

(Substitute for H. B. 230,  
H. B. 658, H. B. 659)

**(No. 10-2013)**

(Approved April 26, 2013)

## **AN ACT**

To amend and add a subsection (c) to Article 197, amend Article 243, eliminate Articles 200, 247, and 297, and renumber current Articles 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308 y 309 as Articles 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, and 305 of Act No. 146-2012, known as the “Penal Code of Puerto Rico,” in order to temper our code of laws with the constitutional mandate to guarantee the freedom of expression as provided in our Magna Carta; decriminalize the prevailing criminal penalties for restricting public demonstrations within any construction site or in certain locations of the State; decriminalize the applicable penalties for resisting or obstructing legislative functions; eliminate the existing restrictions that impair the freedom of the press; and for other purposes.

## STATEMENT OF MOTIVES

The Sixteenth Legislative Assembly of the Commonwealth of Puerto Rico passed a series of legislative measures directed to suppressing or deterring the expressions of the people in relation to the actions of the then government officials which resulted in the repeal of the Penal Code of 2004 and the enactment of Act No. 146-2012, known as the Puerto Rico Penal Code of 2012. The purpose of this measure is to redress the damage caused to Puerto Rican democracy, rendering ineffective criminal provisions whose only practical purpose is to criminalize protests and discourage the people from asserting their rights to express themselves freely and peacefully.

It is the duty of this Legislative Assembly to protect the people's interests and fundamental rights, such as the freedom of expression. At the time, the Sections to be repealed by this Act raised serious doubts regarding their constitutionality and, even though they were enacted, at present they stand out as legislation born out of thoughtlessness. It is necessary to stress this Legislative Assembly's compelling interest in establishing a government in which the State has limited and numbered powers that are made clear to the People who delegate the power to build a society that is not only nominally free, but that also trusts in a government that promulgates legislation to such effect.

When the goal of a legislative body is to protect a compelling interest and it limits a fundamental right in doing so, it is imperative that the legislation promulgated does not suffer from ambiguity or vagueness that could result in arbitrary and capricious application.

Article 200 of Act No. 146-2012, known as the "Puerto Rico Penal Code of 2012," establishes that no person may temporarily or permanently obstruct any public or private construction work or ground movement that has been granted the permits, authorizations or endorsements by the pertinent agencies. Said article

originates from Act No. 158-2010 that amended the then in effect Penal Code of 2004 to add a new article. At the time, a new Section 208-A was added which would later become Article 200 of the new Penal Code of 2012. The People named this legislation the “Tito Kayak Act.” The approval of the abovementioned Act established a rule of law that criminalized protests and suppressed the freedom of expression recognized by the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico in its Bill of Rights. Freedom of expression is an essential principle of democratic societies.

As it is written, Article 200 does not provide additional protections to the right to private property and the right to work, since both were adequately protected under the rule of law in effect prior to the approval of Act No. 158-2010. That is to say, criminal provisions that addressed unlawful conduct that could take place within the context of a demonstration at a construction site already existed. Consequently, the repeal of said article would not have a significant effect over the valid exercise of the right to property, for example. In addition, other remedies exist, through the filing of injunctions or claims under Article 1802 of the Civil Code of Puerto Rico, which would allow the owner of a construction site to enforce his rights. However, preserving Article 200, even though it provides no additional protection for the legal rights it alleges to protect, would have a detrimental effect on the exercise of the fundamental right to freedom of expression.

On the other hand, Article 297 of Act No. 146-2012, known as the “Puerto Rico Penal Code of 2012,” classifies the resistance or obstruction of legislative duties as an offense. This Article is vague and overly broad, and its application could have a neutralizing effect on citizens, to wit, the so called “chilling effect.” This is brought upon by the Article’s intent to punish any person who: “[c]ommits a disturbance seen by and in the presence of the Legislative Assembly, any of its

Bodies, Municipal Legislatures, or any of its members and their respective committees while performing their public duties, intending to interrupt the performance of their duties or reduce the respect due towards their authority.” The purpose of said Article is that citizens be deterred from holding demonstrations that are constitutionally protected due to the uncertainty regarding what could constitute a “disturbance” and how this could vary between officials. Prohibiting our constituents from making valid claims with regard to social reforms or from holding demonstrations in response to government actions is one of the first steps to taking away the strength and powers of citizens in a democracy. The abovementioned deterrent is aggravated when considering the disproportionality of the punishment imposed on persons engaging in the conduct herein described.

It is worth noting that eliminating this Article does not leave the works of the Legislative Assembly, its Committees or the Municipal Legislatures, and the dignity of such bodies unprotected. The offenses of disturbing the peace (Article 241), the use of violence or intimidation against public authorities (Article 245) and resisting or obstructing public authorities (Article 246), among other provisions, are enough to ensure the continuity of the legislative works. We also note that the rights and safety of elected officials are specifically protected and guaranteed by Article 245 of said Code and we quote: “Any person who uses violence or intimidation against a **public official or employee** to compel him to commit or omit an act proper to his office or to commit an act contrary to his official duties, shall be punished by imprisonment for a fixed term of three (3) years.” We raise this matter because Article 14 of the Penal Code defines “**public official**” as: “*Public Official or Employee*”.- *Any person holding an office or performing a duty whether or not for compensation, either permanently or provisionally, by virtue of any kind of appointment, contract or designation, for the Legislative, Executive or Judicial Branch or any the municipalities of the*

*Commonwealth of Puerto Rico. It also includes those persons who represent the public interest and who are designated to hold office in any board, public corporation, instrumentality and its subsidiaries of the Commonwealth of Puerto Rico, as well as those who are entrusted with notarial public faith. The term “public official” includes those persons holding office or employed by the Government of the Commonwealth of Puerto Rico who are vested with the exercise of some sovereign power of the Commonwealth; hence, they are involved in the formulation and implementation of public policy.*

Having clarified that Article 245 of the Puerto Rico Penal Code of 2012 protects and guarantees the rights of all public officials and that the repeal of Article 297 does not jeopardize the aforementioned fundamental rights, it is unnecessary to keep Article 297 in the Code when the only effects thereof are to limit the constituents’ right to freedom of expression and enabling an arbitrary application depending on the person or context. We feel it is our duty and responsibility to repeal the same.

Article 297 of Act No. 146-2012 classifies as an offence the act of hindering access to and interfering with works at learning and health institutions or other buildings where government services are rendered to the public, such as education and health entities. Deliberately, said article is the result of certain situations in our recent history during which, due to a lack of tools, legislation was enacted to resolve what had been classified as a problem in the most onerous manner possible for the citizenry and to the detriment of our democratic order. The most significant constitutional problem presented by this article is its vagueness due to being overly broad. The fundamental juridical principal of the vagueness doctrine, due to overbreadth, has been affirmed in our Courts’ jurisprudence, specifically in *Pueblo de Puerto Rico vs. APS Healthcare of Puerto Rico, Inc.*, 175 D.P.R. 368 (2009) in which it is explained that the purpose of this doctrine is to prevent the “chilling

effect” or, as it is known in Spanish, the neutralizing effect (*efecto neutralizador*). Justice Rodríguez-Rodríguez who delivered the opinion of the court stated the following: *“The goal is to avoid that the application of a law or regulation results in the so-called neutralizing effect or “chilling effect” brought upon by laws that punish both expressions that are protected by the Constitution and those that are not protected, given that the mere existence of the statute may cause other persons who are not before the court to refrain from making any expressions that are constitutionally protected.”*

Undoubtedly, this article is overly broad and ambiguous, can be applied arbitrarily, and the intimidation resulting therefrom has a neutralizing effect on citizens. Through the approval of this Act, this Legislative Assembly seeks to restore the trust of citizens in the effectiveness of, and the respect for their freedom of expression and association. This Legislative Assembly also seeks to reaffirm that the rights to property and work, as well as the operation of hospitals, educational institutions, and government functions continue to be protected from acts that violate the law, obstruct, or disturb the peace.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Article 197 of Act No. 146-2012, is hereby amended to read as follows:

“Article 197.- Entering the Property of Another.-

Any person who enters the premises or property of another under any of the following circumstances without permission from the owner or person in charge thereof shall be guilty of a misdemeanor:

- (a) by forcing the fence or stockade; or
- (b) with the intent to commit an offense; or

(c) with the intent to occupy any private property or machinery that is part of a construction work or used to move dirt holding the appropriate permits.

Entering the property or estate of another shall be punishable by imprisonment for a fixed term of three (3) years if, at the same time, unlawful taking is committed and if the property unlawfully taken consists of farm products.

In the event that the monetary value of the unlawfully taken farm product exceeds one thousand dollars (\$1,000), the person shall be punished by imprisonment for a fixed term of eight (8) years.”

Section 2.- Article 243 of Act No. 146-2012, is hereby amended to read as follows:

“Article 243.- Obstructing the Work of the Press During an Official Act.-

Any person who unlawfully and with no legitimate purpose intentionally obstructs the transmission over any means of communication or the capturing of images through digital photography or video during an official act shall be guilty of a misdemeanor.”

Section 3.- Article 200 of Act No. 146-2012 is repealed.

Section 4.- Article 247 of Act No. 146-2012 is repealed.

Section 5.- Article 297 of Act No. 146-2012 is repealed.

Section 6.- Articles 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308 y 309 are hereby renumbered as Articles 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224,

225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, and 305 of Act No. 146-2012.

Section 7.- This Act shall take effect immediately after its approval and the effect thereof shall be retroactive to any proceeding pending resolution, and in those cases where the person is serving a sentence, it shall be deemed to be satisfied and the person shall be released, if he were imprisoned or under restricted liberty.



## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 10-2013 (Substitute for H. B. 230, H. B. 658, H. B. 659)** of the **1<sup>st</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend and add a subsection (c) to Article 197, amend Article 243, eliminate Articles 200, 247, and 297, and renumber current Articles 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, [...]

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 6<sup>th</sup> day of December, 2018.

Orlando Pagán-Ramírez  
Director