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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Rodriguez) recommended the following:

1 **Senate Substitute for Amendment (866366) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. This act may be cited as the "Homeowners'
7 Associations Bill of Rights."

8 Section 2. Subsection (1) and paragraph (g) of subsection
9 (4) of section 720.303, Florida Statutes, are amended, and
10 paragraph (d) is added to subsection (8) of that section, to



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11 read:

12 720.303 Association powers and duties; meetings of board;
13 official records; budgets; financial reporting; association
14 funds; recalls.—

15 (1) POWERS AND DUTIES.—

16 (a) An association which operates a community as defined in
17 s. 720.301~~7~~ must be operated by an association that is a Florida
18 corporation. After October 1, 1995, the association must be
19 incorporated and the initial governing documents must be
20 recorded in the official records of the county in which the
21 community is located. An association may operate more than one
22 community.

23 (b)1. The officers and directors of an association have a
24 fiduciary relationship to the members who are served by the
25 association.

26 2. An officer or a director charged by information or
27 indictment with any of the following crimes must be removed from
28 office, and the vacancy must be filled as provided in s.
29 720.306(9) until the end of the officer's or director's period
30 of suspension or the end of his or her term of office, whichever
31 occurs first:

32 a. Forgery of a ballot envelope or voting certificate used
33 in a homeowners' association election as provided in s. 831.01.

34 b. Theft or embezzlement of funds of a homeowners'
35 association as provided in s. 812.014.

36 c. Destruction of or the refusal to allow inspection or
37 copying of an official record of a homeowners' association that
38 is accessible to parcel owners within the time periods required
39 by general law in furtherance of any crime. Such act constitutes



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40 tampering with physical evidence as provided in s. 918.13.

41 d. Obstruction of justice under chapter 843.

42 3. If a criminal charge is pending against the officer or
43 director, he or she may not be appointed or elected to a
44 position as an officer or a director of any association and may
45 not have access to the official records of any association,
46 except pursuant to a court order. However, if the charges are
47 resolved without a finding of guilt, the officer or director
48 must be reinstated for the remainder of his or her term of
49 office, if any.

50 (c) The powers and duties of an association include those
51 set forth in this chapter and, except as expressly limited or
52 restricted in this chapter, those set forth in the governing
53 documents.

54 (d) After control of the association is obtained by members
55 other than the developer, the association may institute,
56 maintain, settle, or appeal actions or hearings in its name on
57 behalf of all members concerning matters of common interest to
58 the members, including, but not limited to, the common areas;
59 roof or structural components of a building, or other
60 improvements for which the association is responsible;
61 mechanical, electrical, or plumbing elements serving an
62 improvement or building for which the association is
63 responsible; representations of the developer pertaining to any
64 existing or proposed commonly used facility; and protesting ad
65 valorem taxes on commonly used facilities. The association may
66 defend actions in eminent domain or bring inverse condemnation
67 actions. Before commencing litigation against any party in the
68 name of the association involving amounts in controversy in



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69 excess of \$100,000, the association must obtain the affirmative
70 approval of a majority of the voting interests at a meeting of
71 the membership at which a quorum has been attained. This
72 paragraph subsection does not limit any statutory or common-law
73 right of any individual member or class of members to bring any
74 action without participation by the association.

75 (e) A member does not have authority to act for the
76 association by virtue of being a member. An association may have
77 more than one class of members and may issue membership
78 certificates.

79 (f) An association of 15 or fewer parcel owners may enforce
80 only the requirements of those deed restrictions established
81 prior to the purchase of each parcel upon an affected parcel
82 owner or owners.

83 (4) OFFICIAL RECORDS.—The association shall maintain each
84 of the following items, when applicable, which constitute the
85 official records of the association:

86 (g) A current roster of all members and their designated
87 mailing addresses and parcel identifications. A member's
88 designated mailing address is the member's property address,
89 unless the member has sent written notice to the association
90 requesting that a different mailing address be used for all
91 required notices. The association shall also maintain the e-mail
92 electronic mailing addresses and the facsimile numbers
93 designated by members for receiving notice sent by electronic
94 transmission of those members consenting to receive notice by
95 electronic transmission. A member's e-mail address is the e-mail
96 address the member provided when consenting in writing to
97 receiving notice by electronic transmission, unless the member



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98 has sent written notice to the association requesting that a
99 different e-mail address be used for all required notices. The
100 e-mail ~~electronic mailing~~ addresses and facsimile numbers
101 provided by ~~members~~ ~~unit owners~~ to receive notice by electronic
102 transmission ~~must~~ ~~shall~~ be removed from association records when
103 the member ~~revokes~~ consent to receive notice by electronic
104 transmission ~~is revoked~~. However, the association is not liable
105 for an erroneous disclosure of the e-mail ~~electronic mail~~
106 address or the facsimile number for receiving electronic
107 transmission of notices.

108 (8) ASSOCIATION FUNDS; COMMINGLING.—

109 (d) If an association collects a deposit from a member for
110 any reason, including to pay for expenses that may be incurred
111 as a result of construction on a member's parcel, such funds
112 must be maintained separately and may not be comingled with any
113 other association funds. Upon completion of the member's
114 construction project, or other reason for which the deposit was
115 collected, the member may request an accounting from the
116 association of his or her funds that were deposited, and the
117 association must provide such accounting to the member within 7
118 days after receiving the member's request. An association must
119 remit payment of any unused funds to the member within 30 days
120 after receiving notice that the member's construction project,
121 or other reason for which the deposit was collected, is
122 complete.

123 Section 3. Subsection (3) of section 720.3033, Florida
124 Statutes, is amended, and subsection (6) is added to that
125 section, to read:

126 720.3033 Officers and directors.—



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127 (3) An officer, a director, or a manager may not solicit,
128 offer to accept, or accept any thing ~~good~~ or service of value
129 for which consideration has not been provided for his or her
130 benefit or for the benefit of a member of his or her immediate
131 family from any person providing or proposing to provide goods
132 or services to the association. An officer, a director, or a
133 manager who knowingly solicits, offers to accept, or accepts any
134 thing or service of value or kickback for which consideration
135 has not been provided for his or her own benefit or that of his
136 or her immediate family, from any person providing or proposing
137 to provide goods or services to the association is subject to a
138 civil penalty under s. 718.501(1)(d) and, if applicable, a
139 criminal penalty as provided in s. 718.111(1)(d). If the board
140 finds that an officer or a director has violated this
141 subsection, the board shall immediately remove the officer or
142 director from office. The vacancy shall be filled according to
143 law until the end of the officer's or director's term of office.
144 However, an officer, a director, or a manager may accept food to
145 be consumed at a business meeting with a value of less than \$25
146 per individual or a service or good received in connection with
147 trade fairs or education programs.

148 (6) (a) Directors and officers of an association that are
149 appointed by the developer must disclose to the association
150 their relationship to the developer each calendar year in which
151 they serve as a director or an officer. Directors and officers
152 appointed by the developer must disclose any other activity that
153 may reasonably be construed to be a conflict of interest
154 pursuant to paragraph (b).

155 (b) Directors and officers must disclose to the association



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156 any activity that may be reasonably construed to be a conflict
157 of interest at least 14 days before voting on an issue or
158 entering into a contract that is the subject of the conflict. A
159 rebuttable presumption of a conflict of interest exists if any
160 of the following acts occur without prior disclosure to the
161 association:

162 1. A director or an officer, or a relative of a director or
163 an officer, enters into a contract for goods or services with
164 the association.

165 2. A director or an officer, or a relative of a director or
166 an officer, holds an interest in a corporation, limited
167 liability company, partnership, limited liability partnership,
168 or other business entity that conducts business with the
169 association or proposes to enter into a contract or other
170 transaction with the association.

171 Section 4. Subsections (1), (2), and (5) of section
172 720.305, Florida Statutes, are amended to read:

173 720.305 Obligations of members; remedies at law or in
174 equity; levy of fines and suspension of use rights.-

175 (1) Each member and the member's tenants, guests, and
176 invitees, and each association, are governed by, and must comply
177 with, this chapter, the governing documents of the community,
178 and the rules of the association. Actions at law or in equity,
179 or both, to redress alleged failure or refusal to comply with
180 these provisions may be brought by the association or by any
181 member against:

182 (a) The association;

183 (b) A member;

184 (c) Any director or officer of an association who willfully



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185 and knowingly fails to comply with these provisions; and
186 (d) Any tenants, guests, or invitees occupying a parcel or
187 using the common areas.
188
189 The prevailing party in any such litigation is entitled to
190 recover reasonable attorney fees and costs as provided in
191 paragraph (2) (e). A member prevailing in an action between the
192 association and the member under this section, in addition to
193 recovering his or her reasonable attorney fees, may recover
194 additional amounts as determined by the court to be necessary to
195 reimburse the member for his or her share of assessments levied
196 by the association to fund its expenses of the litigation. This
197 relief does not exclude other remedies provided by law. This
198 section does not deprive any person of any other available right
199 or remedy.
200 (2) An association may levy reasonable fines for violations
201 of the declaration, association's bylaws, or reasonable rules of
202 the association. A fine may not exceed \$100 per violation
203 against any member or any member's tenant, guest, or invitee for
204 the failure of the owner of the parcel or its occupant,
205 licensee, or invitee to comply with any provision of the
206 declaration, the association bylaws, or reasonable rules of the
207 association unless otherwise provided in the governing
208 documents. A fine may be levied by the board for each day of a
209 continuing violation, with a single notice and opportunity for
210 hearing, except that the fine may not exceed \$1,000 in the
211 aggregate unless otherwise provided in the governing documents.
212 A fine of less than \$1,000 may not become a lien against a
213 parcel. In any action to recover a fine, the prevailing party is



214 entitled to reasonable attorney fees and costs from the
215 nonprevailing party as determined by the court.

216 (a) An association may suspend, for a reasonable period of
217 time, the right of a member, or a member's tenant, guest, or
218 invitee, to use common areas and facilities for the failure of
219 the owner of the parcel or its occupant, licensee, or invitee to
220 comply with any provision of the declaration, the association
221 bylaws, or reasonable rules of the association. This paragraph
222 does not apply to that portion of common areas used to provide
223 access or utility services to the parcel. A suspension may not
224 prohibit an owner or tenant of a parcel from having vehicular
225 and pedestrian ingress to and egress from the parcel, including,
226 but not limited to, the right to park.

227 (b) A fine or suspension levied by the board of
228 administration may not be imposed unless the board first
229 provides at least 14 days' notice to the parcel owner at his or
230 her designated mailing or e-mail address in the association's
231 official records and, if applicable, any occupant, licensee, or
232 invitee of the parcel owner, sought to be fined or suspended and
233 ~~an opportunity for~~ a hearing before a committee of at least
234 three members appointed by the board who are not officers,
235 directors, or employees of the association, or the spouse,
236 parent, child, brother, or sister of an officer, director, or
237 employee. The notice must include a description of the alleged
238 violation, the specific action required to cure such violation,
239 if applicable, and the date and location of the hearing. A
240 parcel owner has the right to attend a hearing by telephone or
241 other electronic means.

242 (c) If the committee, by majority vote, does not approve a



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243 proposed fine or suspension, the proposed fine or suspension may
244 not be imposed. The role of the committee is limited to
245 determining whether to confirm or reject the fine or suspension
246 levied by the board.

247 (d) After the hearing, the committee shall provide written
248 notice to the parcel owner at his or her designated mailing or
249 e-mail address in the association's official records and, if
250 applicable, any occupant, licensee, or invitee of the parcel
251 owner, of the committee's findings related to the violation,
252 including any applicable fines or suspensions that the committee
253 approved or rejected, and how the parcel owner or any occupant,
254 licensee, or invitee of the parcel owner may cure the violation,
255 if applicable.

256 (e) If the proposed fine or suspension levied by the board
257 is approved by the committee by a majority vote, the fine
258 payment is due 5 days after notice of the approved fine required
259 under paragraph (d) is provided to the parcel owner and, if
260 applicable, to any occupant, licensee, or invitee of the parcel
261 owner. The association must provide written notice of such fine
262 or suspension by mail or hand delivery to the parcel owner and,
263 if applicable, to any occupant, licensee, or invitee of the
264 parcel owner.

265 (5) All suspensions imposed under ~~pursuant to~~ subsection
266 (3) or subsection (4) must be approved at a properly noticed
267 board meeting. Upon approval, the board association must send
268 written notice to notify the parcel owner and, if applicable,
269 the parcel's occupant, licensee, or invitee by mail or hand
270 delivery to the parcel owner's designated mailing or e-mail
271 address in the association's official records.



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272 Section 5. Section 720.3065, Florida Statutes, is created
273 to read:

274 720.3065 Fraudulent voting activities relating to
275 association elections; penalties.—Each of the following acts is
276 a fraudulent voting activity relating to association elections
277 and constitutes a misdemeanor of the first degree, punishable as
278 provided in s. 775.082 or s. 775.083:

279 (1) Willfully and falsely swearing to or affirming an oath
280 or affirmation, or willfully procuring another person to falsely
281 swear to or affirm an oath or affirmation, in connection with or
282 arising out of voting activities.

283 (2) Perpetrating or attempting to perpetrate, or aiding in
284 the perpetration of, fraud in connection with a vote cast, to be
285 cast, or attempted to be cast.

286 (3) Preventing a member from voting or preventing a member
287 from voting as he or she intended by fraudulently changing or
288 attempting to change a ballot, ballot envelope, vote, or voting
289 certificate of the member.

290 (4) Menacing, threatening, or using bribery or any other
291 corruption to attempt, directly or indirectly, to influence,
292 deceive, or deter a member when the member is voting.

293 (5) Giving or promising, directly or indirectly, anything
294 of value to another member with the intent to buy the vote of
295 that member or another member or to corruptly influence that
296 member or another member in casting his or her vote. This
297 subsection does not apply to any food served which is to be
298 consumed at an election rally or a meeting or to any item of
299 nominal value which is used as an election advertisement,
300 including a campaign message designed to be worn by a member.



301 (6) Using or threatening to use, directly or indirectly,
302 force, violence, or intimidation or any tactic of coercion or
303 intimidation to induce or compel a member to vote or refrain
304 from voting in an election or on a particular ballot measure.

305 Section 6. This act shall take effect October 1, 2023.

306
307 ===== T I T L E A M E N D M E N T =====

308 And the title is amended as follows:

309 Delete everything before the enacting clause
310 and insert:

311 A bill to be entitled
312 An act relating to homeowners' associations; providing
313 a short title; amending s. 720.303, F.S.; requiring
314 certain officers or directors of an association to be
315 removed from office under certain circumstances;
316 specifying how a vacancy on the association board must
317 be filled; providing restrictions on certain officers
318 and directors; specifying when an officer or director
319 is required to be reinstated; requiring an association
320 to maintain designated addresses as official records;
321 specifying what constitutes a designated address;
322 conforming provisions to changes made by the act;
323 prohibiting certain funds from being comingled with
324 other association funds; authorizing a member to
325 request an accounting from an association under
326 certain circumstances; requiring an association to
327 provide such accounting and remit unused funds to the
328 member within specified timeframes; amending s.
329 720.3033, F.S.; providing criminal and civil penalties



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330 for certain actions by officers, directors, or
331 managers of an association; requiring directors and
332 officers of the association to disclose certain
333 activity and relationships to the association within a
334 specified timeframe; creating a rebuttable presumption
335 of a conflict of interest if certain acts occur;
336 amending s. 720.305, F.S.; restricting certain
337 attorney fees and fines; specifying the types of
338 violations for which an association may levy fines;
339 specifying where certain notice must be delivered;
340 providing requirements for such notice; authorizing
341 parcel owners to attend certain hearings by telephone
342 or other electronic means; requiring a specified
343 notice after a hearing; conforming provisions to
344 changes made by the act; creating s. 720.3065, F.S.;
345 providing criminal penalties for certain fraudulent
346 voting activities; providing an effective date.