

- SUBJECT:** Prohibiting HOA regulation of certain religious displays
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 6 ayes — C. Turner, Cain, Crockett, Lambert, Ordaz Perez, Shine
0 nays
3 absent — Hefner, Patterson, S. Thompson
- SENATE VOTE:** On final passage, April 6 — 31-0
- WITNESSES:** *On House companion bill, HB 1569:*
For — Jonathan Covey, Texas Values Action; Shannon Jacquette, Texas Catholic Conference of Bishops; Nancy Kozanecki, HOA Reform Coalition of Texas; (*Registered, but did not testify:* Mary Castle and Gregory McCarthy, Texas Values Action; Julia Parenteau, Texas Realtors; Thomas Parkinson, Jason Vaughn)

Against — Tara Devine, Majestic Hills Homeowners Association; Alison Woss, Avery Ranch Homeowners Association and Ingleside; (*Registered, but did not testify:* John Krueger, Associa; Doug Plas, Texas Community Associations Advocates; Matt Simpson, ACLU of Texas)
- BACKGROUND:** Property Code sec. 202.018 prohibits a property owners' association from enforcing or adopting a restrictive covenant that prohibits a property owner or resident from displaying or affixing on a dwelling entry one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief. The law does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the Texas and U.S. constitutions, prohibits a display that is in a location other than the entry door or door frame or extends past the outer edge of the door frame or that has a total size of greater than 25 square inches.
- DIGEST:** SB 581 would prohibit a property owner's association from enforcing or adopting a provision in a dedicatory instrument, including a restrictive

covenant, that prohibited a property owner or resident from displaying or affixing on the owner's or resident's property or dwelling one or more religious items the display of which was motivated by the owner's or resident's sincere religious belief. The bill would remove the provision that limited the prohibition on enforcement to the entry of the owner's or resident's dwelling.

The bill would not prohibit a property owners' association from enforcing or adopting a provision in a dedicatory instrument that, to the extent allowed by the state and U.S. constitutions, prohibited the display on a resident's property of a religious item that:

- threatened the public health or safety;
- violated a law other than a law prohibiting the display of religious speech;
- contained language, graphics, or any display that was patently offensive to a passerby for reasons other than its religious content;
- was installed on property owned or maintained by the property owners' association or owned in common by association members;
- violated any applicable building line, right-of-way, setback, or easement; or
- was attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

The bill would repeal a provision relating to the authority of an owner or resident to use a material or color to make an unauthorized alteration to an entry door or door frame in the context of displaying or affixing a religious item and a provision authorizing a property owners' association to remove religious items displayed in violation of a restrictive covenant.

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, 2021.

**SUPPORTERS
SAY:**

SB 581 would correct an unintended consequence of legislation enacted a decade ago that protects the rights of homeowners to display religious

items on their front door or door frame. That law was enacted to protect the rights of homeowners of the Jewish faith to display mezuzahs on the entryways to their homes. Some homeowners' associations have determined that the law permits them to force homeowners to remove any religious display that is not affixed to a homeowners' front door. There have been instances of homeowners being told to take down a small cross from their front yard.

SB 581 would fix what amounts to a ban on religious speech by homeowners' associations and would recognize that for many people, their freedom to express their religion extends beyond the interior of their home. The bill is appropriately crafted to remove a substantial burden that does not further a compelling interest by prohibiting homeowners' associations from interfering with a person's constitutionally protected right to place traditional religious displays on their property. It would not prevent a homeowners' association from removing religious displays placed on common property or areas that are owned or maintained by the association.

While some have expressed concern over the type or size of religious displays that could be placed in a yard, the bill retains statutory language prohibiting any display that is patently offensive to a passerby for reasons other than its religious content.

CRITICS
SAY:

SB 581 could burden members of a homeowners' association who serve on the association's governing board with having to investigate complaints about religious displays, and it could be difficult to determine when a display was motivated by the owner's sincere religious beliefs. The purpose of homeowners' associations is to maintain property in a neighborhood for enhanced property values, and the bill could lead to disputes or litigation over large or controversial displays and their impact on property values.

NOTES:

The House companion bill, HB 1569 by Schofield, was left pending in the House Committee on Business and Industry.