

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2472

SPONSOR: Criminal Justice Committee and Senator Haridopolos

SUBJECT: Motor Vehicle Speed Competitions

DATE: April 2, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>TR</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute increases the offense of racing on highways from a second degree misdemeanor to a first degree misdemeanor for a first offense, and from a first degree misdemeanor to a third degree felony for a second offense within five years.

The CS defines conviction to include a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld, and provides for forfeiture of a vehicle used in committing the offense. The CS limits its application to the operation of motor vehicles.

This CS substantially amends s. 316.191, F.S.

II. Present Situation:

Racing on Highways

Section 316.191, F.S., prohibits persons from driving a vehicle on a highway, roadway, or parking lot in a race, speed competition, drag race, test of physical endurance, exhibition of speed or acceleration, or attempt to set a speed record. Persons are also prohibited from any manner of participation in such activities, including coordinating, facilitating, collecting money, riding as a passenger, or slowing or stopping traffic.

Section 316.003(75), F.S., defines the term "vehicle" to include "every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary wheels or tracks." In addition to automobiles and other motor vehicles, this definition embraces non-motorized vehicles such as bicycles and tricycles.

The first commission of a violation of s. 316.191, F.S., is a second degree misdemeanor, which can result in imprisonment for up to 60 days. In addition, the statute requires a fine in an amount between \$250-\$500, and revocation of the offender's driver license for 1 year.

A second violation within 5 years after the date of the prior conviction is a first degree misdemeanor, punishable by imprisonment for up to 1 year. In addition, the mandatory fine must be no less than \$500 nor more than \$1000, and the offender's driver license is to be revoked for 2 years.

In addition to the above criminal and administrative penalties, the court may order impoundment or immobilization of the vehicle as a condition of incarceration or probation. The law provides for the impounding agency to release the vehicle to the registered owner as provided in ss. 316.193(6)(e), (f), (g), and (h), F.S. These are cases in which the vehicle was stolen, was lawfully purchased after the offense, is the sole means of transportation for the owner's family, or was owned by the defendant but used solely by the defendant's employees or by a business owned by the defendant.

Florida Contraband Forfeiture Act

Sections 932.701-932.707, F.S., contain the Florida Contraband Forfeiture Act. A contraband article includes an enumerated controlled substance, gambling paraphernalia, equipment used in violation of the beverage or tobacco laws, motor fuel upon which the tax has not been paid, real property, and:

Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind...which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony....¹

Further, section 932.702, F.S., provides that it is unlawful:

To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.²

The Act authorizes seizure and forfeiture for contraband articles that are used in violation of the Florida Contraband Forfeiture Act. Immediately upon seizure, all rights to, interest in, and title to contraband articles vest in the seizing law enforcement agency.³ Personal property may be seized at the time of the violation, or later, if the person is provided proper notice that there is a right to an adversarial preliminary hearing to determine probable cause that the property has been used in contravention of the Act. Should the court determine probable cause, a seizure, or continued seizure is ordered.⁴

¹ s. 932.701(2)(a), F.S.

² s. 932.702(4), F.S.

³ s. 932.703(1), F.S.

⁴ s. 932.703(2), F.S.

In a separate forfeiture proceeding, the seizing agency must establish by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was employed or likely to be employed in criminal activity. In the case of joint ownership, prior to forfeiture, a seizing agency is required to show by a preponderance of the evidence that the co-owner knew, or should have known, after reasonable inquiry, that the property was employed or likely to be employed in criminal activity.⁵

An owner whose property is subject to forfeiture has the right to a jury trial.⁶ The burden of proof in a forfeiture case is clear and convincing evidence. Where the claimant prevails, the property is returned immediately, and reasonable attorney's fees and costs are awarded.⁷

III. Effect of Proposed Changes:

The CS amends ss. 316.191(1), F.S., to provide a definition of the term "conviction," to increase the penalty for violation of the statute, and to provide that a vehicle used in commission of the offense is subject to forfeiture.

"Conviction" is defined to include a determination of guilt resulting from a trial or a plea, regardless of whether adjudication is withheld. This is the same definition of conviction that is found in s. 921.0011(2), F.S., and used in determining whether an offense is scored for purposes of sentencing under the Criminal Punishment Code. The definition makes it clear that a person has been convicted of this offense even if adjudication is withheld. This is significant in applying the penalty enhancement provisions for a second violation within 5 years of a prior conviction.

The CS also amends ss. 316.191(1) and (2), F.S., to restrict application of the statute to the operation of motor vehicles, rather than the broader class of all vehicles.

The CS increases the offense from a second degree misdemeanor to a first degree misdemeanor. The mandatory fine is increased from a range of \$250-\$500 to \$500-\$1000. A second violation within 5 years of a prior conviction is increased from a first degree misdemeanor to a third degree felony, with a maximum imprisonment term of five years. The mandatory fine range is increased from \$500-\$1000 to \$1000-\$5000.

The CS also creates a new s. 316.191(4), F.S., providing that any motor vehicle used in committing the offense may be seized and forfeited pursuant to the Florida Contraband Forfeiture Act (ss. 932.701-932.707, F.S.)

Seizure and forfeiture are limited to those cases in which a second, or subsequent, violation is charged as it does not apply, in any case, to misdemeanors.

The CS has an effective date of October 1, 2004.

⁵ s. 932.703(5) and (7), F.S.

⁶ s. 932.704(3), F.S.

⁷ s. 932.704(9) and (10), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The increased fines and provision for seizure and forfeiture of motor vehicles can be expected to have a negative economic impact upon offenders.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet analyzed the impact of the CS, but it is unlikely that increase of the second offense to an unranked third degree felony would have an impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.