

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 56-C

SPONSOR: Senator Cowin

SUBJECT: United States flag

DATE: December 3, 2001      REVISED: 12/04/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 56-C provides that it is a second degree misdemeanor for any person to prohibit the display of the flag of the United States.

This bill creates s. 256.15, F.S.

**II. Present Situation:**

Section 718.113(4), F.S., provides that “[a]ny unit owner may display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations.” Section 718.113, F.S., is pertinent to condominium owners.

Section 720.3075(3), F.S., provides that “[h]omeowner’s association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of one United States flag by property owners. However, the flag must be displayed in a respectful way and may be subject to reasonable standards for size, placement, and safety, as adopted by the homeowners’ association, consistent with Title 36 U.S.C. chapter 10 and any local ordinances.” Title 36 U.S.C chapter 10 governs patriotic customs, including display of the flag of the United States.

**III. Effect of Proposed Changes:**

Senate Bill 56-C provides that it is a second degree misdemeanor for any person to prohibit the display of the flag of the United States.

The word “prohibit” is not specifically defined in the legislation. Consequently, were a court to interpret a law containing the text of this bill, the court would resort to the following rule of statutory construction:

. . . The general rule is that where the legislature has not defined words or phrases used in a statute, they must be “construed in accordance with [their] common and ordinary meaning.” *Donato v. American Tel. & Tel. Co.*, 767 So.2d 1146 (Fla. 2000). “[T]he plain and ordinary meaning of [a] word can be ascertained by reference to a dictionary.” *Green v. State*, 604 So.2d 471 (Fla. 1992). However, there are variations on the general rule of statutory interpretation regarding words being given their common and ordinary meaning. The supreme court has stated that “consideration must be accorded not only to the literal and usual meaning of the words, but also to their meaning and effect on the objectives and purposes of the statute’s enactment.” *Florida Birth-Related Neurological Injury Compensation Ass’n v. Division of Admin. Hearings*, 686 So.2d 1349, 1354 (Fla. 1997). The supreme court has also held that words in a statute “must be construed according to their plain and ordinary meaning, or according to the meaning assigned to the terms by the class of persons within the purview of the statute.” *Florida E. Coast Indus., Inc. v. Department of Community Affairs*, 677 So.2d 357, 362 (Fla. 1st DCA 1996). *Sneed v. State*, 736 So.2d 1274, 1276 (Fla. 4th DCA 1999) (quoting *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527, 109 S.Ct. 1981, 104 L.Ed.2d 557 (1989)), held that “[t]he meaning of terms on the statute books ought to be determined on the basis of which meaning is (1) most in accord with context and ordinary usage and (2) most compatible with the surrounding body of law into which the provision must be integrated.” (First ellipsis in original.) The Fourth District also held in *WFTV, Inc. v. Wilken*, 675 So.2d 674, 679 (Fla. 4th DCA 1996), that a “statutory phrase should also be viewed not only in its internal context within the section, but in harmony with interlocking statutes.”

*Southwest Florida Water Management Dist. v. Charlotte County*, 774 So.2d 903, 915-916 (Fla. 2d DCA 2001).

The online Merriam Webster’s Collegiate Dictionary defines the word “prohibit” as follows:

- 1: to forbid by authority: ENJOIN
- 2a: to prevent from doing something b: PRECLUDE

Attention over the display of the United States flag has primarily focused on restrictions on its display in deeds; covenants, articles of incorporation, or bylaws of homeowners’ associations; and rules or requirements of condominium associations. Restrictions on the United States flag do not, as a general rule, ban the display of the flag; they set boundaries on its display. To the extent the word “prohibit” were interpreted as absolutely precluding the display of the United States flag, the bill does not conflict with current law and would not prevent the restrictions on display previously described, as well as other restrictions, such as might be found in local ordinance, agency rule, or statutory law relating to nuisance, utilities and communications, public safety and order, property ownership, and contract.

To the extent the word “prohibit” were interpreted as nullifying those restrictions, problems might arise, particularly in the areas previously described that are addressed by ordinance, rule, or statute. Impairment of contract might raise constitutional issues. However, the rule of lenity would likely favor a limiting interpretation favorable to the accused, and not an expansive interpretation.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector would be impacted only to the extent, if any, the text of the bill could be construed to nullify restrictions on display of the United States flag. For example, there might arguably be instances in which a homeowner’s display results in devaluation of adjacent properties.

C. Government Sector Impact:

The only penalty in the bill is a second degree misdemeanor, so there is no prison bed impact. The government sector would only be impacted to the extent, if any, the text of the bill could be construed to nullify local ordinances, agency rules, or statutory law, such as placing a pole for displaying a flag where it obstructs public utilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

Provides that display of the United States flag can be prohibited if the display would constitute a threat to the health or safety of any person. (WITH TITLE AMENDMENT)

#2 by Criminal Justice:

Restricts the penalty for a violation of this statute to a fine, as prescribed in the amendment. (WITH TITLE AMENDMENT)

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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