

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: CS/CS/SB 150

SPONSOR: Committees on Judiciary and Criminal Justice Committee and Senator Cowin

SUBJECT: United States flag

DATE: January 29, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 150 provides that it is unlawful for any person to prohibit the display of the flag of the United States unless the display would constitute a threat to the health and safety of any person.

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:

The CS provides that it is unlawful and punishable by specified fines for any person to prohibit the display of the flag of the United States unless the display would constitute a threat to the health and safety of any person. A first violation is a noncriminal violation punishable by a fine not to exceed \$500. A second violation is a noncriminal violation punishable by a fine not to

exceed \$10,000. A third or subsequent violation is a second degree misdemeanor punishable as provided in s. 775.082 and by a fine of \$10,000.

The word “prohibit” is not specifically defined in the legislation. Consequently, if a court were to interpret a law containing the text of this CS, 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). The court in *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

Additionally, the court in *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696 (Fla. 1st DCA 2001), discussed the difference between the terms “prohibit” and “regulate.” Specifically, in a concurring opinion, Judge Browning wrote that regulation, as defined in *Webster’s New Collegiate Dictionary* (1981), is “an authoritative rule dealing with details or procedure” and prohibition is not a power encompassed within the meaning of the word regulation. *Id.* at 705. Judge Browning cited several Florida cases supporting his opinion that regulation and prohibition have different meanings. *Id.*

Attention over the display of the United States flag has recently 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 display of the United States flag on the property of the homeowner or condominium owner do not, as a general rule, involve an absolute ban or blanket prohibition on display; the restrictions set boundaries on its display, such as authorizing the flag to be hung by brackets, but not on a flagpole. Accordingly, to the extent the word "prohibit" were to be interpreted as absolutely precluding the display of the United States flag, the CS does not conflict with current law and would not prevent restrictions on its display in deeds, covenants, articles of incorporation, bylaws, local ordinances, codes, associations' or governmental agencies' rules, or statutory laws relating to nuisance, utilities, communications, public safety and order, property ownership, contract, and other subject areas.

Although it is not likely, to the extent the word "prohibit" were to be interpreted as nullifying those restrictions, problems might arise. Impairment of contract might raise constitutional issues. However, the rule of lenity would likely favor an interpretation that the legislation is not nullifying all restrictions on display, an interpretation that is more favorable to the accused.

The act takes effect July 1, 2002.

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 to the extent, if any, the text of the CS 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 could potentially result in devaluation of adjacent properties.

C. Government Sector Impact:

The only criminal penalty in the CS 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 CS could be construed to nullify local ordinances, agency rules, or statutory law, such as displaying the flag on a flagpole that obstructs a public utility.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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