

[117H9670]



(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Ohio introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To amend the Communications Act of 1934 to prohibit the application of certain private land use restrictions to amateur station antennas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Amateur Radio Emer-  
5 gency Preparedness Act".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) More than 770,000 amateur operators in  
2           the United States are licensed by the Federal Com-  
3           munications Commission (in this section referred to  
4           as the "Commission") in the amateur radio services,  
5           and, by treaty, amateur operators licensed by other  
6           countries are authorized to operate within the  
7           United States.

8           (2) Amateur radio, in addition to providing life-  
9           saving emergency communications at no cost to tax-  
10          payers, provides a fertile ground for technical self-  
11          training in modern telecommunications, electronics  
12          technology, and emergency communications tech-  
13          niques and protocols.

14          (3) There is a strong Federal interest in the ef-  
15          fective performance of amateur stations established  
16          at the residences of amateur operators. Among other  
17          reasons, when an emergency arises, it can be too  
18          late, and too dangerous, to erect an effective an-  
19          tenna. However, amateur stations have been shown  
20          to be frequently and increasingly precluded by un-  
21          reasonable private land use restrictions, including re-  
22          strictive covenants.

23          (4) Commission regulations have for more than  
24          3 decades prohibited State and local regulation of  
25          amateur station antenna structures that precludes

1 or fails to reasonably accommodate amateur service  
2 communications, or that does not constitute the min-  
3 imum practicable regulation to accomplish a legiti-  
4 mate State or local purpose. The policy of the Com-  
5 mission has been and is to require States and local-  
6 ities to permit erection of a station antenna struc-  
7 ture at heights and dimensions sufficient to reason-  
8 ably accommodate amateur service communications.  
9 The Commission struck an appropriate balance by  
10 enabling effective use of the amateur service without  
11 burdening localities and adjoining properties.

12 (5) The Commission has sought guidance and  
13 direction from Congress with respect to the applica-  
14 tion of the Commission's limited preemption policy  
15 regarding amateur service communications to private  
16 land use restrictions, including restrictive covenants.

17 (6) In 1996, Congress provided guidance, direc-  
18 tion, and authority to the Commission by directing  
19 the Commission to promulgate regulations (Public  
20 Law 104-104, title II, section 207, 110 Stat. 114;  
21 47 U.S.C. 303 note) that have preempted all private  
22 land use restrictions applicable to exterior commu-  
23 nications facilities that impair the ability of citizens  
24 to receive television broadcast signals, direct broad-  
25 cast satellite services, or multichannel multipoint

1 distribution services, or to transmit and receive wire-  
2 less internet services.

3 (7) To further the public interest benefits that  
4 amateur radio brings to society, private land use re-  
5 strictions that prohibit, restrict, or impair amateur  
6 operators from operating, installing, or maintaining  
7 effective outdoor amateur station antenna structures  
8 should also be preempted.

9 **SEC. 3. APPLICATION OF PRIVATE LAND USE RESTRIC-**  
10 **TIONS TO AMATEUR STATION ANTENNAS.**

11 (a) IN GENERAL.—Part I of title III of the Commu-  
12 nications Act of 1934 (47 U.S.C. 301 et seq.) is amended  
13 by adding at the end the following:

14 **“SEC. 346. APPLICATION OF PRIVATE LAND USE RESTRIC-**  
15 **TIONS TO AMATEUR STATION ANTENNAS.**

16 “(a) IN GENERAL.—A private land use restriction  
17 that prohibits, restricts, or impairs, or has the effect of  
18 prohibiting, restricting, or impairing, an amateur operator  
19 from operating, installing, or maintaining any amateur  
20 station antenna on property subject to the control of the  
21 amateur operator may not be adopted or enforced, except  
22 as permitted by subsection (b).

23 “(b) PERMISSIBLE RESTRICTIONS.—

24 “(1) IN GENERAL.—Subject to paragraph (2),  
25 the following private land use restrictions applicable

1 to amateur station antennas may be adopted or en-  
2 forced:

3 “(A) A restriction that requires an ama-  
4 teur station antenna to be installed in compli-  
5 ance with the specifications of the manufacturer  
6 of the antenna, applicable zoning ordinances,  
7 amateur radio tower ordinances (if any), and  
8 governmentally adopted building codes.

9 “(B) A restriction that requires an ama-  
10 teur station antenna to be maintained in a  
11 structurally safe condition.

12 “(C) A restriction that requires any dete-  
13 riorated or structurally unsafe component of an  
14 amateur station antenna to be repaired, re-  
15 placed, or removed.

16 “(D) A restriction that requires an ama-  
17 teur station antenna to be removed if the prop-  
18 erty on which the antenna is located ceases to  
19 be subject to the control of an amateur oper-  
20 ator.

21 “(E) A restriction that requires an ama-  
22 teur station antenna ground-mounted electrical  
23 enclosure, ground-mounted control enclosure, or  
24 guy wire anchor to be visually screened if such  
25 enclosure or anchor—

1                   “(i) is visible from the street faced by  
2                   the dwelling; or

3                   “(ii) is located in an unfenced side or  
4                   rear yard and is visible from an adjoining  
5                   property.

6                   “(2) REASONABLE APPLICATION AND ENFORCE-  
7                   MENT.—A private land use restriction permitted by  
8                   paragraph (1) shall be reasonably applied and en-  
9                   forced.

10                  “(c) LIMITATIONS ON PRIOR APPROVAL.—

11                  “(1) REQUIREMENT NOT PRESENT IN LAND  
12                  RECORDS AT TIME OF PURCHASE OR LEASE.—A re-  
13                  quirement in a private land use restriction for an  
14                  amateur operator to obtain prior approval for the in-  
15                  stallation of an amateur station antenna may not be  
16                  adopted or enforced if such requirement for prior  
17                  approval was not present in the publicly recorded  
18                  land records prior to the purchase or lease of the  
19                  property by the amateur operator.

20                  “(2) INFORMATION REQUIRED FOR PRIOR AP-  
21                  PROVAL.—A private land use restriction that re-  
22                  quires an amateur operator to submit an application  
23                  for approval of an amateur station antenna prior to  
24                  installation may not be adopted or enforced if the in-  
25                  formation required to be submitted as part of the

1 application is greater or more detailed than the in-  
2 formation required to be submitted as part of an ap-  
3 plication for any other improvement.

4 “(3) DEEMED APPROVAL.—If a community as-  
5 sociation or other person authorized to enforce a pri-  
6 vate land use restriction applicable to an amateur  
7 station antenna does not approve or deny an appli-  
8 cation of an amateur operator for approval of the in-  
9 stallation of an amateur station antenna by the day  
10 that is 45 days after the date on which the applica-  
11 tion is submitted, the application shall be deemed to  
12 be approved on the 45th day.

13 “(4) EXISTING APPROVAL.—If a private land  
14 use restriction requires an amateur operator to sub-  
15 mit an application for approval of an amateur sta-  
16 tion antenna prior to installation, after a community  
17 association or other person authorized to enforce the  
18 restriction approves the application, no further ap-  
19 proval of the antenna may be required, unless there  
20 is a material change in the dimensions or structural  
21 integrity of the antenna.

22 “(d) ANTENNAS THAT DO NOT REQUIRE PRIOR AP-  
23 PROVAL.—A requirement in a private land use restriction  
24 for an amateur operator to obtain prior approval for the  
25 installation of an amateur station antenna may not be

1 adopted or enforced with respect to any of the following  
2 types of amateur station antennas:

3           “(1) 1 METER OR LESS IN DIAMETER OR DI-  
4           AGONAL MEASUREMENT.—An antenna for use by an  
5           amateur operator that is less than 1 meter in diame-  
6           ter or diagonal measurement, or having other meas-  
7           urements prescribed by the Commission.

8           “(2) FLAGPOLE ANTENNAS.—A flagpole, capa-  
9           ble of dual use as a flagpole and an amateur station  
10          antenna, not greater than 43 feet in height above  
11          ground.

12          “(3) WIRE ANTENNAS.—Minimally obtrusive  
13          wire antennas, of a length necessary for the fre-  
14          quency of use intended.

15          “(4) VERTICAL ANTENNAS.—Vertical antennas,  
16          not to exceed 43 feet in height above ground, includ-  
17          ing collapsible whip and tilt-over antennas.

18          “(e) RULES OF CONSTRUCTION.—

19               “(1) CONTROL OF PROPERTY.—For purposes of  
20               this section, property is subject to the control of an  
21               amateur operator if the amateur operator is an  
22               owner, lessee, or legal resident of the property.

23               “(2) IMPAIRMENT OF INSTALLATION, MAINTEN-  
24               NANCE, OR OPERATION.—For purposes of this sec-  
25               tion, a private land use restriction prohibits, re-



1       stricts, or impairs the installation, maintenance, or  
2       operation of an amateur station antenna if the re-  
3       striction—

4               “(A) unreasonably delays or prevents in-  
5       stallation, maintenance, or operation of the an-  
6       tenna;

7               “(B) unreasonably increases the costs or  
8       difficulty of installation, maintenance, or oper-  
9       ation of the antenna; or

10              “(C) prevents or degrades reception or  
11       transmission of a signal acceptable to the ama-  
12       teur operator.

13       “(3) LIMITED COMMON AREA.—

14              “(A) IN GENERAL.—For purposes of this  
15       section, if there exists, within the property for  
16       which a community association is responsible, a  
17       limited common area to which an amateur oper-  
18       ator has the right to exclude use by others, the  
19       limited common area shall be treated as prop-  
20       erty under the control of the amateur operator.

21              “(B) PERMISSION ACCESS.—For purposes  
22       of subparagraph (A), access by a community  
23       association for roof repairs, landscaping, or  
24       other maintenance activities shall be treated as  
25       a permission, or authorized access, which does

1 not limit or destroy the control of the amateur  
2 operator.

3 “(f) ENFORCEMENT.—

4 “(1) STAY OF ENFORCEMENT.—If an action is  
5 initiated to seek a declaratory ruling from the Com-  
6 mission or a court of competent jurisdiction regard-  
7 ing whether a private land use restriction complies  
8 with this section, any community association or  
9 other person seeking to enforce the restriction shall  
10 suspend all enforcement efforts with respect to the  
11 restriction until a ruling in the action has become  
12 final.

13 “(2) PROHIBITION ON ACCRUAL OF PENALTIES  
14 OR OTHER COSTS.—No penalty or other cost related  
15 to an amateur station antenna may accrue against  
16 an amateur operator under a private land use re-  
17 striction while an action described in paragraph (1)  
18 is pending to determine whether the restriction com-  
19 plies with this section.

20 “(3) BURDEN OF PROOF.—

21 “(A) REGARDING COMPLIANCE WITH THIS  
22 SECTION.—In any action before the Commis-  
23 sion or a court of competent jurisdiction involv-  
24 ing the interpretation of any provision of this  
25 section, the burden of demonstrating that a

1 particular private land use restriction complies  
2 with this section shall be on the party that  
3 seeks to impose, maintain, or enforce the re-  
4 striction.

5 “(B) REGARDING VIOLATION OF PRIVATE  
6 LAND USE RESTRICTION.—In any action before  
7 the Commission or a court of competent juris-  
8 diction to determine whether an amateur sta-  
9 tion antenna violates a private land use restric-  
10 tion, the party alleging the violation bears the  
11 burden of proof.

12 “(g) PRIVATE RIGHT OF ACTION.—A person harmed  
13 by a violation of this section may bring an action against  
14 the person alleged to have committed the violation in an  
15 appropriate district court of the United States without  
16 first exhausting remedies under State law.

17 “(h) AFFIRMATION OF LIMITED PREEMPTION OF  
18 STATE AND LOCAL LAND USE REGULATION.—Nothing in  
19 this section shall be construed to modify or otherwise limit  
20 the applicability of section 97.15(b) of title 47, Code of  
21 Federal Regulations, or any successor regulation.

22 “(i) DEFINITIONS.—In this section:

23 “(1) AMATEUR OPERATOR.—The term ‘amateur  
24 operator’—

1           “(A) has the meaning given such term in  
2           section 97.3 of title 47, Code of Federal Regu-  
3           lations, or any successor regulation; and

4           “(B) includes any other person authorized  
5           to operate an amateur station in the United  
6           States.

7           “(2) AMATEUR STATION.—The term ‘amateur  
8           station’ has the meaning given such term in section  
9           97.3 of title 47, Code of Federal Regulations, or any  
10          successor regulation.

11          “(3) ANTENNA.—The term ‘antenna’ in-  
12          cludes—

13                 “(A) the transmitting and receiving ele-  
14                 ments;

15                 “(B) any feedline, control enclosures, or  
16                 electrical enclosures necessary for effective  
17                 transmission or reception; and

18                 “(C) any support structure, guy wire, an-  
19                 chor, or tie-off.

20          “(4) COMMUNITY ASSOCIATION.—The term  
21          ‘community association’ means—

22                 “(A) a condominium association (as de-  
23                 fined in section 604 of the Condominium and  
24                 Cooperative Abuse Relief Act of 1980 (15  
25                 U.S.C. 3603));

1           “(B) a cooperative association (as defined  
2           in such section); and

3           “(C) a residential real estate management  
4           association (as defined in section 528 of the In-  
5           ternal Revenue Code of 1986).

6           “(5) LESSEE.—The term ‘lessee’ means a per-  
7           son who, in exchange for payment—

8           “(A) takes temporary possession of resi-  
9           dential real estate through a lease; or

10           “(B) takes possession, in whole or in part,  
11           by lease or purchase, of residential real estate  
12           subject to a ground lease.

13           “(6) PRIVATE LAND USE RESTRICTION.—The  
14           term ‘private land use restriction’ means—

15           “(A) a publicly recorded provision (whether  
16           such provision is denoted as a covenant, deed  
17           restriction, declaration, use restriction, covenant  
18           that runs with the land, or otherwise) that—

19           “(i) touches or concerns the real es-  
20           tate to which the provision applies; and

21           “(ii) limits or restricts the use of the  
22           real estate or imposes conditions on the  
23           use of the real estate; or

24           “(B) a rule or regulation of a community  
25           association, whether publicly recorded or not,

1           that limits or restricts the use of real estate or  
2           imposes conditions on the use of real estate.”.

3       (b) REGULATIONS.—Not later than 180 days after  
4 the date of the enactment of this Act, the Federal Commu-  
5 nications Commission shall promulgate regulations to im-  
6 plement the amendment made by subsection (a).