

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: Judiciary Committee

BILL: CS/SB 1428

SPONSOR: Judiciary Committee and Senator Haridopolos

SUBJECT: Motor Vehicle Speed Competitions

DATE: April 14, 2005

REVISED: _____

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

I. Summary:

This committee substitute amends s. 316.191, F.S., which prohibits drag racing and racing on highways, roadways, and parking lots, and other acts relating to unlawful racing. The committee substitute defines the term “conviction.” The committee substitute 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 committee substitute 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 committee substitute increases this fine range to a fine of not less than \$500 and not more than \$1,000.

A law enforcement officer is authorized to impound the motor vehicle that was used in unlawful racing for 10 business days, provided that the person who is arrested and taken into custody is the owner or co-owner of the vehicle. The Department of Highway Safety and Motor Vehicles is required to be notified of any impoundment. Additionally, any motor vehicle used in unlawful racing by any person within five year of the date of a prior conviction for the same offense is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

This committee substitute 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 race¹ 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. This section also prohibits participating in, coordinating, facilitating, or collecting money 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 one 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 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.

The remainder of the section requires that 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; 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:

This committee substitute 1428 amends s. 316.191, F.S., which prohibits drag racing and racing on highways, roadways, and parking lots, and other acts relating to unlawful racing.

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

¹ 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 committee substitute also amends the unlawful racing offense. The provisions of the committee substitute 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 committee substitute appears to 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 committee substitute 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 committee substitute 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 committee substitute increases this fine range; violators shall pay a fine of not less than \$500 and not more than \$1,000.²

A law enforcement officer is authorized to impound the motor vehicle that was used in unlawful racing, provided that the person who is arrested and taken into custody is the owner or co-owner of the vehicle. Additionally, any motor vehicle used in this violation may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.³

This committee substitute takes effect October 1, 2005.

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.

² 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.

³ 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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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