

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 and Civil Justice Appropriations Committee

BILL: CS/SB 768

INTRODUCER: Judiciary Committee and Senator Constantine

SUBJECT: Luis Rivera Ortega Street Racing Act

DATE: April 9, 2010 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input 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 driver’s license suspensions for violators. Specifically, for a second violation 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 or subsequent time in a five-year period, providing for a fine of not less than \$2,000 and not more than \$5,000 to be assessed, and that the violator’s driver’s license 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, 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 Mar. 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 with 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 certain 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 must pay for a second violation of s. 316.191(2), F.S., within five years of the first violation. Specifically, the bill provides that the violator shall pay a fine of 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 or subsequent violation of the statute within five years after a prior conviction commits a first-

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 Although this offense is a first-degree misdemeanor and the uniform, maximum fine for a first-degree misdemeanor is \$1,000 pursuant to s. 775.083(1)(d), F.S., there is statutory authority to permit higher fines. See s. 775.083(1)(g), F.S.

degree misdemeanor¹⁴ and 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 or subsequent 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 October 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 violations 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, third, and subsequent convictions for unlawful racing under s. 316.191, F.S. According to the Department of Highway Safety and Motor Vehicles (DHSMV or department), 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.

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 note 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 Judiciary).

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

In addition, the bill will require programming modifications to the department’s 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 or subsequent violation of the statute within five years after a prior conviction commits a first-degree misdemeanor. On March 17, 2010, the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact of criminal legislation, determined this bill will not have a prison bed impact.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

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 behavior.²⁰ However, in 2009 the Legislature amended s. 316.191, F.S., to address this constitutional concern.²¹

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 Judiciary on March 26, 2010:

The committee substitute provides that any person who commits a third *or subsequent* violation of the statute within a five-year period commits a first-degree misdemeanor. The committee substitute also changes the effective date from July 1, 2010, to October 1, 2010, to allow sufficient time for implementation to make necessary programming modifications, which addresses a concern raised by the Department of Highway Safety and Motor Vehicles.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Office of Economic and Demographic Research, The Florida Legislature, *Criminal Justice Impact Conference 2010 Legislature* (Mar. 17, 2010), available at <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (follow the “2010 Conference Results” link) (last visited Mar. 22, 2010).

²⁰ *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).

²¹ See ch. 2009-85, s. 29, Laws of Fla.

B. Amendments:

None.

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