

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 71 CS

Motor Vehicle Speed Competitions

SPONSOR(S): Quinones

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Transportation Committee</u>	<u>9 Y, 6 N, w/CS</u>	<u>Thompson</u>	<u>Miller</u>
3) <u>Justice Appropriations Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>10 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 71 w/CS increases the severity of the offense of racing on highways, commonly known as "drag racing", from a second degree misdemeanor to a first degree misdemeanor for a first offense. This will have the effect of increasing the maximum sentence for a first violation from 60 days in county jail to one year in county jail. The bill w/CS also increases the minimum fine for a first offense from \$250 to \$500 and increases the maximum fine from \$500 to \$1000.

The bill w/CS defines the term "conviction" for purposes of the section to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. The bill w/CS also provides that any motor vehicle used in violation of this section may be impounded for 10 business days for a first offense and may be seized and forfeited for a second offense which occurs within five years of the first.

On February 22, 2005 the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections. Since that time, the felony penalty that was previously in the bill was removed and as a result, the bill will not have any prison bed impact. Increased fines may generate additional revenues for the clerks of court and, indirectly, state government. Increasing the maximum sentence may impact current jail capacity; however the fiscal impact on local governments is indeterminate. Increased minimum fines and potential forfeiture revenues will have an indeterminate fiscal impact on the private sector (See Fiscal Comments section).

The bill has an effective date of October 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0071f.JC.doc

DATE: 4/18/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: This bill increases the severity of the sanction for potentially injurious behavior.

Provide limited government: The bill allows for the seizure and forfeiture of a motor vehicle as provided by the Florida Contraband Forfeiture Act under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Section 316.191, F.S. provides the following:

A person may not drive any vehicle, including any motorcycle, in any race¹; speed competition or contest; drag race² 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, and a person may not in any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race; ride as a passenger in; or purposefully cause the movement of traffic to slow or stop for, any such race, competition, contest, test or exhibition.

The offense is second degree misdemeanor. A second degree misdemeanor is punishable by up to sixty days in county jail. The section also requires the imposition of a fine of not less than \$250 or more than \$500 and the revocation of the offender's driver's license for one year.

A person who commits the offense within five years of a prior violation commits a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail. The section requires the imposition of a fine of not less than \$500 or more than \$1,000 and the revocation of the offender's driver's license for two years.

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.

HB 71 w/CS amends section 316.191, F.S., to provide that a first conviction for this section will be a first degree misdemeanor (rather than a second degree misdemeanor) and increases the minimum fine from \$250 to \$500 and the maximum fine from \$500 to \$1,000. This will have the effect of increasing the maximum sentence for a first violation from 60 days in county jail to one year in county jail. As in current law, the Department of Highway Safety and Motor Vehicles will be required to suspend the offender's license for one year. A second conviction within 5 years after the date of a first conviction will remain a first degree misdemeanor.. The driver's license of the offender must be revoked for 2 years.

¹ The term "racing" is defined to mean "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." s. 316.191(1)(b), F.S.

² The term "drag race" is defined to mean "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." s. 316.191(1)(a), F.S.

The bill adds a requirement that a person must knowingly ride as a passenger in order to commit the offense. The bill defines the term "conviction" for purposes of the section to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

The bill w/CS also provides that any motor vehicle used in violation of this section may be impounded for 10 business days for a first offense if the person being arrested is the owner or co-owner of the vehicle. The vehicle may be seized and forfeited for a second offense which occurs within five years of the first conviction if the owner of the vehicle is the person being charged with the violation.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.191, F.S.; relating to motor vehicle speed competitions, to increase penalties and to provide for impoundments and forfeitures of vehicles.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See Fiscal Comments below.

2. Expenditures:

On February 22, 2005 the Criminal Justice Impact Conference met to consider the prison bed impact of this bill on the Department of Corrections. The Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the department. Since that time, the felony penalty was removed, and as a result, there will be no prison bed impact. The Florida Public Defenders' Association stated that there would be some impact on each Office of the Public Defender; however, the projected amount of the fiscal impact is indeterminate. Since the bill does not create a new crime, the only workload impact on state attorneys or public defenders would be if more defendants charged with this crime choose to go to trial to avoid the potentially more serious sanction that would apply to the higher level misdemeanor. Thus, impact on both state attorneys and public defenders would most likely be minimal. There is no fiscal note on file from the Florida Prosecuting Attorney's Association.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See Fiscal Comments below.

2. Expenditures:

To the extent that this bill results in offenders serving more time in county jail as a result of increasing the offense from a second to a first degree misdemeanor, it may have some impact on county jail populations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because HB 71 w/CS increases minimum fines, any person convicted of racing under s. 316.191, F.S. , would pay additional fine amounts. In addition, violators would be subject to forfeiture proceedings against their vehicle.

D. FISCAL COMMENTS:

The average annual number of racing violations on a public highway is 4,134, per the Driver License Information Warehouse (an in-house database used by DHSMV). Assuming the minimum fine increase of \$250 is applied as required by the bill and that there are 100% collections, an additional \$1.03 million in fines would be collected. These funds would be deposited into the Clerk of Courts Fine and Forfeiture Trust Fund to support activities of the clerks. Since any surplus court-related revenue generated by the clerk is deposited into General Revenue, the bill has the potential to generate up to \$1.03 million for the state General Revenue fund. The number of violations, however, may be reduced and revenue collections rates are typically less than 100% in criminal cases.

The Florida Contraband Forfeiture Act s. 932.704, F.S., authorizes the seizing law enforcement agencies to utilize proceeds collected under the act as supplemental funding for authorized purposes. Revenues and expenditures of law enforcement agencies could be impacted due to vehicles involved in racing being forfeited pursuant to the Florida Contraband Forfeiture Act. The amount of this impact is unknown due to a lack of information on the number and value of the vehicles that would be seized for racing violations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 8, 2005 the Committee on Transportation adopted 1 strike all amendment to HB 71.

Amendment # 1 by Rep. Quinones—Revises HB 71 to remove the third degree felony penalty for a second violation within 5 years. The amendment also provides for a 10 day impoundment of a motor vehicle used in violation of a motor vehicle speed competition and authorizes forfeiture of any such vehicle for a second offense within 5 years of the first offense. The original bill authorized forfeiture of vehicles on the first offense.

The bill was reported favorably with a committee substitute.

On March 29, 2005 the Justice Appropriations Committee adopted the following amendment:

Amendment # 2 by Rep. Seiler - Revises CS/HB 71 by providing that a passenger must knowingly be a passenger in a race to be guilty of a crime.

The bill was reported favorably with a committee substitute.