

SUBJECT: Limiting homeowners' association restrictions on religious item display

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Deshotel, Orr, Bohac, Giddings, Quintanilla, Solomons
1 nay — Garza
2 absent — S. Miller, Workman

WITNESSES: For — Janet Ahmad, Home Owner for Better Building, HOA Reform; Paul Colbert, Anti-Defamation League (ADL); (*Registered, but did not testify*: Irene Adolph, Texas Homeowners for HOA Reform, Coalition for HOA Reform, HOAdata.org; Sandra Denton, Texas Community Association Advocates; Nancy Hentschel; Joshua Houston, Texas Impact; Robin Lent, HOA Reform Coalition; Lupe Serna, Wildflower Homeowner HOA)

Against — Jonathan Saenz, Liberty Institute

On — (*Registered, but did not testify*: David Smith, Texas Neighborhoods Together)

BACKGROUND: Property Code, ch. 202 governs restrictive covenants established and enforced by homeowners' associations (HOAs). The chapter restricts HOAs from adopting or enforcing certain types of restrictive covenants, including prohibitions on political signs.

DIGEST: HB 1278 would prohibit HOAs from adopting or enforcing a restrictive covenant that prohibited an owner or resident from displaying or attaching to the entry of his or her dwelling one or more religious items reflective of the resident's religion.

The bill would not prohibit the enforcement or adoption of a restrictive covenant that banned a religious item that threatened the public health or safety, violated a law, or contained language, graphics, or any display that was offensive to a passerby.

HB 1278 also would allow the HOA to restrict religious items that:

- extended beyond the doorframe;
- were placed elsewhere on the house besides the entry door or doorframe;
- exceeded 25 square inches individually or in combination with other religious symbols; or
- used a color or material that would violate restrictive covenants on the design or appearance of the home.

The HOA could remove an item not protected by the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

HB 1278 would protect the rights of residents and owners to display religious items reflective of their religion on the entrance of their homes. There is currently no statutory prohibition against adopting a restrictive covenant prohibiting the display of such items. This issue was raised recently when an HOA adopted a rule banning residents from placing any displays or other objects on or around their front entrances. When a couple placed a small mezuzah (an encased parchment containing verses from the Torah) near their front entrance as part of a long-established religious mandate in the Jewish faith, they received notice from the HOA that the mezuzah would have to be removed. The residents had to choose between remaining in the home and neglecting their faith or breaking their lease with the landlord. A suit filed in federal court on behalf of the residents was unsuccessful.

The restrictive covenants that some HOAs adopt are of questionable constitutionality, but the legal issues are complex, and challenging the covenants requires resources and time that many homeowners lack. A large gray area remains regarding the rights and privileges a homeowner may contractually surrender when buying a home as part of an HOA. Residents pursuing these issues in court often are not successful because the cases are difficult and because most restrictive covenants are facially constitutional — though some may be discriminatory in effect by having a disproportionate impact on one group of residents.

Future cases may shed more light on this, but the best way to address the most conspicuous practices in some associations is to set in statute specific limits as to what associations may regulate. HB 1278 would accomplish this with respect to religious items placed in the entrance of a dwelling. The bill is carefully tailored to apply only to the entrances of dwellings and would allow associations to regulate objects in certain instances, including those with content that would be offensive to the ordinary person. This language is found elsewhere in Property Code, ch. 202, with respect to political signs.

The exceptions provided in the bill would grant flexibility to the wide variety of HOAs to customize internal regulations, while prohibiting those associations from obstructing the right to free exercise of religion through the placing of religious items in an entrance. The bill also would prescribe a reasonable size limit on displayed items and would allow enforcement of restrictive covenants on design and appearance.

**OPPONENTS
SAY:**

HB 1278 would establish statewide prohibitions against specific HOA actions that should be resolved locally. Property owners have numerous options available to resolve disputes. For instance, they could utilize available channels established in the HOA bylaws or could ultimately elect to take action in court. Enacting a statewide law on the subject could have unintended consequences for the ability of HOAs to restrict the appearance and other aspects of common areas. Homeowners agree to an association's bylaws upon purchasing or renting property, and it is their responsibility to consult applicable rules before moving to the member dwelling. Further, if owners do not agree with a specific covenant, they may seek election to the association and initiate changes to the rule. Amending state statutes to restrict associations from adopting certain covenants would set an unfortunate precedent and could cause more problems than it would address.

**OTHER
OPPONENTS
SAY:**

HB 1278 would not sufficiently protect the rights of residents in HOAs to freely exercise their religion within reason. While the bill notably would protect religious items in an entrance, it would not extend this protection to religious items placed elsewhere on the property. The bill would not protect, for instance, an item placed in a window or on a porch or other common area. The free exercise of religion is a basic constitutional right that should not be abridged without a compelling interest in limiting its practice. The aesthetic preferences of HOA board members do not

constitute a strong, compelling interest; these associations should not be able to prohibit the display of religious items in general, within reason.

HB 3025 contains a flaw that could render the bill constitutionally problematic. The provision that would allow HOAs to regulate “language, graphics, or any display that would be offensive to the ordinary person” is fatally vague and subjective, as the term “offensive” is subject to a broad range of interpretations. Allowing HOAs to interpret what constitutes an “offensive” religious display would violate established constitutional principles.