

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 581
By: Bettencourt et al.
Local Government
3/22/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 581 seeks to protect both religious expression and property rights by limiting the ability of a homeowner's association (HOA) to order the removal of religious displays on a homeowner's property.

An unintended consequence of the passage of H.B. 1278 (82R) was that HOAs were given authority to force homeowners to remove any religious display that is not affixed to the homeowner's front door. Examples might include crosses, menorahs, or nativity scenes displayed in a homeowner's yard. Furthermore, HOAs are currently empowered to limit the homeowner's ability to place a religious display on their doors if using a material "that is not authorized" by the HOA. Thus, an HOA can even prohibit religious displays on a homeowner's front door, simply by not approving any materials at all. Finally, even if the HOA does deign to allow certain materials for crosses or other religious displays, they can still be removed if any "passerby" (who might not even live in the subdivision) finds it "patently offensive."

S.B. 581 would protect homeowners from being subject to HOAs removing religious displays from their property. The bill strikes the provisions limiting homeowners' rights to display religious symbols to the front door, prohibiting the HOA from forcing the removal of any religious display on the homeowner's property. The bill also deletes the provision allowing the HOA to effectively ban religious displays by having control of the allowable materials—or not allowing any at all. Finally, the bill only allows the removal of displays that are patently offensive "for reasons other than religious content."

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 581 amends current law relating to regulation by a property owner's association of certain religious displays.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 202.018(a) and (b), Property Code, as follows:

(a) Prohibits a property owner's association, except as otherwise provided by Section 202.018 (Regulation of Display of Certain Religious Items), from enforcing or adopting a provision in a dedicatory instrument, including a restrictive covenant, rather than enforcing or adopting a restrictive covenant, that prohibits a property owner or resident from displaying or affixing on the owner's or resident's property or dwelling, rather than on the entry to the owner's or resident's dwelling, one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief. Makes a nonsubstantive change.

(b) Makes conforming changes. Provides that this section does not prohibit the enforcement or adoption of a provision in a dedicatory instrument, including a restrictive covenant, that, to the extent allowed by the constitution of Texas and the United States, prohibits the display or affixing of a religious item on the owner's or resident's property or dwelling, that:

(1) makes no changes to this subdivision;

(2) violates a law other than a law prohibiting the display of religious speech;

(3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;

(4) is installed on property:

(A) owned or maintained by the property owners' association; or

(B) owned in common by members of the property owners' association;

(5) violates any applicable building line, right-of-way, setback, or easement; or

(6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

Deletes existing text prohibiting the display or affixing of a religious item in a location other than the entry door or door frame or extending past the outer edge of the door frame of the owner's or resident's dwelling; or that individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

SECTION 2. Repealers: Sections 202.018(c) (relating to the use of a material or color for an entry door or door frame that is not authorized by the restrictive covenants governing the dwelling) and (d) (relating to the authority of a property owners' association to remove an item displayed in violation of a restrictive covenant permitted by Section 202.018), Property Code.

SECTION 3. Effective date: upon passage or September 1, 2021.