

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 636

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO ACCESSORY DWELLING UNITS; AMENDING SECTION 55-115, IDAHO CODE,  
2 TO REVISE PROVISIONS REGARDING PROHIBITED CONDUCT BY HOMEOWNER'S AS-  
3 SOCIATIONS; AMENDING CHAPTER 6, TITLE 55, IDAHO CODE, BY THE ADDITION  
4 OF A NEW SECTION 55-616, IDAHO CODE, TO PROHIBIT CERTAIN RESTRICTIVE  
5 COVENANTS AGAINST ACCESSORY DWELLING UNITS ON OWNER-OCCUPIED HOME-  
6 STEADS; AMENDING CHAPTER 65, TITLE 67, IDAHO CODE, BY THE ADDITION OF  
7 A NEW SECTION 67-6540, IDAHO CODE, TO PROHIBIT CERTAIN CITY AND COUNTY  
8 ORDINANCES REGARDING ACCESSORY DWELLING UNITS ON OWNER-OCCUPIED HOME-  
9 STEADS AND TO DEFINE A TERM; AND DECLARING AN EMERGENCY.  
10

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

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

14 55-115. HOMEOWNER'S ASSOCIATION -- PROHIBITED CONDUCT. (1) As used in  
15 this section:

16 (a) "Homeowner's association" shall have the same meaning as in section  
17 45-810(6), Idaho Code.

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

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

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

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

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

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

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

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

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

11 (4) No homeowner's association may add, amend, or enforce any covenant,  
12 condition, or restriction in such a way that creates an express or practi-  
13 cal general ban of accessory dwelling units, as defined in section 67-6540,  
14 Idaho Code, on the property of an owner-occupied homestead, as defined in  
15 section 63-701(2), Idaho Code, within the jurisdiction of the homeowner's  
16 association. Nothing in this subsection prevents a homeowner's association  
17 from adopting reasonable rules regarding the installation and location of  
18 individual accessory dwelling units.

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

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

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

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

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

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

1 (e) Except as provided in paragraph (d) of this subsection, a home-  
2 owner's association shall not remove a political sign from the property  
3 of a homeowner or impose any fine or penalty upon the homeowner unless  
4 it has first provided the homeowner three (3) days' written notice that  
5 specifically identifies the rule and the nature of the violation.

6 (~~67~~) (a) No homeowner's association may add, amend, or enforce any  
7 covenant, condition, or restriction in such a way that prohibits or has  
8 the effect of prohibiting the display of:

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

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

11 (iii) The POW/MIA flag; or

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

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

16 (i) That require:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) A property owner who has a front yard and who otherwise complies  
2 with any permitted homeowner's association regulation may elect to in-  
3 stall a flagpole in accordance with paragraph (b) (ii) of this subsec-  
4 tion.

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

14 SECTION 2. That Chapter 6, Title 55, Idaho Code, be, and the same is  
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
16 ignated as Section 55-616, Idaho Code, and to read as follows:

17 55-616. ACCESSORY DWELLING UNITS -- RESTRICTIVE COVENANTS PROHIB-  
18 ITED. (1) On and after July 1, 2022, no restrictive covenant may be entered  
19 into that has the express or practical effect of prohibiting an accessory  
20 dwelling unit, as defined in section 67-6540, Idaho Code, to be situated  
21 on the property of an owner-occupied homestead, as defined in section  
22 63-701(2), Idaho Code. Any such covenant is hereby declared to be against  
23 public policy and is void and unenforceable. Any person attempting to create  
24 or enforce such a covenant shall be liable for any attorney's fees, court  
25 costs, and any other damages incurred by the other party.

26 (2) This section does not apply to a restrictive covenant against ac-  
27 cessory dwelling units entered into prior to July 1, 2022.

28 SECTION 3. That Chapter 65, Title 67, Idaho Code, be, and the same is  
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
30 ignated as Section 67-6540, Idaho Code, and to read as follows:

31 67-6540. ACCESSORY DWELLING UNITS. (1) No county or city may enact or  
32 enforce any ordinance that has the express or practical effect of imposing  
33 a general ban of accessory dwelling units in any residential zoning area  
34 within its jurisdiction. A county or city may implement reasonable reg-  
35 ulations that it deems necessary to safeguard the public health, safety,  
36 and general welfare of its residents. An accessory dwelling unit shall be  
37 classified as a residential land use for zoning purposes subject to all ap-  
38 plicable zoning requirements.

39 (2) For the purpose of this section, an "accessory dwelling unit" means  
40 a self-contained living unit subordinate to and on the same parcel as an  
41 owner-occupied homestead, as defined in section 63-701(2), Idaho Code, that  
42 includes its own cooking, sleeping, and sanitation facilities and is created  
43 within or detached from the owner-occupied homestead, including but not lim-  
44 ited to an attached or detached garage. "Accessory dwelling unit" does not  
45 include a motorhome, camper, recreational vehicle, tiny home on wheels, or  
46 other such similar dwellings on wheels.

1           SECTION 4. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.