



212266

CHAMBER ACTION

Senate

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House

1 The Committee on Community Affairs (Wise) recommended the
2 following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Section 720.304, Florida Statutes, is amended
8 to read:

9 720.304 Right of owners to peaceably assemble; display of
10 flag; SLAPP suits prohibited, application to nonmandatory
11 homeowners' associations.--

12 (1) All common areas and recreational facilities serving
13 any homeowners' association shall be available to parcel owners
14 in the homeowners' association served thereby and their invited
15 guests for the use intended for such common areas and

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16 recreational facilities. The entity or entities responsible for
17 the operation of the common areas and recreational facilities
18 may adopt reasonable rules and regulations pertaining to the use
19 of such common areas and recreational facilities. No entity or
20 entities shall unreasonably restrict any parcel owner's right to
21 peaceably assemble or right to invite public officers or
22 candidates for public office to appear and speak in common areas
23 and recreational facilities.

24 (2) (a) Any homeowner may display one portable, removable
25 United States flag or official flag of the State of Florida in a
26 respectful manner, and one ~~on Armed Forces Day, Memorial Day,~~
27 ~~Flag Day, Independence Day, and Veterans Day may display in a~~
28 ~~respectful manner~~ portable, removable official flag ~~flags~~, not
29 larger than 4 1/2 feet by 6 feet, which represent the United
30 States Army, Navy, Air Force, Marine Corps, or Coast Guard,
31 regardless of any covenants, restrictions, bylaws, declaration
32 rules, or requirements of the association ~~dealing with flags or~~
33 ~~decorations.~~

34 (b) Any homeowner may erect a freestanding flagpole no
35 more than 20 feet in height on any portion of the homeowner's
36 real property, regardless of any covenants, restrictions,
37 bylaws, rules, or requirements of the association, provided that
38 the flagpole does not obstruct sight lines at intersections and
39 is not erected within any easement. The homeowner may further
40 display in a respectful manner from that flagpole, regardless of
41 any covenants, restrictions, bylaws, rules, or requirements of
42 the association, one official United States flag, not larger
43 than 4 1/2 feet by 6 feet, and may additionally display one

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44 official flag of the State of Florida, the United States Army,
45 Navy, Air Force, Marine Corps, or Coast Guard, or the POW-MIA
46 flag, which additional flag must be equal in size or smaller
47 than the United States flag.

48 (3) Any owner prevented from exercising rights guaranteed
49 by subsection (1) or subsection (2) may bring an action in the
50 appropriate court of the county in which the alleged
51 infringement occurred, and, upon favorable adjudication, the
52 court shall enjoin the enforcement of any provision contained in
53 any homeowners' association document or rule that operates to
54 deprive the owner of such rights.

55 (4) It is the intent of the Legislature to protect the
56 right of parcel owners to exercise their rights to instruct
57 their representatives and petition for redress of grievances
58 before the various governmental entities of this state as
59 protected by the First Amendment to the United States
60 Constitution and s. 5, Art. I of the State Constitution. The
61 Legislature recognizes that "Strategic Lawsuits Against Public
62 Participation" or "SLAPP" suits, as they are typically called,
63 have occurred when members are sued by individuals, business
64 entities, or governmental entities arising out of a parcel
65 owner's appearance and presentation before a governmental entity
66 on matters related to the homeowners' association. However, it
67 is the public policy of this state that government entities,
68 business organizations, and individuals not engage in SLAPP
69 suits because such actions are inconsistent with the right of
70 parcel owners to participate in the state's institutions of
71 government. Therefore, the Legislature finds and declares that



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72 prohibiting such lawsuits by governmental entities, business
73 entities, and individuals against parcel owners who address
74 matters concerning their homeowners' association will preserve
75 this fundamental state policy, preserve the constitutional
76 rights of parcel owners, and assure the continuation of
77 representative government in this state. It is the intent of the
78 Legislature that such lawsuits be expeditiously disposed of by
79 the courts.

80 (a) As used in this subsection, the term "governmental
81 entity" means the state, including the executive, legislative,
82 and judicial branches of government, the independent
83 establishments of the state, counties, municipalities,
84 districts, authorities, boards, or commissions, or any agencies
85 of these branches which are subject to chapter 286.

86 (b) A governmental entity, business organization, or
87 individual in this state may not file or cause to be filed
88 through its employees or agents any lawsuit, cause of action,
89 claim, cross-claim, or counterclaim against a parcel owner
90 without merit and solely because such parcel owner has exercised
91 the right to instruct his or her representatives or the right to
92 petition for redress of grievances before the various
93 governmental entities of this state, as protected by the First
94 Amendment to the United States Constitution and s. 5, Art. I of
95 the State Constitution.

96 (c) A parcel owner sued by a governmental entity, business
97 organization, or individual in violation of this section has a
98 right to an expeditious resolution of a claim that the suit is
99 in violation of this section. A parcel owner may petition the



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100 court for an order dismissing the action or granting final
101 judgment in favor of that parcel owner. The petitioner may file
102 a motion for summary judgment, together with supplemental
103 affidavits, seeking a determination that the governmental
104 entity's, business organization's, or individual's lawsuit has
105 been brought in violation of this section. The governmental
106 entity, business organization, or individual shall thereafter
107 file its response and any supplemental affidavits. As soon as
108 practicable, the court shall set a hearing on the petitioner's
109 motion, which shall be held at the earliest possible time after
110 the filing of the governmental entity's, business organization's
111 or individual's response. The court may award the parcel owner
112 sued by the governmental entity, business organization, or
113 individual actual damages arising from the governmental
114 entity's, individual's, or business organization's violation of
115 this section. A court may treble the damages awarded to a
116 prevailing parcel owner and shall state the basis for the treble
117 damages award in its judgment. The court shall award the
118 prevailing party reasonable attorney's fees and costs incurred
119 in connection with a claim that an action was filed in violation
120 of this section.

121 (d) Homeowners' associations may not expend association
122 funds in prosecuting a SLAPP suit against a parcel owner.

123 (5) (a) Any parcel owner may construct an access ramp if a
124 resident or occupant of the parcel has a medical necessity or
125 disability that requires a ramp for egress and ingress under the
126 following conditions:



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127 1. The ramp must be as unobtrusive as possible, be
128 designed to blend in aesthetically as practicable, and be
129 reasonably sized to fit the intended use.

130 2. Plans for the ramp must be submitted in advance to the
131 homeowners' association. The association may make reasonable
132 requests to modify the design to achieve architectural
133 consistency with surrounding structures and surfaces.

134 (b) The parcel owner must submit to the association an
135 affidavit from a physician attesting to the medical necessity or
136 disability of the resident or occupant of the parcel requiring
137 the access ramp. Certification used for s. 320.0848 shall be
138 sufficient to meet the affidavit requirement.

139 (6) Any parcel owner may display a sign of reasonable size
140 provided by a contractor for security services within 10 feet of
141 any entrance to the home.

142 (7) The provisions of this section apply to all
143 homeowners' associations, whether or not such associations are
144 authorized to impose assessments that may become a lien on the
145 parcel. The provisions of this section apply to a community
146 development district.

147 Section 2. This act shall take effect July 1, 2008.

148
149 ===== T I T L E A M E N D M E N T =====

150 And the title is amended as follows:

151 Delete everything before the enacting clause
152 and insert:

153 A bill to be entitled

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154 | An act relating to the display of flags; amending s.
155 | 720.304, F.S.; authorizing homeowners to display certain
156 | flags in a specified manner; providing for application of
157 | section to nonmandatory homeowners' associations and
158 | community development districts; providing an effective
159 | date.