

SUBJECT: Removing restrictions on homeowners from displaying flags

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Bohac, Martinez Fischer, J. Moreno, Solomons, Zedler

0 nays

2 absent — Kolkhorst, Oliveira

WITNESSES: For — Kenneth Gross

Against — None

On — Connie Heyer, Texas Community Associations Institute and Texas Building Owners and Managers Association

BACKGROUND: Some property owners' associations have restrictive covenants that ban flagpoles and other flag displays from the yards of homes under their jurisdictions.

Government Code, ch. 3100 provides the proper way to display a Texas flag, and U.S. Code, Title 4, ch. 1, sec. 6-8, otherwise known as the U.S. Flag Code, provides the proper way to display a U.S. flag. Provisions in both laws generally govern how flags should be oriented in relation to the ground and to each other, how and when they should be raised and lowered, how they should appear mounted on a flagpole, and other such rules.

DIGEST: CSHB 1279 would add Property Code, sec. 202.007 to allow a property owner's association to enforce a restrictive covenant prohibiting or restricting the display of a flag on a flagpole on the owner's property only if the prohibition or restriction was stated clearly and specifically in the covenant.

As an exception to this provision, an association could not adopt a covenant that prevented a property owner from displaying the United States flag or the Texas flag in a size that was three feet by five feet or smaller, although it

specifically could allow the display of a flag larger than three feet by five feet. The U.S. or Texas flag would have to be displayed on the owner's property on a flagpole that did not exceed 18 feet in height if the property was one-third of an acre or larger, or in any other respectful manner as provided in Government Code, ch. 3100 or in the United States Flag Code.

The bill would take effect September 1, 2003, and would apply to a restrictive covenant, rule or other prohibition adopted on or after that date. The provision allowing enforcement of a prohibition on flag display only if it was clearly and specifically stated would be retroactive.

**SUPPORTERS
SAY:**

Although some property owners' associations have banned flagpoles and other flag displays, there is no actual language in many restrictive covenants that would prohibit homeowners from erecting flagpoles or flying flags. CSHB 1279 would allow a homeowner to fly a flag on the homeowner's property unless he or she was bound by a restrictive covenant containing clear and specific restrictions against displaying a flag.

The bill also would apply to existing covenants that did not specifically prohibit flags and flagpoles, but might specifically prevent certain improvements on the land. By applying retroactively to covenants that did not clearly ban the display of flags, the bill would ensure that the addition of a flagpole by a property owner in such an association, for example, could not be considered as a prohibited "improvement."

The bill also would allow citizens to express their patriotism by prohibiting adoption of any restrictions on the respectful display of the U.S. or Texas flag on a homeowner's property as long as the flag and the flagpole met certain reasonable size restrictions. The display of these flags in a "respectful manner" is defined clearly in state and federal law.

**OPPONENTS
SAY:**

Associations of private property owners should be allowed to set rules and craft covenants that are appropriate for local homeowners and neighborhoods without government interference. Many homeowners seek specifically to live in communities that have restrictive covenants forbidding the display on property of flags, banners, signs, and other such items that might be aesthetically inappropriate for the neighborhood.

This bill could be interpreted as preventing neighborhood associations from acting to stop homeowners from displaying flags that many people find offensive or provocative. A homeowner who lived in an association with a covenant that did not explicitly prohibit the display of flags could, for example, fly a Confederate flag or even a Nazi flag in front of his house. At the very least, the bill should restrict such blanket protection only to the U.S. and Texas flags.

NOTES:

The original version of the bill would have prohibited a restrictive covenant from prohibiting a property owner from displaying the U.S. or Texas flag in a respectful manner on the owner's property on a flag pole 18 feet tall or shorter.