

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1664

INTRODUCER: Senator Perry

SUBJECT: Unlawful Assemblies

DATE: January 28, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 1664 addresses unlawful assemblies that specifically target residences to harass or disturb people inside their homes.

Specifically, the bill amends the unlawful assembly statute to expressly prohibit a person from picketing or protesting before or about another person’s home in order to harass or disturb the person in his or her home. A person who engages in the prohibited conduct commits a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.¹

The bill takes effect October 1, 2022.

II. Present Situation:

The rights to acquire, possess, and *protect* private property are basic principles afforded under the both the Constitution of the United States and the Florida Constitution. While the government has interest in protecting private property rights, those interests must also coincide with other basic legal protections, such as the freedom to assemble. Balancing these rights, especially when they seemingly compete with one another, is a delicate issue. For example, while first amendment interests are broadly protected, courts have recognized that state and local authorities may broadly use their “police powers”² to protect the rights of individuals during confrontational protests.

The United States Supreme has frequently addressed this issue. The Court found, for example, that certain regulations, including a 36-foot buffer zone restricting protestors at the entrance to an

¹ Sections 775.082 and 775.083, F.S.

² Local and State officials have broad powers to create laws for the health, safety, morals, and general welfare of the public. See Legal Information Institute, Cornell Law School, *police powers*, https://www.law.cornell.edu/wex/police_powers (last visited Jan. 28, 2022).

abortion clinic were justified by the government's interest in allowing the clinic to remain operational and allowing patients to walk in without close physical confrontations.³ The Court has recognized that some protests effect the rights of others, specifically commenting that "if overamplified loudspeakers assault the citizenry, government may turn them down."⁴ In summary, courts have recognized the government's ability to "to shut off discourse solely to protect others from hearing it is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner."⁵

Unlawful Assembly

Although protests, at face value, are legal, certain offenses may occur at or near a protest that are not protected under the First Amendment right to assemble. For example, Florida's unlawful assembly statute, s. 877.02, F.S., prohibits three or more persons from meeting together to commit a "breach of the peace" or "any other unlawful act."⁶ A violation of the unlawful assembly statute is a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.⁷

As defined in s. 877.03, F.S., "breach of the peace or disorderly conduct" includes:

- Brawling or fighting;
- Corrupting the public morals;
- Outraging the sense of public decency; or
- Affecting the peace and quiet of persons who may witness them.⁸

Moreover, these activities are a second degree misdemeanor offense separate and apart from the unlawful assembly statute. Accordingly, the unlawful assembly statute defines an offense that is a subset of the offenses constituting a breach of the peace or disorderly conduct. The unlawful assembly statute differs from the breach of peace or disorderly conduct statute by requiring that a person arrested for unlawful assembly be held in custody until he or she is brought before a court to establish bail or bond.⁹

The Florida Supreme Court has held that the common law definition of "unlawful assembly" must be satisfied in order for the offense to satisfy constitutional muster. Specifically, the Court held that the offense only covers situations where (1) three or more people assemble, (2) have a common unlawful purpose, and (3) assemble in such a manner as to give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace.¹⁰

³ *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 768-71 (1994).

⁴ *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

⁵ *Cohen v. California*, 403 U.S. 15, 21 (1971).

⁶ Section 870.02(1), F.S.

⁷ Section 775.082, F.S., and s. 775.083, F.S.

⁸ Section 877.03, F.S.

⁹ Section 870.02(2), F.S.

¹⁰ *State v. Simpson*, 347 So. 2d 414, 415 (Fla. 1977).

Recent Targeted Protests at Private Residences

Protests, especially for highly-publicized issues, have sometimes targeted specific individual's homes. Both Senators Marco Rubio and Rick Scott have had protests outside their private residences.¹¹ The local Mayors of Chicago and Portland have likewise drawn protests to their private residences.^{12, 13} In Orlando, groups stood outside of a home owned by an officer involved in the death of George Floyd, with one local resident summarizing "about 50 people showed up to the neighborhood, honking horns and yelling until around 3:30 a.m."¹⁴

III. Effect of Proposed Changes:

The bill creates a new criminal offense to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. A person who violates this section commits a second degree misdemeanor and may be sentenced to up to 60 days in county jail and assessed a \$500 fine.

The bill specifically states that the purpose of the new offense is to "serve the states significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing."

The bill takes effect October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Jacob Ogles, *Protesters to convene on Marco Rubio's, Rick Scott's homes to demand challenge to Joe Biden win*, FLORIDA POLITICS, Jan. 1, 2021, available at <https://floridapolitics.com/archives/405357-protesters-to-convene-on-marco-rubios-rick-scotts-homes-to-demand-challenge-to-joe-biden-win/>. See also, Lautaro Grinspan, *Trump supporters gather in front of Marco Rubio's West Miami home. 'You work for us.'*, THE MIAMI HERALD, Jan. 3 2021, available at <https://www.spokesman.com/stories/2021/jan/03/trump-supporters-gather-in-front-of-marco-rubios-w/>.

¹² Madeline Holcombe, *Chicago protesters rally at mayor's house a day after clashes with police*, CNN, July 19, 2020, available at <https://www.cnn.com/2020/07/19/us/chicago-protest-lori-lightfoot/index.html>.

¹³ The Portland Mayor actually planned to move out of his apartment due to the targeted protests at his home. Andrew Hay, *Portland mayor to leave home targeted by protestors*, REUTERS, Sept. 2, 2020, available at <https://www.reuters.com/article/us-global-race-usa-protests-portland/portland-mayor-to-leave-home-targeted-by-protesters-idUSKBN25T32R>.

¹⁴ FOX 35 ORLANDO, *Protesters remain at Orlando-area home owned by officer connected to George Floyd's death*, May 30, 2020, available at <https://www.fox35orlando.com/news/protesters-remain-at-orlando-area-home-owned-by-officer-connected-to-george-floyds-death>.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues

Courts analyze regulations effecting speech under two different standards depending on if the regulation is content-neutral or content-based.¹⁵ Content-neutral restrictions, such as limitations on protests which interrupt a meeting of the Legislature, are subject to *intermediate scrutiny*. Content-based restrictions, such as regulations regarding indecent language, are presumably unconstitutional and must survive the highest level of judicial scrutiny *strict scrutiny*. In order to pass constitutional muster, a content-based regulation must be shown to be narrowly tailored to serve a compelling government interest. Content-neutral regulations, on the other hand, must satisfy *intermediate scrutiny* and be tailored to a significant government interest, while leaving open alternative channels of communication.

The bill is specifically tailored to protest activity that leads to the intentional harassment of a particular residence, as opposed to protests activity generally. This regulatory activity is clearly content-neutral, as it not regulating a particular ideology or type of speech. The bill only outlaws picketing and protest activity to the extent that such activity is specifically towards an individual person or residence, as opposed to merely the public at large, or an overall ideology.¹⁶ Courts are likely to find that the state has a well vested interest in protecting both property rights and the rights of citizens to be free from confrontational protests within their own dwellings.¹⁷

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁵ *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015).

¹⁶ A similar statute was upheld by the United States Supreme Court precisely for this reason. Specifically, the court found that the use of the words “dwelling” and “residence” in an ordinance outlawing “picketing before or about the residence or dwelling” suggested that the ordinance was appropriately limited to regulate certain conduct at particular residences and was not overbroad so as to unconstitutionally limit picketing through the whole residential area. *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

¹⁷ See footnotes 3-5 and accompanying text.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 870.02, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.