

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill amends s. 316.191, F.S., relating to racing on highways, in response to the Fourth District Court of Appeal declaring the statute unconstitutional. The bill provides criminal sanctions for potentially injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 316.191, F.S. provides that a person may not:

Drive any motor vehicle, including any motorcycle in any race¹, speed competition or contest, drag race² or acceleration contest, test of physical endurance, or exhibition of speed or acceleration for the purpose of making a speed record on any highway, roadway, or parking lot, and a person may not participate in, coordinate, facilitate, or collect moneys at any location for any such race; ride as a passenger in; or purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

The offense is a first degree misdemeanor; punishable by up to one year in county jail. This section also requires a fine of not less than a \$500 and not more than a \$1,000, and requires a revocation of the offender's driver's license for one year.

A person who commits the offense within five years of a prior violation commits a first degree misdemeanor. This section also requires a minimum fine of not less than \$500 and not more than \$1,000, and requires a two year revocation of the offender's driver's license.

This section does not apply to licensed racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

The Fourth District Court of Appeal ruled that current s. 316.191, F.S. is unconstitutionally vague because the statutory definition of racing could include both lawful and unlawful conduct.³ For example, both speeding (illegal) and the act of passing a vehicle (legal) could be included under the definition since both acts could be an attempt to outgain or outdistance another motor vehicle. The court held that the critical distinction between the lawful and unlawful conduct was the element of

¹ "Racing" is defined to mean the use of one or more motor vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

² "Drag race" is defined to mean the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

³ State v. Wells, 965 So. 2d. 834 (Fla. 4th DCA).

competition or a challenge between two drivers.⁴ Absent such language, the court held the s. 316.191, F.S. was unconstitutionally vague on its face.⁵

Proposed Changes

HB 1043 provides that a person operating or in actual physical control of a motor vehicle, including a motorcycle, on any street, highway, or publicly accessible parking lot may not:

- drive in any race⁶;
- drive in any drag race⁷;
- drive in any exhibition of speed⁸;
- drive in any exhibition of acceleration⁹.

The bill also provides that a person may not:

- knowingly participate in, coordinate, facilitate, or collect moneys at any location for any such race, drag race, or exhibition of speed or acceleration;
- knowingly ride as a passenger in a race, drag race, or exhibition of speed or acceleration; or
- knowingly cause the movement of traffic to slow or stop for a race, drag race, or exhibition of speed or acceleration.

⁴ Id.

⁵ Id.

⁶ The bill defines “race” as the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers that, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

⁷ The bill defines “drag race” as the operation of two or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit. A drag race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers that, under the totality of the circumstances, can reasonably be interpreted as a challenge to participate in a drag race.

⁸ The bill defines “exhibition of speed” as the use of a motor vehicle in a demonstration to another person or persons, including, but not limited to, any passenger of such motor vehicle or the driver or passenger of another motor vehicle, of the motor vehicle’s speed or handling capabilities at a speed of at least double the posted or lawful speed limit or over 100 miles per hour, whichever is less.

⁹ The bill defines “exhibition of acceleration” as the use of a motor vehicle in a demonstration to another person or persons, including, but not limited to, any passenger of such motor vehicle or the driver or passenger of another motor vehicle, of the motor vehicle’s ability to accelerate by a sudden increase in speed causing a tire to lose firm traction with, or burn, smoke, or squeal against, the road surface which results in the vehicle’s continuous acceleration to a final speed that exceeds the posted or lawful speed limit.

Criminal Penalties¹⁰

HB 1043 provides a driver, passenger, or race organizer who violates any of the above provisions commits a second degree misdemeanor¹¹ rather than a first degree misdemeanor, punishable by up to 60 days in jail and a fine of not less than \$250 and not more than \$500. The bill also requires the court to revoke a person's driver's license for two years, rather than one year for a violation of the above provisions, regardless of whether adjudication is withheld.

The bill provides that if a driver, passenger, or race organizer violates any of the above provisions twice within a 5 year period, the person commits a first degree misdemeanor¹², punishable by up to one year in jail and a fine of not less than \$500 and not more than \$1,000. The bill prohibits the court from withholding adjudication for second or subsequent convictions for violations of this section, and requires the court to revoke the person's driver's license for 5 years. The bill provides that proof of a prior conviction under this section must be made with a certified copy of a prior judgment and sentence.

The bill provides that if a driver, passenger, or race organizer violate any of the above provisions and, as a result, causes damage to the property or person of another, the person commits a first degree misdemeanor; punishable by up to one year in jail, a fine of not less than \$500 and not more than \$1,000, and a 2 year driver's license suspension.

The bill provides that if a driver, passenger, or race organizer violates any of the above provisions and, as a result, causes or contributes to causing serious bodily injury to another, the person commits a third degree felony¹³; punishable by up to five years in prison and a fine of not less than \$1,000. The third degree felony is not ranked in the Offense Severity Ranking Chart and would default to a level 1 for sentencing purposes.¹⁴

The bill provides that if a driver, passenger, or race organizer violates any of the above provisions and causes or in any way contributes to causing the death of any human being or unborn quick child¹⁵, the person commits racing manslaughter. The bill prohibits the court from withholding adjudication of guilt for racing manslaughter and requires the court to order a permanent revocation of a person's driver's license. A person convicted of racing manslaughter commits:

- a second degree felony¹⁶ and a minimum \$5,000 fine, or
- a first degree felony¹⁷ and a minimum \$5,000 fine if the person knew or should have known that the crash occurred and the person failed to render aid.¹⁸

¹⁰ The criminal penalties created by the bill for offenses involving property damage, serious bodily injury, or racing manslaughter are identical to DUI penalties in those circumstances. See s. 316.193, F.S. The criminal penalties for racing manslaughter are also identical to those for vehicular homicide, excluding the four year minimum mandatory sentence. See s.782.071, F.S.

¹¹ See ss. 775.082, 775.083, F.S.

¹² See ss. 775.082, 775.083, F.S.

¹³ See ss. 775.082, 775.083, 775.084, F.S. The maximum fine for a third degree felony is \$5,000.

¹⁴ Section 921.0022, F.S.

¹⁵ Defined in accordance with s. 782.071, F.S.

¹⁶ A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

The bill provides a mandatory minimum prison term of four years for racing manslaughter, regardless of felony degree. The second and first degree felonies are not ranked in the Offense Severity Ranking Chart and would default to a level 4 and level 7, respectively, for purposes of sentencing.

Forfeiture

The bill provides that motor vehicles used in violation of this section are subject to forfeiture, whether driven by the owner; or in circumstances where a race organizer, passenger, or person who causes traffic to slow for purposes of holding a race allows a driver to use their vehicle in violation of this section, regardless of whether the offense was a misdemeanor or felony. The bill also provides that if a person negligently entrusts a vehicle to another person who violates this section, the vehicle is subject to forfeiture regardless of whether the criminal offense was a felony or misdemeanor. The bill provides the element of negligent entrustment is satisfied if a person entrusts a motor vehicle to another person knowing that such person has previously been cited or charged with any offense under this section, regardless of whether the charge or citation resulted in a conviction.

Spectators

The bill creates noncriminal penalties for spectators¹⁹ of races, drag races, and exhibitions of speed and acceleration prohibited by this section. The bill provides that a vehicle parked or operated in near proximity to a race, drag race, or exhibition of speed or acceleration under circumstances which indicate the driver or operator is a spectator creates a rebuttable presumption that the driver is a spectator. A spectator is subject to noncriminal penalties in s. 775.083, F.S. and must appear before a county judge to dispose of the violation. A person determined to be a spectator must pay a fine of not less than \$250 and not more than \$500.

Severability

The bill provides that if any provision of this section is found unconstitutional, the provision is severable and all other provisions of this section shall remain enforceable.

C. SECTION DIRECTORY:

Section 1 Cites the bill as the "Luis Rivera Ortega Street Racing Act."

Section 2 Amends s. 316.191, F.S. relating to racing on highways

Section 3 Provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹⁷ A first degree felony is punishable by up to 30 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

¹⁸ See s. 316.062, F.S.

¹⁹ The bill defines a "spectator" as any person who is knowingly present at and views an illegal race, drag race, or exhibition when such presence is the result of an affirmative choice to attend or participate in the race or exhibition. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the racer and the individual, evidence of gambling or betting on the outcome of the race, and any other factor that would tend to show knowing attendance or participation.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill creates a noncriminal offense if a person is a spectator at a race, drag race, or exhibition of speed or acceleration. The fine for such a noncriminal offense is no less than \$250 and no more than \$500.

2. Expenditures:

The bill requires every person who is cited for the noncriminal violation of being a spectator at a race, drag race, or exhibition of speed or acceleration to appear before a judge. Based on the number of noncriminal citations issued, this could increase the judicial workload of county judges and clerks of court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that any motor vehicle used in violation of this section is subject to forfeiture as provided by the Florida Contraband Forfeiture Act. The forfeiture action applies where the driver is the registered owner of the vehicle, or where a race organizer, passenger, or person who causes traffic to slow for purposes of holding a race is the registered owner and allows the driver to use their vehicle in violation of this section. A forfeiture action may also be commenced where a person negligently entrusts their vehicle to a person who uses the vehicle in violation of this section. Additionally, the bill provides for increased driver's license suspensions for a criminal violation of this section.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the fiscal impact of this bill. The bill creates the second degree felony offense of racing manslaughter which will require the imposition of a four year minimum mandatory sentence. The bill also creates a third degree felony offense of racing which causes serious bodily injury.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant to s. 901.15, F.S., absent certain exceptions, a law enforcement officer may not arrest a person for a misdemeanor criminal offense without a warrant unless the offense occurs in the presence of the officer. The bill provides that law enforcement officers may arrest a person who violates this section even if the offense does not occur in the presence of an officer. The only applicable circumstance to s. 316.191 listed in s. 901.15, F.S. provides that a law enforcement officer may arrest a person for a violation of Ch. 316 if the offense does not occur in the presence of an officer only if a fellow officer relays information that a person has committed a violation of Ch. 316. If the intent is to broaden the scope of an officer's warrantless arrest powers, ch. 901.15, F.S. should be amended to include the exception in the bill to maintain organizational consistency.

The bill provides law enforcement officers, consistent with constitutional requirements, may arrest a person for a violation of this section regardless of whether the officer's determination to make an arrest is based upon information from anonymous tipsters, citizen informants, or other sources. Law enforcement officers must act consistent with constitutional requirements at all times and are permitted to make arrests based on information from the above sources, subject to the constitution. Therefore, this language is unnecessary.

The bill outlines procedures clerks of court must take if a law enforcement officer determines a person is a spectator and issues a noncriminal violation. Chapter 318 provides the procedures used for noncriminal traffic violations. Therefore, the language in the bill is redundant.

The bill allows for forfeiture if a person negligently entrusts their vehicle to a person who commits a criminal violation of this section with the knowledge that the person has previously been cited or charged for a violation of this section, regardless of whether a conviction occurred. This language seems to presume guilt for every person cited or charged under this section since the outcome of the case is irrelevant. A person could loan their vehicle to a person previously found not guilty of racing who then engages in a race in violation of this section, and the element of negligent entrustment would be satisfied.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES