vendors, as the department
 148 determines, and the creation and maintenance of a website
 149 containing instructional materials. ~~The expenses of operating~~
 150 ~~the education program shall be initially paid by the moneys and~~
 151 ~~filing fees generated by the arbitration of recall and election~~
 152 ~~disputes and by the mediation of those disputes referred to in~~
 153 ~~this subsection.~~

154 Section 4. Section 712.11, Florida Statutes, is created to
 155 read:

156 712.11 Covenants and restrictions.--A homeowners'
 157 association that is not otherwise subject to chapter 720 may use
 158 the procedures provided in ss. 720.403-720.407 to revive a
 159 declaration of covenants and restrictions that has been
 160 extinguished by this chapter entitled Marketable Record Titles
 161 to Real Property.

162 Section 5. This act shall take effect upon becoming a law.