

CHAPTER 175

PROPERTY

HOUSE BILL 08-1270

BY REPRESENTATIVE(S) Kerr A., Carroll M., Carroll T., Ferrandino, Fischer, Frangas, Green, Labuda, Madden, Marshall, McGihon, Merrifield, Middleton, Peniston, Primavera, Romanoff, Solano, Soper, Stafford, Todd, Weissmann, Kefalas, Levy, and Summers;
also SENATOR(S) Tupa, Boyd, Gibbs, Groff, Hagedorn, Keller, Schwartz, Shaffer, and Tochtrop.

AN ACT**CONCERNING THE REMOVAL OF RESTRICTIONS ON THE USE OF ENERGY EFFICIENCY MEASURES IN CONNECTION WITH REAL PROPERTY.**

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

SECTION 1. 38-30-168, Colorado Revised Statutes, is amended to read:

38-30-168. Unreasonable restrictions on renewable energy generation devices - definitions. (1) (a) ~~After May 25, 1979, any~~ A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property ~~solely on the basis of aesthetic considerations which~~ THAT effectively prohibits or restricts the installation or use of a solar energy device, ~~as defined in section 38-32.5-100.3;~~ RENEWABLE ENERGY GENERATION DEVICE is void and unenforceable.

(b) AS USED IN THIS SECTION, "RENEWABLE ENERGY GENERATION DEVICE" MEANS EITHER:

(I) A SOLAR ENERGY DEVICE, AS DEFINED IN SECTION 38-32.5-100.3; OR

(II) A WIND-ELECTRIC GENERATOR THAT MEETS THE INTERCONNECTION STANDARDS ESTABLISHED IN RULES PROMULGATED BY THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-2-124, C.R.S.

(2) Subsection (1) of this section shall not apply to:

(a) Aesthetic provisions ~~which~~ THAT impose reasonable restrictions on ~~solar~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~energy devices~~ THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF A RENEWABLE ENERGY GENERATION DEVICE and ~~which~~ THAT do not:

(I) Significantly increase the cost of the device; OR

(II) SIGNIFICANTLY DECREASE ITS PERFORMANCE OR EFFICIENCY;

(b) BONA FIDE SAFETY REQUIREMENTS, REQUIRED BY AN APPLICABLE BUILDING CODE OR RECOGNIZED ELECTRICAL SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY; OR

(c) REASONABLE RESTRICTIONS ON THE INSTALLATION AND USE OF WIND-ELECTRIC GENERATORS TO REDUCE INTERFERENCE WITH THE USE AND ENJOYMENT BY RESIDENTS OF PROPERTY SITUATED NEAR WIND-ELECTRIC GENERATORS AS A RESULT OF THE SOUND ASSOCIATED WITH THE WIND-ELECTRIC GENERATORS. INTERFERENCE WITH THE USE AND ENJOYMENT OF PROPERTY BY RESIDENTS FOR THE PURPOSE OF DETERMINING WHETHER A RESTRICTION IS REASONABLE SHALL BE DETERMINED AS A PART OF THE ARCHITECTURAL REVIEW PROCESS AS REQUIRED BY THE GOVERNING DOCUMENTS OF THE COMMON INTEREST COMMUNITY AND SHALL INCLUDE CONSIDERATION OF INPUT BY THE INDIVIDUALS REQUESTING APPROVAL FROM THE COMMON INTEREST COMMUNITY TO INSTALL A WIND-ELECTRIC GENERATOR.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY PROPERTY OWNER THE RIGHT TO PLACE A RENEWABLE ENERGY GENERATION DEVICE ON PROPERTY THAT IS:

(a) OWNED BY ANOTHER PERSON;

(b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;

(c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH PERMISSION OF THE SECURED PARTY; OR

(d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT OF A COMMON INTEREST COMMUNITY.

(4) IN ANY LITIGATION INVOLVING THE SIGNIFICANCE OF AN INCREASE IN COST OF A RENEWABLE ENERGY GENERATION DEVICE, FOR PURPOSES OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, THE PARTY THAT PREVAILS ON THE ISSUE OF THE SIGNIFICANCE OF THE INCREASE SHALL BE ENTITLED TO ITS REASONABLE ATTORNEY FEES AND COSTS INCURRED IN LITIGATING THAT ISSUE. THIS SUBSECTION (4) SHALL NOT BE CONSTRUED TO LIMIT OR PROHIBIT AN AWARD OF ATTORNEY FEES OR COSTS ON OTHER GROUNDS OR IN CONNECTION WITH OTHER ISSUES.

SECTION 2. Part 1 of article 33.3 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions. (1) (a) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION,

BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT EFFECTIVELY PROHIBIT THE INSTALLATION OR USE OF AN ENERGY EFFICIENCY MEASURE.

(b) AS USED IN THIS SECTION, "ENERGY EFFICIENCY MEASURE" MEANS A DEVICE OR STRUCTURE THAT REDUCES THE AMOUNT OF ENERGY DERIVED FROM FOSSIL FUELS THAT IS CONSUMED BY A RESIDENCE OR BUSINESS LOCATED ON THE REAL PROPERTY. "ENERGY EFFICIENCY MEASURE" IS FURTHER LIMITED TO INCLUDE ONLY THE FOLLOWING TYPES OF DEVICES OR STRUCTURES:

(I) AN AWNING, SHUTTER, TRELIS, RAMADA, OR OTHER SHADE STRUCTURE THAT IS MARKETED FOR THE PURPOSE OF REDUCING ENERGY CONSUMPTION;

(II) A GARAGE OR ATTIC FAN AND ANY ASSOCIATED VENTS OR LOUVERS;

(III) AN EVAPORATIVE COOLER;

(IV) AN ENERGY-EFFICIENT OUTDOOR LIGHTING DEVICE, INCLUDING WITHOUT LIMITATION A LIGHT FIXTURE CONTAINING A COILED OR STRAIGHT FLUORESCENT LIGHT BULB, AND ANY SOLAR RECHARGING PANEL, MOTION DETECTOR, OR OTHER EQUIPMENT CONNECTED TO THE LIGHTING DEVICE; AND

(V) A RETRACTABLE CLOTHESLINE.

(2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

(a) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ENERGY EFFICIENCY MEASURE. IN CREATING REASONABLE AESTHETIC PROVISIONS, COMMON INTEREST COMMUNITIES SHALL CONSIDER:

(I) THE IMPACT ON THE PURCHASE PRICE AND OPERATING COSTS OF THE ENERGY EFFICIENCY MEASURE;

(II) THE IMPACT ON THE PERFORMANCE OF THE ENERGY EFFICIENCY MEASURE;
AND

(III) THE CRITERIA CONTAINED IN THE GOVERNING DOCUMENTS OF THE COMMON INTEREST COMMUNITY.

(b) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN APPLICABLE BUILDING CODE OR RECOGNIZED SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO CONFER UPON ANY PROPERTY OWNER THE RIGHT TO PLACE AN ENERGY EFFICIENCY MEASURE ON PROPERTY THAT IS:

(a) OWNED BY ANOTHER PERSON;

(b) LEASED, EXCEPT WITH PERMISSION OF THE LESSOR;

(c) COLLATERAL FOR A COMMERCIAL LOAN, EXCEPT WITH PERMISSION OF THE SECURED PARTY; OR

(d) A LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT OF A COMMON INTEREST COMMUNITY.

SECTION 3. 38-33.3-106.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - renewable energy generation devices - definitions. (1.5) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT EFFECTIVELY PROHIBIT RENEWABLE ENERGY GENERATION DEVICES, AS DEFINED IN SECTION 38-30-168.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to enforcement actions that are pending or commenced on or after the applicable effective date of this act.

Approved: April 24, 2008