

# 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.)

Prepared By: Criminal Justice Committee

BILL: SB 1428

SPONSOR: Senator Haridopolos

SUBJECT: Motor Vehicle Speed Competitions

DATE: March 17, 2005

REVISED: 03/22/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>JA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

### I. Summary:

Senate Bill 1428 amends s. 316.191, F.S., which proscribes unlawful racing on highways, roadways, or parking lots, and various acts relating to unlawful racing. The bill defines the term "conviction." The bill also clarifies elements of the unlawful racing offense, increases current penalties and the range of fines for unlawful racing, and authorizes the seizure and forfeiture of some motor vehicles.

Currently, unlawful racing is a second degree misdemeanor. The bill increases the penalty for this offense to a first degree misdemeanor. Currently, unlawful racing violators are required to pay a fine of not less than \$250 and not more than \$500. The bill increases this fine range; violators shall pay a fine of not less than \$500 and not more than \$1,000.

Currently, unlawful racing is also subject to a greater penalty. If a person commits unlawful racing within 5 years after the date of a prior unlawful racing violation that resulted in a conviction, the person commits a first degree misdemeanor. The bill increases this penalty to a third degree felony. Currently, violators subject to this penalty are required to pay a fine of not less than \$500 and not more than \$1,000. The bill increases this fine range; violators shall pay a fine of not less than \$1,000 and not more than \$5,000. Any motor vehicle that was used in this violation may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

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

## **II. Present Situation:**

### **Unlawful Racing**

Section 316.191, F.S., prohibits driving any vehicle, including any motorcycle, in any race; speed competition or contest; drag race<sup>1</sup> or acceleration contest; test of physical endurance; exhibition of speed or acceleration; or for the purpose of making a speed record on any highway, roadway, or parking lot. This section also proscribes participating in, coordinating, facilitating, or collecting moneys at any location for, riding as a passenger in, or purposefully causing the movement of traffic to slow or stop for, any such race, competition, contest, test, or exhibition.

A violation of this offense is a second degree misdemeanor. The violator is also required to pay a fine of not less than \$250 and not more than \$500 and the convicted violator's driver's 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 5 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 convicted violator's driver's license is revoked for 2 years, though a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

The remainder of the section requires that the court be provided with a copy of the violators 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; 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; and provides that the section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

## **III. Effect of Proposed Changes:**

Senate Bill 1428 amends s. 316.191, F.S., which proscribes unlawful racing on highways, roadways, or parking lots, and various acts relating to such unlawful racing.

The bill defines the term "conviction" as "a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld."

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<sup>1</sup> Section 316.191(1)(a), F.S., defines "drag race" as "the operation of two or more 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 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 vehicle or vehicles within a certain distance or time limit."

Section 316.191(1)(b), F.S., defines "racing" as "the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes."

The bill also amends the unlawful racing offense. The amendments appear to be clarifying, rather than substantive (i.e., modifying, adding, or deleting elements of the offense). The offense relates to a number of proscribed acts. The amendments just clarify that each of these acts are committed in the context of a race, competition, contest, test, or exhibition, which appears to be the intent of the current law, though better articulated by virtue of the amendments.

The bill also increases current penalties and the range of fines for this unlawful racing and authorizes the seizure and forfeiture of some motor vehicles. Currently, unlawful racing is a second degree misdemeanor. The bill increases the penalty to a first degree misdemeanor. Currently, unlawful racing violators are required to pay a fine of not less than \$250 and not more than \$500. The bill increases this fine range; violators shall pay a fine of not less than \$500 and not more than \$1,000.<sup>2</sup>

Currently, unlawful racing is also subject to a greater penalty. If a person commits unlawful racing within 5 years after the date of a prior unlawful racing violation that resulted in a conviction, the person commits a first degree misdemeanor. The bill increases this penalty to a third degree felony.<sup>3</sup> Currently, violators subject to this penalty are required to pay a fine of not less than \$500 and not more than \$1,000.<sup>4</sup> The bill increases this fine range; violators shall pay a fine of not less than \$1,000 and not more than \$5,000. Any motor vehicle that was used in this violation may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.<sup>5</sup>

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

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

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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<sup>2</sup> Section 775.083(1)(d), F.S., provides that a fine for a first misdemeanor shall not exceed \$1,000. However, s. 775.083(1)(g), F.S., authorizes a higher amount, if specifically authorized by statute.

<sup>3</sup> As a comparison, reckless driving is a third degree felony if serious bodily injury occurs.

<sup>4</sup> Section 775.083(1)(c), F.S., provides that a fine for a third degree felony shall not exceed \$5,000. However, s. 775.083(1)(g), F.S., authorizes a higher amount, if specifically authorized by statute.

<sup>5</sup> Sections 932.701- 932.707, F.S. A “contraband article” includes, but is not limited to, a “vehicle of any kind” that “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....” s. 932.701(2)(a)5., F.S.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## VIII. Summary of Amendments:

### **Barcode 880726 by Criminal Justice:**

Clarifies elements of an unlawful motor vehicle competition and provides that this offense is a first degree misdemeanor, which makes the criminal penalty the same as for repeat violators. However, if the owner of the motor vehicle is charged as a repeat violator, the vehicle may be seized and forfeited. Any motor vehicle used in an unlawful motor vehicle competition may be impounded for up to 10 days if a law enforcement officer has arrested and taken a person into custody for the violation and that person is the registered owner or co-owner of the vehicle. The officer is required to notify DHSMV of the impoundment in accordance with DHSMV procedures. (WITH TITLE AMENDMENT)

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