

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0801.01 Richard Sweetman x4333

SENATE BILL 23-178

SENATE SPONSORSHIP

Jaquez Lewis and Will, Marchman, Priola

HOUSE SPONSORSHIP

McCormick,

Senate Committees

Local Government & Housing

House Committees

A BILL FOR AN ACT

101 **CONCERNING REMOVING BARRIERS TO WATER-WISE LANDSCAPING IN**
102 **COMMON INTEREST COMMUNITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, a unit owners' association (association) of a common interest community may not prohibit the use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible. There is, however, an exception authorizing an association to adopt and enforce design or aesthetic guidelines or rules that apply to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

nonvegetative turf grass and drought-tolerant vegetative landscapes or to regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property, on a limited common element, or on other property for which the unit owner is responsible.

The bill states that an association's guidelines or rules must:

- Not prohibit the use of nonvegetative turf grass in the backyard of a unit owner's property;
- Not unreasonably require the use of hardscape on more than 20% of the landscaping area of a unit owner's property;
- Allow a unit owner an option that consists of at least 80% drought-tolerant plantings; and
- Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property.

The bill also requires an association to permit the installation of at least 3 garden designs that are preapproved by the association for installation in front yards within the common interest community. To be preapproved, a garden design must adhere to the principles of water-wise landscaping and emphasize drought-tolerant and native plants.

The bill allows a unit owner who is affected by an association's violation of the new requirements to bring a civil action to restrain further violation and to recover damages in an amount equal to actual damages plus \$500, plus any other damages, costs, and reasonable attorney fees.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-106.5,
3 **amend** (1)(i) as follows:

4 **38-33.3-106.5. Prohibitions contrary to public policy -**
5 **patriotic, political, or religious expression - public rights-of-way - fire**
6 **prevention - renewable energy generation devices - affordable**
7 **housing - drought prevention measures - child care - definitions.**

8 (1) Notwithstanding any provision in the declaration, bylaws, or rules
9 and regulations of the association to the contrary, an association shall not
10 prohibit any of the following:

11 (i) (I) ~~(A)~~ The use of xeriscape, nonvegetative turf grass, or

1 drought-tolerant vegetative OR NONVEGETATIVE landscapes to provide
2 ground covering to property for which a unit owner is responsible,
3 including a limited common element or property owned by the unit owner
4 AND ANY RIGHT-OF-WAY OR TREE LAWN THAT IS THE UNIT OWNER'S
5 RESPONSIBILITY TO MAINTAIN. Associations may adopt and enforce design
6 or aesthetic guidelines or rules that apply to ~~nonvegetative turf grass and~~
7 drought-tolerant vegetative OR NONVEGETATIVE landscapes or regulate
8 the type, number, and placement of drought-tolerant plantings and
9 hardscapes that may be installed on ~~a unit owner's property or on a limited~~
10 ~~common element or other property for which the unit owner is~~
11 ~~responsible. An association may restrict the installation of nonvegetative~~
12 ~~turf grass to rear yard locations only.~~ PROPERTY THAT IS SUBJECT TO THE
13 GUIDELINES OR RULES; EXCEPT THAT THE GUIDELINES OR RULES MUST:

14 (A) NOT PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN
15 THE BACKYARD OF A UNIT OWNER'S PROPERTY;

16 (B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE ON
17 MORE THAN TWENTY PERCENT OF THE LANDSCAPING AREA OF A UNIT
18 OWNER'S PROPERTY;

19 (C) ALLOW A UNIT OWNER AN OPTION THAT CONSISTS OF AT LEAST
20 EIGHTY PERCENT DROUGHT-TOLERANT PLANTINGS; AND

21 (D) NOT PROHIBIT VEGETABLE GARDENS IN THE FRONT, BACK, OR
22 SIDE YARD OF A UNIT OWNER'S PROPERTY. AS USED IN THIS SUBSECTION
23 (1)(i), "VEGETABLE GARDEN" MEANS A PLOT OF GROUND OR AN ELEVATED
24 SOIL BED IN WHICH POLLINATOR PLANTS, FLOWERS, OR VEGETABLES OR
25 HERBS, FRUITS, LEAFY GREENS, OR OTHER EDIBLE PLANTS ARE
26 CULTIVATED.

27 (II) FOR THE PURPOSES OF THIS SUBSECTION (1)(i), EACH

1 ASSOCIATION SHALL SELECT AT LEAST THREE PREPLANNED WATER-WISE
2 GARDEN DESIGNS THAT ARE PREAPPROVED FOR INSTALLATION IN FRONT
3 YARDS WITHIN THE COMMON INTEREST COMMUNITY. TO BE PREAPPROVED,
4 A GARDEN DESIGN MUST ADHERE TO THE PRINCIPLES OF WATER-WISE
5 LANDSCAPING, AS DEFINED IN SECTION 37-60-135 (2)(1), AND EMPHASIZE
6 DROUGHT-TOLERANT AND NATIVE PLANTS. EACH GARDEN DESIGN MAY BE
7 SELECTED FROM THE COLORADO STATE UNIVERSITY EXTENSION PLANT
8 SELECT ORGANIZATION'S "DOWNLOADABLE DESIGNS" LIST OR FROM A
9 MUNICIPALITY, UTILITY, OR OTHER ENTITY THAT CREATES SUCH GARDEN
10 DESIGNS. AN ASSOCIATION SHALL CONSIDER A UNIT OWNER'S USE OF ONE
11 OF THE GARDEN DESIGNS SELECTED BY THE ASSOCIATION TO BE
12 PREAPPROVED AS COMPLYING WITH THE ASSOCIATION'S AESTHETIC
13 GUIDELINES. EACH ASSOCIATION SHALL POST ON ITS PUBLIC WEBSITE, IF
14 ANY, INFORMATION CONCERNING PREAPPROVALS OF GARDEN DESIGNS.

15 (III) EXCEPT AS DESCRIBED IN SUBSECTION (1)(i)(IV) OF THIS
16 SECTION, IF AN ASSOCIATION KNOWINGLY VIOLATES THIS SUBSECTION
17 (1)(i), A UNIT OWNER WHO IS AFFECTED BY THE VIOLATION MAY BRING A
18 CIVIL ACTION TO RESTRAIN FURTHER VIOLATION AND TO RECOVER:

19 (A) DAMAGES IN AN AMOUNT EQUAL TO ACTUAL DAMAGES PLUS
20 FIVE HUNDRED DOLLARS PLUS ANY OTHER DAMAGES;

21 (B) COSTS; AND

22 (C) REASONABLE ATTORNEY FEES.

23 (IV) BEFORE A UNIT OWNER COMMENCES A CIVIL ACTION AS
24 DESCRIBED IN SUBSECTION (1)(i)(III) OF THIS SECTION, THE UNIT OWNER
25 SHALL NOTIFY THE ASSOCIATION OF THE VIOLATION AND ALLOW THE
26 ASSOCIATION FORTY-FIVE DAYS TO CURE THE VIOLATION.

27 ~~(B)~~ (V) This subsection (1)(i), as amended by House Bill 21-1229,

1 enacted in 2021, does not apply to an association that includes time share
2 units, as defined in section 38-33-110 (7).

3 ~~(H)~~ (VI) This ~~paragraph (i)~~ SUBSECTION (1)(i) does not supersede
4 any subdivision regulation of a county, city and county, or other
5 municipality.

6 (VII) NOTHING IN THIS SUBSECTION (1)(i) SHALL BE CONSTRUED
7 TO PROHIBIT OR RESTRICT THE AUTHORITY OF ASSOCIATIONS TO:

8 (A) ADOPT BONA FIDE SAFETY REQUIREMENTS CONSISTENT WITH
9 APPLICABLE LANDSCAPE CODES OR RECOGNIZED SAFETY STANDARDS FOR
10 THE PROTECTION OF PERSONS AND PROPERTY;

11 (B) PROHIBIT OR RESTRICT THE ESTABLISHMENT AND
12 MAINTENANCE OF FIRE BUFFERS OR DEFENSIBLE SPACES; OR

13 (C) PROHIBIT OR RESTRICT CHANGES TO EXISTING GRADING,
14 DRAINAGE, OR OTHER STRUCTURAL LANDSCAPE ELEMENTS NECESSARY
15 FOR THE PROTECTION OF PERSONS AND PROPERTY.

16 (VIII) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
17 CONTRARY, THIS SUBSECTION (1)(i) APPLIES ONLY TO UNITS THAT ARE
18 SINGLE-FAMILY DWELLINGS, AS DEFINED IN SECTION 38-45-101 (7).

19 **SECTION 2.** In Colorado Revised Statutes, 37-60-126, **amend**
20 (11)(a) and (11)(b)(IV); and **add** (11)(e) as follows:

21 **37-60-126. Water conservation and drought mitigation**
22 **planning - programs - relationship to state assistance for water**
23 **facilities - guidelines - water efficiency grant program - definitions -**
24 **repeal.** (11) (a) (I) Any section of a restrictive covenant or of the
25 declaration, bylaws, or rules and regulations of a common interest
26 community, all as defined in section 38-33.3-103, and any rule or policy
27 of a special district, as defined in section 32-1-103 (20), that prohibits or

1 limits xeriscape, prohibits or limits the installation or use of
2 drought-tolerant vegetative OR NONVEGETATIVE landscapes, requires
3 cultivated vegetation to consist wholly or partially of turf grass, or
4 prohibits the use of nonvegetative turf grass in the backyard of a
5 residential property is hereby declared contrary to public policy and, on
6 that basis, is unenforceable.

7 (II) This subsection (11)(a) does not prohibit common interest
8 communities or special districts from adopting and enforcing design or
9 aesthetic guidelines or rules that apply to drought-tolerant vegetative or
10 nonvegetative landscapes or regulate the type, number, and placement of
11 drought-tolerant plantings and hardscapes that may be installed on
12 property that is subject to the guidelines or rules; except that the
13 guidelines or rules must:

14 (A) Not prohibit the use of nonvegetative turf grass in the
15 backyard of a residential property;

16 (B) NOT UNREASONABLY REQUIRE THE USE OF HARDSCAPE ON
17 MORE THAN TWENTY PERCENT OF THE LANDSCAPING AREA OF A UNIT OF
18 A COMMON INTEREST COMMUNITY, AS THOSE TERMS ARE DEFINED IN
19 SECTION 38-33.3-103 (8) AND (30);

20 (C) ALLOW A UNIT OWNER, AS DEFINED IN SECTION 38-33.3-103
21 (31), AN OPTION THAT CONSISTS OF AT LEAST EIGHTY PERCENT
22 DROUGHT-TOLERANT PLANTINGS; AND

23 (D) NOT PROHIBIT VEGETABLE GARDENS IN THE FRONT, BACK, OR
24 SIDE YARD OF A UNIT OWNER'S PROPERTY. AS USED IN THIS SUBSECTION
25 (11)(a)(II)(D), "VEGETABLE GARDEN" MEANS A PLOT OF GROUND OR AN
26 ELEVATED SOIL BED IN WHICH POLLINATOR PLANTS, FLOWERS, OR
27 VEGETABLES OR HERBS, FRUITS, LEAFY GREENS, OR OTHER EDIBLE PLANTS

1 ARE CULTIVATED.

2 (H) (III) This subsection (11)(a), as amended by House Bill
3 21-1229, enacted in 2021, does not apply to an association that includes
4 time share units, as defined in section 38-33-110 (7).

5 (b) As used in this subsection (11):

6 (IV) "~~Xeriscape~~" ~~means the application of the principles of~~
7 ~~landscape planning and design, soil analysis and improvement,~~
8 ~~appropriate plant selection, limitation of turf area, use of mulches,~~
9 ~~irrigation efficiency, and appropriate maintenance that results in water use~~
10 ~~efficiency and water-saving practices~~ HAS THE MEANING SET FORTH IN
11 SECTION 38-33.3-103 (33).

12 (e) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
13 CONTRARY, THIS SUBSECTION (11) APPLIES TO A UNIT OF A COMMON
14 INTEREST COMMUNITY, AS THOSE TERMS ARE DEFINED IN SECTION
15 38-33.3-103 (8) AND (30), ONLY IF THE UNIT IS A SINGLE-FAMILY
16 DWELLING, AS DEFINED IN SECTION 38-45-101 (7).

17 **SECTION 3. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly; except
20 that, if a referendum petition is filed pursuant to section 1 (3) of article V
21 of the state constitution against this act or an item, section, or part of this
22 act within such period, then the act, item, section, or part will not take
23 effect unless approved by the people at the general election to be held in
24 November 2024 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.