

BILL ANALYSIS

C.S.H.B. 3460
By: Murr
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a property owners' association may not prohibit or restrict the display of certain flags, including the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the U.S. armed forces, but interested parties have expressed concern that the display of historical flags of the State of Texas, POW/MIA flags, or Gold Star, Silver Star, or Blue Star service flags is not protected. C.S.H.B. 3460 amends the applicable law to address this concern.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3460 amends the Property Code to add any variation of a Gold Star, Silver Star, or Blue Star service flag; any variation of a POW/MIA flag; or any historical flag of the State of Texas to the list of flags for which a property owners' association is prohibited from adopting or enforcing a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from displaying, with certain exceptions. The bill authorizes a property owners' association to adopt or enforce a reasonable dedicatory instrument provision that prohibits the display of more than three flags.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3460 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 202, Property Code, is amended to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 202.012(a) and (b), Property Code, are amended to read as

84R 27272

15.121.529

Substitute Document Number: 84R 23201

Sec. 202.012. FLAG DISPLAY.

(a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

- (1) the flag of the United States of America;
- (2) the flag of the State of Texas; [ø]
- (3) an official or replica flag of any branch of the United States armed forces;
- (4) any variation of a Blue Star Mothers Service Flag or a POW/MIA Flag; or
- (5) any flag representing the six national flags of the State of Texas or any historical flag of the State of Texas.

No equivalent provision.

follows:

(a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

- (1) the flag of the United States of America;
- (2) the flag of the State of Texas; [ø]
- (3) an official or replica flag of any branch of the United States armed forces;
- (4) any variation of a Gold Star, Silver Star, or Blue Star service flag;
- (5) any variation of a POW/MIA flag; or
- (6) any historical flag of the State of Texas.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

- (1) that require:
 - (A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;
 - (B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;
 - (C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
 - (D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and
 - (E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;
- (2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that:
 - (A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements, and setbacks of record, is located in the front yard of the property; or
 - (B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association;

- (3) that govern the size of a displayed flag;
- (4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;
- (5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; ~~[or]~~
- (6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:
 - (A) owned or maintained by the property owners' association; or
 - (B) owned in common by the members of the association; or
- (7) that prohibit the display of more than three flags.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2015.