

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: SB 768

INTRODUCER: Senator Constantine

SUBJECT: Luis Rivera Ortega Street Racing Act

DATE: March 4, 2010 REVISED: _____

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

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends Florida’s street racing statute by increasing certain fines and penalties and driver’s license suspensions for violators. For a second conviction of the statute within five years, the bill increases the amount of fine a violator must pay to not less than \$1,000 and not more than \$3,000. Additionally, the bill adds a first-degree misdemeanor offense if a person is convicted of an unlawful racing violation a third time in a five year period, provides for a fine of not less than \$2,000 and not more than \$5,000, and provides that the violator’s driver’s license must be revoked for four years.

This act is to be cited as the “Luis Rivera Ortega Street Racing Act.”

This bill substantially amends section 316.191, of the Florida Statutes.

II. Present Situation:

Drag racing is a type of illegal street racing and originated in California's Mojave Desert in the early 1930s.¹ Unlike racetracks, illegal street racing is often done on public roads and encourages spectators to stand at arms-length away from the race. Because of the dangers involved in street racing, many states have enacted laws regulating or prohibiting it.

Florida enacted its street racing law in 1971, now codified in s. 316.191, F.S., titled "Racing on highways."² Section 316.191(2), F.S., provides that a person may not:

- Drive any motor vehicle, including any motorcycle, in any race,³ speed competition or contest, drag race⁴ 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 for violating one of the above provisions is a first-degree misdemeanor.⁵ The statute also requires the imposition of a fine of not less than \$500 and not more than \$1,000, and the Department of Highway Safety and Motor Vehicles (DHSMV or department) may revoke the violator's driver's license for one year, although a "hardship" hearing may be requested pursuant to s. 322.271, F.S.⁶

¹ Nat'l Hot Rod Ass'n, *NHRA History: Drag Racing's Fast Start*,

<http://sportsman.nhra.com/content/about.asp?articleid=3263&zoneid=101> (last visited January 22, 2010).

² Chapter 71-135, s. 1, Laws of Fla. When the statute was first enacted, it was codified in s. 316.186, F.S. The initial statute provided that "[n]o person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition."

³ "Race" means 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 which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.

⁴ "Drag race" is defined as 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. Section 316.192(1)(b), F.S.

⁵ Sections 775.082 and 775.083, F.S., provide that a first-degree misdemeanor is punishable by a term of imprisonment not to exceed one year, a \$1,000 fine, or both.

⁶ Section 322.271, F.S., provides the DHSMV with the authority to modify a revocation, cancellation, or suspension order. During a hearing, the person whose license has been revoked may show the revocation causes a serious hardship and precludes the person from carrying out his or her normal business occupation.

If the violator commits the unlawful racing violation within five years after the date of a prior unlawful racing violation that resulted in a conviction, the violator still commits a first-degree misdemeanor and must pay a fine of not less than \$500 and not more than \$1,000. However, the violator's driver's license is revoked for two years, and a "hardship" hearing may be requested pursuant to s. 322.271, F.S.⁷

Also, the court must be provided with a copy of the violator's driving record in any case charging a person of a violation of the statute. The statute authorizes a law enforcement officer to immediately arrest violators and take them into custody, and authorizes the court to enter an order of impoundment or immobilization of the motor vehicle as a condition of incarceration or probation.⁸ Section 316.191(4), F.S., 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.

The statute provides that any motor vehicle that was used in unlawful racing may be impounded for 30 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 shall notify DHSMV of the impoundment.⁹ Additionally, any motor vehicle used for unlawful racing by a person within five 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.¹⁰

The statute specifies that it does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.¹¹

III. Effect of Proposed Changes:

This bill provides that the act may be cited as the "Luis Rivera Ortega Street Racing Act."¹²

The bill increases the amount of the fine a person, who commits a second violation of s. 316.191(2), F.S., within five years of a prior, must pay to not less than \$1,000 and not more than \$3,000.¹³

The bill creates a new penalty section that provides that a person who commits a third violation of the statute within five years after a prior conviction commits a first-degree misdemeanor¹⁴ and

⁷ Section 316.191(2)(b), F.S.

⁸ Section 316.191(4), F.S.

⁹ Section 316.191(4)(c), F.S.

¹⁰ Section 316.191(5), F.S.

¹¹ Section 316.191(6), F.S.

¹² In 2007, Luis Rivera Ortega was killed while he was riding his bike and was hit by a car going between 50 and 70 mph in a 35-mph zone. Witnesses said the driver of the car was involved in a street race. See George Diaz, *Deadly, Illicit Racing Needs to be Stopped*, THE ORLANDO SENTINEL, Jan. 23, 2009, at B1; *Man Arrested in Teen's Street Racing Death*, CENTRAL FLA. NEWS 13, Jan. 17, 2009 (on file with the Senate Committee on Transportation).

¹³ While this offense is a first degree misdemeanor and the uniform, maximum fine for a first degree misdemeanor is \$1,000 under s. 775.083(1)(d), F.S., s. 775.083(1)(g), F.S., authorizes any higher amount authorized by law.

must pay a fine of not less than \$2,000 and not more than \$5,000.¹⁵ The bill provides that a person who is convicted of a third offense within five years is subject to a four-year driver's license revocation. A "hardship" hearing may be requested pursuant to s. 322.271, F.S.

The effective date of the bill is July 1, 2010.

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 will have a fiscal impact on persons who violate s. 316.191, F.S., by increasing fines for violators and increasing the length of time for driver's license revocations.

C. Government Sector Impact:

The bill increases the minimum and maximum fine amounts for second and third convictions for unlawful racing under s. 316.191, F.S. According to DHSMV, the bill "may generate additional revenues for local and state governments as a result of the penalties of racing, drag racing or exhibition of speed or acceleration."¹⁶ The department also estimated it may receive additional reinstatement fees; however, the exact fiscal benefit to the department is unknown.

According to the department, "there are currently 25,058 convictions listed in the department's database for racing on public highway; however, only 1,212 drivers have two convictions for this offense and 173 have three or more convictions."¹⁷

¹⁴ A first-degree misdemeanor is punishable by a term of imprisonment not to exceed one year, a fine not to exceed \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁵ See Footnote 13.

¹⁶ Dep't of Highway Safety and Motor Vehicles, *Agency Bill Analysis SB 768* (Nov. 4, 2009) (on file with the Senate Committee on Transportation).

¹⁷ *Id.*

In addition, the bill will require programming modifications to the Driver License Software Information Systems, but the cost of this programming will be absorbed by the department.¹⁸

The bill creates a new penalty section that provides that a person who commits a third violation of the statute within five years after a prior conviction commits a first degree misdemeanor. The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of prison bed impact, if any, of legislation. CJIC has not yet met to consider the bill. However, a first degree misdemeanor is not punishable by a state prison sentence. Jail bed impact, if any, is unknown.

VI. Technical Deficiencies:

The bill provides that a third conviction for racing on highways within a 5-year period is punishable as a first-degree misdemeanor. Currently, there are no provisions for four or more violations. The bill could be amended to read third or subsequent violation for clarification purposes.

VII. Related Issues:

The department has expressed concerns about the effective date of the bill allowing sufficient time for implementation to make necessary programming modifications. The department suggests an effective date of October 1, 2010.

In 2007, the Fourth District Court of Appeal held that s. 316.191, F.S., was unconstitutionally vague because the statutory definition of racing could include both lawful and unlawful conduct.¹⁹ However, in 2009 the Legislature amended s. 316.191, F.S., to address this constitutional concern.²⁰

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 279362 by Transportation on February 2, 2010:

Clarifies a third *or subsequent* violation within a five year period is punishable as a first degree misdemeanor.

¹⁸ *Id.*

¹⁹ *State v. Wells*, 965 So. 2d. 834 (Fla. 4th DCA, 2007). But see *Reaves v. State*, 979 So.2d 1066 (Fla. 1st DCA 2008) (disagreeing with the holding in *Wells* and finding the statute facially constitutional).

²⁰ See s. 29, ch. 2009-85, L.O.F.

Barcode 621930 by Transportation on February 2, 2010:

Changes the effective date to October 1, 2010, to allow sufficient time for implementation to make necessary programming modifications, which addresses a concern made by the department.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
