

**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 Criminal Justice Committee

**BILL:** CS/CS/SB 1998

**INTRODUCER:** Criminal Justice Committee; Transportation Committee; and Senator Constantine

**SUBJECT:** Luis Rivera Ortega Street Racing Act

**DATE:** April 6, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Erickson	Cannon	CJ	Fav/CS
3.			JU	
4.			JA	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill amends s. 316.191, F.S., relating to racing on highways. Currently, a violation of s. 316.191, F.S., is punishable as a first degree misdemeanor and a minimum \$500 fine. A first conviction for racing on highways results in a one year driver license revocation. A second conviction for racing on highways within five years results in a two-year driver license revocation.

The bill provides a first conviction for racing on highways is punishable as a second degree misdemeanor, rather than as a first degree misdemeanor, a minimum \$250 fine, and a two-year driver license suspension.

The bill increases the driver license suspension from two years to three years for a second conviction for racing on highways within five years.

In addition, the bill adds a third degree felony offense if a person is convicted of racing on highways a third or subsequent time in a five year period. The bill provides a third or subsequent conviction in a 5-year period is punishable by a minimum \$2,000 fine and a five-year driver license suspension.

A severability clause is also provided.

Currently, a law enforcement officer may impound for 10 business days the motor vehicle of a person arrested for racing on highways if the person arrested is either the owner or co-owner of the vehicle. A vehicle that has been impounded may be released to the owner of the vehicle prior to 10 days under certain circumstances if the owner was not operating the vehicle at the time of arrest.

The bill allows a law enforcement officer to impound a motor vehicle if a person is arrested for racing on highways regardless of whether the person arrested is the owner or co-owner of the vehicle. The bill increases the length of time a vehicle may be impounded to 30 business days. The bill also eliminates two exceptions in which the owner of an impounded vehicle may regain possession of the vehicle prior to the 30-day impound limit.

This bill substantially amends s. 316.191 of the Florida Statutes.

## II. Present Situation:

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

- Drive any motor vehicle, including any motorcycle, in any race,<sup>1</sup> speed competition or contest, drag race<sup>2</sup> or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;
- Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; 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.<sup>3</sup> The section also requires the imposition of a fine of not less than \$500 and not more than \$1,000, and the convicted violator's driver license is revoked for 1 year, though a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

If the violator committed the unlawful racing violation within five years after the date of a prior unlawful racing violation that resulted in a conviction, the violator commits a first degree misdemeanor and must pay a fine of not less than \$500 and not more than \$1,000, and the

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<sup>1</sup> "Race" is not a defined term in the statute. "Racing" means the use of one or more 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. See s. 316.192(1)(c), F.S.

<sup>2</sup> "Drag race" means 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. See s. 316.192(1)(b), F.S.

<sup>3</sup> Sections 775.082 and 775.083, F.S., provide that a first degree misdemeanor is punishable by a jail term not exceeding one year, a \$1,000 fine, or both.

convicted violator's driver's license is revoked for two years, though a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

Also, this section requires the court be provided with a copy of the violator's driving record; authorizes law enforcement to immediately arrest violators and take them into custody; authorizes the court to enter an order of impoundment or immobilization of the motor vehicle as a condition of incarceration or probation, as specified; requires the impounding agency to release the motor vehicle under the specified conditions; and requires the owner or person leasing or renting the vehicle to pay costs and fees for the impoundment or immobilization, unless the impoundment or immobilization order is dismissed.

A law enforcement officer is authorized to impound the motor vehicle that was used in unlawful racing for 10 business days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle. The law enforcement officer impounding the vehicle shall notify the Department of Highway Safety and Motor Vehicles (Department) of the impoundment. Additionally, any motor vehicle used for unlawful racing by a person within 5 years after the date of a prior conviction of that person for unlawful racing may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, if the owner of the vehicle is the person charged with unlawful racing.

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

Portions of s. 316.191, F.S., were ruled unconstitutional in *State v. Wells*, 965 So.2d 834 (Fla. 4th DCA 2007); however, the ruling in *Wells* conflicts with *Reaves v. State*, 979 So.2d 1066 (Fla. 1st DCA 2008). In *Wells*, 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. 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 the critical distinction between the lawful and unlawful conduct was the element of competition or a challenge between two drivers. Absent such language, the court in *Wells* held s. 316.191, F.S., was unconstitutionally vague on its face.

In contrast, the court in *Reaves* appeared to find "racing" to require competition, even though the definition of the term does not mention "competition," and, in fact, the word is never used alone in the statute (the word "race" is used), except in the definition of that term. The court concluded that s. 316.191, F.S., "cannot be applied unless vehicles are 'competing' with each other,"<sup>4</sup> based on reading the definition of "racing," the terms "speed competition or contest" and "acceleration contest" in s. 316.191(1)(b), F.S., and the definition of "drag racing."

### III. Effect of Proposed Changes:

**Section 1** provides a short title. Specifically, this act may be cited as the "Luis Rivera Ortega Street Racing Act."

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<sup>4</sup> *Id.* at 1072.

**Section 2** amends s. 316.191, F.S., relating to racing on highways. Specifically, the bill amends s. 316.191(2)(a), F.S., to provide that a person operating or in actual physical control of a motor vehicle, including any motorcycle, on any street or highway or public parking lot may not:

- Drive in any race;<sup>5</sup>
- Drive in any drag race;<sup>6</sup> or
- Drive in any exhibition of speed or acceleration.<sup>7</sup>

The bill also amends s. 316.191(2)(b), F.S., to provide that a person may not:

- In any manner participate in, coordinate, facilitate, or collect moneys at any location for any race, drag race, or exhibition prohibited under paragraph (a);
- Knowingly ride as a passenger in any race, drag race, or exhibition prohibited under paragraph (a); or
- Purposefully cause the movement of traffic to slow or stop for any such race, drag race, or exhibition prohibited under paragraph (a).<sup>8</sup>

The bill provides a definition for the term “race” to mean the same as “racing.” The bill provides that a violation s. 316.191(2)(a) or (2)(b), F.S., is a second degree misdemeanor,<sup>9</sup> rather than a first degree misdemeanor and requires the imposition of a fine of not less than \$250 and not more than \$500. In addition, the bill increases the length the convicted violator’s driver license is revoked to two years for a first conviction, although a “hardship” hearing may be requested pursuant to s. 322.271, F.S.

The bill provides a person who commits a second violation of racing on highways within five years commits a first degree misdemeanor and must pay a fine of not less than \$500 and not more than \$1,000. The bill also increases the length the convicted violator’s driver license is revoked to three years for a second conviction within five years, although a “hardship” hearing may be requested pursuant to s. 322.271, F.S.

The bill provides a person who commits a third or subsequent violation of racing on highways within five years after a prior conviction for racing on highways commits a third degree felony<sup>10</sup> and must pay a fine of not less than \$2,000 and not more than \$5,000. The bill provides a person who is convicted of a third offense of racing on highways within five years is subject to a five-year driver license suspension.

The bill increases the length of time a vehicle may be impounded by law enforcement to a period of 30 business days. The bill also eliminates the requirement that law enforcement can only

<sup>5</sup> The bill deletes “speed competition or contest.”

<sup>6</sup> The bill deletes “acceleration contest” and “test of physical endurance.”

<sup>7</sup> The bill deletes “for the purpose of making a speed record.”

<sup>8</sup> The words “competition, contest, test” are deleted from the paragraph and “drag racing” is inserted in the description of each prohibited act.

<sup>9</sup> Section 775.082, F.S., provides that a second degree misdemeanor is punishable by a jail term not exceeding 60 days.

<sup>10</sup> Sections 775.082 and 775.083, F.S., provide that a third degree felony is punishable state prison not exceeding five years , a fine not exceeding \$5,000, or both.

impound a vehicle following an arrest for racing on highways if the person is the owner or co-owner of the vehicle.

The bill eliminates two circumstances in which a vehicle that has been impounded by law enforcement following an arrest for racing on highways may be released: if the family of the owner of the vehicle has no other means of transportation; or if the vehicle impounded is operated solely by the defendant's employees.

Subsection (9) is added to specify if any provision of s. 316.191, F.S., is deemed unconstitutional by any court, such unconstitutional provision shall be deemed severable and such determination shall not affect the enforceability of all remaining constitutional provisions of s. 316.191, F.S.

The effective date of the bill is October 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for increased driver's license suspensions and specified fines for a criminal violation of this section.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 25, 2009, and estimated that this bill will have an insignificant prison bed impact.

The bill decreases the minimum fine amount for a first conviction for racing on highways. This may result in a decrease in revenue. The bill also adds a \$2,000 minimum penalty for a third or subsequent conviction of racing on highways within five years. The \$2,000 fine is not currently in statute and could result in an increase in revenues, but this

may not be enough to offset the revenue lost from the decrease in fines for a first or second offense of racing on highways.

The department may receive additional reinstatement fees of which are indeterminate. In addition, the department estimates the bill would require approximately 290 hours of programming for coding and testing, which would be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Criminal Justice on April 6, 2009:**

- Provides that a person who commits a third or subsequent violation of racing on highways within five years after a prior conviction for racing on highways commits a third degree felony, must pay a fine of not less than \$2,000 and not more than \$5,000, and is subject to a five-year driver license suspension.
- Modifies the definition of “racing” by changing the word “racing” to “race” and providing language in the definition of “race” that indicates competition.

**CS by Transportation on March 25, 2009:**

- Defines the term “race” which was referred to in s. 316.191, F.S., but not specifically defined.
- Clarifies a third or *subsequent* violation within a *three* year period is punishable as a third degree felony.
- Changes the effective date to October 1, 2009, to allow sufficient time for implementation to make necessary programming modifications, which addresses a concern made by the department.

**B. Amendments:**

None.