



Ohio Legislative Service Commission

Bill Analysis

Allison Mease

H.B. 189

129th General Assembly
(As Introduced)

Reps. Coley and DeGeeter, O'Brien, Garland, Butler, Yuko, Martin, Murray, Slaby, Beck, Fende, Pillich, Blair, Combs, Ruhl, Schuring, Dovilla, J. Adams, Phillips, Okey, Antonio, Carey, Derickson, McKenney, Brenner

BILL SUMMARY

- Prohibits condominium associations, neighborhood associations, and landlords from restricting the display of blue star banners, gold star banners, and other service flags.
- Prohibits landlords from restricting the display of the United States flag.

CONTENT AND OPERATION

Service flag display

(R.C. 5301.072, 5311.191, and 5321.131)

The bill prohibits a condominium, homeowners, neighborhood, civic, or other association in a governing document or agreement from prohibiting the display of a service flag approved by the United States Secretary of Defense for display in a window of the residence of a member of the immediate family of an individual serving in the United States armed forces. A service flag includes a blue star banner, a gold star banner, and any other flag the Secretary designates as a service flag. A provision of a governing document or agreement that violates this provision is against public policy and unenforceable in any Ohio court.¹

The bill's provisions are similar to a federal law, which states that a service flag approved by the Secretary of Defense can be displayed in a window of the place of residence of individuals who are members of the immediate family of an individual

¹ R.C. 5301.072 and 5311.191.

serving in the United States armed forces during any period of war or hostilities in which the United States armed forces are engaged.²

The bill does not limit the right to display the service flag to periods of war or hostilities like federal law.

The bill also prohibits a landlord from including any restriction in a rental agreement, or from otherwise prohibiting on a tenant's rental property, the display of a service flag as described above. The bill states that any violation of this prohibition is against public policy and unenforceable. Any provision of a rental agreement that violates the prohibition also is an unconscionable term.³

Continuing Ohio law states that if the court finds a rental agreement, or any clause thereof, to have been unconscionable at the time it was made, it can refuse to enforce the rental agreement or it can enforce the remainder of the rental agreement without the unconscionable clause, or it can so limit the application of any unconscionable clause as to avoid any unconscionable result. Additionally, under ongoing law, when it is claimed or appears to the court that the rental agreement, or any clause thereof, can be unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.⁴

United States flag display

The bill prohibits a landlord from including any restriction in a rental agreement, or from otherwise prohibiting on a tenant's rental property, the display of the United States flag if the flag is displayed in accordance with any of the following:

- (a) The patriotic customs set forth in federal law governing the display and use of the United States flag;
- (b) Federal law, Ohio law, or any local ordinance or resolution;
- (c) A presidential or gubernatorial proclamation.⁵

Federal law generally sets forth: appropriate times of day and special occasions for flag display; procedures for hoisting, passing, and lowering the flag; proper

² 36 U.S.C. § 901.

³ R.C. 5321.131(A)(2) and (B).

⁴ R.C. 5321.14, not in the bill.

⁵ R.C. 5321.131(A)(1).

locations for flag display; correct position and manner of flag display; and accepted behavior to show respect for the flag, including destruction of a flag no longer considered in fit condition.⁶

The bill states that any violation of this prohibition is against public policy and unenforceable. Any provision of a rental agreement that violates the prohibition also is an unconscionable term.⁷

The bill's provisions are similar to current law, which prohibits a condominium, homeowners, neighborhood, civic, or other association, from prohibiting the placement on any property of a flagpole that is to be used for the purpose of displaying the United States flag or the display of the United States flag if the display is in accordance with any of the following: certain patriotic customs; the consent of the property's owner or controlling party; the appropriate flagpole standards; or any federal law, presidential or gubernatorial proclamation, Ohio law, or local ordinance or resolution. A governing document or agreement that violates this provision is against public policy and unenforceable in any Ohio court.⁸

HISTORY

ACTION	DATE
Introduced	04-06-11

h0189-i-129.docx/ks

⁶ See 4 U.S.C. §§ 5-10.

⁷ R.C. 5321.131(B).

⁸ R.C. 5301.072(A)(2) and 5311.191(A)(1).

