

By the Committee on Community Affairs; and Senators Fasano,
Gaetz and Haridopolos

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1 A bill to be entitled
2 An act relating to the display of flags; amending s.
3 720.304, F.S.; authorizing homeowners to display certain
4 flags in a specified manner; providing that such
5 provisions apply to nonmandatory homeowners' associations
6 and community development districts; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 720.304, Florida Statutes, is amended to
12 read:

13 720.304 Right of owners to peaceably assemble; display of
14 flag; SLAPP suits prohibited; application to nonmandatory
15 homeowners' associations and community development districts.--

16 (1) All common areas and recreational facilities serving
17 any homeowners' association shall be available to parcel owners
18 in the homeowners' association served thereby and their invited
19 guests for the use intended for such common areas and
20 recreational facilities. The entity or entities responsible for
21 the operation of the common areas and recreational facilities may
22 adopt reasonable rules and regulations pertaining to the use of
23 such common areas and recreational facilities. No entity or
24 entities shall unreasonably restrict any parcel owner's right to
25 peaceably assemble or right to invite public officers or
26 candidates for public office to appear and speak in common areas
27 and recreational facilities.

28 (2) (a) Any homeowner may display one portable, removable
29 United States flag or official flag of the State of Florida in a

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

38 (b) Any homeowner may erect a freestanding flagpole no more
39 than 20 feet in height on any portion of the homeowner's real
40 property, regardless of any covenants, restrictions, bylaws,
41 rules, or requirements of the association, provided that the
42 flagpole does not obstruct sight lines at intersections and is
43 not erected within an easement. The homeowner may further display
44 in a respectful manner from that flagpole, regardless of any
45 covenants, restrictions, bylaws, rules, or requirements of the
46 association, one official United States flag, not larger than 4
47 1/2 feet by 6 feet, and may additionally display one official
48 flag of the State of Florida or the United States Army, Navy, Air
49 Force, Marine Corps, or Coast Guard or the POW-MIA flag, which
50 additional flag must be equal in size or smaller than the United
51 States flag.

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

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59 (4) It is the intent of the Legislature to protect the
60 right of parcel owners to exercise their rights to instruct their
61 representatives and petition for redress of grievances before the
62 various governmental entities of this state as protected by the
63 First Amendment to the United States Constitution and s. 5, Art.
64 I of the State Constitution. The Legislature recognizes that
65 "Strategic Lawsuits Against Public Participation" or "SLAPP"
66 suits, as they are typically called, have occurred when members
67 are sued by individuals, business entities, or governmental
68 entities arising out of a parcel owner's appearance and
69 presentation before a governmental entity on matters related to
70 the homeowners' association. However, it is the public policy of
71 this state that government entities, business organizations, and
72 individuals not engage in SLAPP suits because such actions are
73 inconsistent with the right of parcel owners to participate in
74 the state's institutions of government. Therefore, the
75 Legislature finds and declares that prohibiting such lawsuits by
76 governmental entities, business entities, and individuals against
77 parcel owners who address matters concerning their homeowners'
78 association will preserve this fundamental state policy, preserve
79 the constitutional rights of parcel owners, and assure the
80 continuation of representative government in this state. It is
81 the intent of the Legislature that such lawsuits be expeditiously
82 disposed of by the courts.

83 (a) As used in this subsection, the term "governmental
84 entity" means the state, including the executive, legislative,
85 and judicial branches of government, the independent
86 establishments of the state, counties, municipalities, districts,
87 authorities, boards, or commissions, or any agencies of these

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88 | branches which are subject to chapter 286.

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

99 | (c) A parcel owner sued by a governmental entity, business
100 | organization, or individual in violation of this section has a
101 | right to an expeditious resolution of a claim that the suit is in
102 | violation of this section. A parcel owner may petition the court
103 | for an order dismissing the action or granting final judgment in
104 | favor of that parcel owner. The petitioner may file a motion for
105 | summary judgment, together with supplemental affidavits, seeking
106 | a determination that the governmental entity's, business
107 | organization's, or individual's lawsuit has been brought in
108 | violation of this section. The governmental entity, business
109 | organization, or individual shall thereafter file its response
110 | and any supplemental affidavits. As soon as practicable, the
111 | court shall set a hearing on the petitioner's motion, which shall
112 | be held at the earliest possible time after the filing of the
113 | governmental entity's, business organization's or individual's
114 | response. The court may award the parcel owner sued by the
115 | governmental entity, business organization, or individual actual
116 | damages arising from the governmental entity's, individual's, or

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117 business organization's violation of this section. A court may
118 treble the damages awarded to a prevailing parcel owner and shall
119 state the basis for the treble damages award in its judgment. The
120 court shall award the prevailing party reasonable attorney's fees
121 and costs incurred in connection with a claim that an action was
122 filed in violation of this section.

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

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

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

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

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

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

144 (7) The provisions of this section apply to all homeowners'
145 associations, whether or not such associations are authorized to

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146 impose assessments that may become a lien on the parcel, and to
147 all community development districts.

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