

1 A bill to be entitled
2 An act relating to street racing; creating the "Luis
3 Rivera Ortega Street Racing Act"; amending s. 316.191,
4 F.S.; revising provisions prohibiting certain speed
5 competitions and exhibitions; revising the definition of
6 the terms "conviction," "drag race," and "race"; defining
7 the terms "exhibition of acceleration," "exhibition of
8 speed," and "spectator"; prohibiting driving in any race,
9 drag race, exhibition of speed, or exhibition of
10 acceleration; prohibiting certain acts in association with
11 a race, drag race, exhibition of speed, or exhibition of
12 acceleration; prohibiting being a spectator at any such
13 race, drag race, or exhibition; providing for a rebuttable
14 presumption that a person is a spectator; providing
15 criminal and noncriminal penalties; providing for
16 revocation of the driver license upon conviction;
17 providing for disposition of citation for being a
18 spectator; providing penalties for a second or subsequent
19 offense; providing that a violation that causes or
20 contributes to causing serious bodily injury to another is
21 a felony of the third degree; providing that a violation
22 that causes or contributes to causing the death of any
23 human being or unborn quick child is the crime of racing
24 manslaughter; providing penalties; providing for a
25 determination of the definition of the term "unborn quick
26 child"; requiring that the driving record of a person
27 charged be provided to the court; providing criteria for
28 arrest; providing procedures for charging the owner of a

29 motor vehicle as a spectator if the owner's vehicle is
30 parked or operated in near proximity to any such race,
31 drag race, or exhibition; providing for citations,
32 disposition procedures, and enforcement; providing
33 procedures for impoundment or immobilization of a motor
34 vehicle under a court order; providing for release from
35 impoundment under specified exceptions; requiring costs
36 and fees of impoundment to be paid by the owner or lessee
37 of the motor vehicle; providing procedures for an
38 arresting officer to immediately impound a motor vehicle
39 used in a violation; providing for the period of
40 impoundment; removing a requirement for impoundment that
41 the person being arrested is the registered owner or
42 coowner of the motor vehicle; providing for seizure and
43 forfeiture of a motor vehicle used in a violation;
44 removing provisions for application only after a prior
45 conviction and only if the owner of the motor vehicle is
46 the person charged with the violation; providing for a
47 motor vehicle used in violation to be seized and forfeited
48 under the Florida Contraband Forfeiture Act regardless of
49 whether the violation is a misdemeanor or felony;
50 providing for satisfaction of the element of negligent
51 entrustment; providing for severability; providing an
52 effective date.

53
54 WHEREAS, illegal street racing has lead to a significant
55 number of deaths as well as substantial bodily injuries to
56 drivers and pedestrians in the State of Florida, and

57 WHEREAS, the definitions of "drag race" and "race" require
 58 further clarification to comport with the requirements of the
 59 Florida and United States Constitutions, and

60 WHEREAS, increased penalties for first-time and repeat
 61 offenders are necessary to preserve the safety and security of
 62 our highways, roads, and pedestrians, and

63 WHEREAS, prevention of illegal street racing requires the
 64 proscription of negligent entrustment of vehicles being utilized
 65 in such racing, and

66 WHEREAS, illegal street racing events have increasingly
 67 become spectator-driven and the assembly of persons at such
 68 events for the purpose of viewing or participating therein
 69 materially contributes to the number and severity of illegal
 70 street racing, and

71 WHEREAS, to prevent further death and injury resulting from
 72 illegal street racing, the Legislature of the State of Florida
 73 finds a compelling state interest in proscribing and providing
 74 for civil penalties for knowing spectators of such events due to
 75 their critical role in promoting and assisting in the
 76 conflagration of illegal street racing, NOW, THEREFORE,

77

78 Be It Enacted by the Legislature of the State of Florida:

79

80 Section 1. Short title.--This act may be cited as the
 81 "Luis Rivera Ortega Street Racing Act."

82 Section 2. Section 316.191, Florida Statutes, is amended
 83 to read:

84 316.191 Racing on highways.--

85 (1) As used in this section, the term:

86 (a) "Conviction" means a determination of guilt that is
 87 the result of a plea or trial, regardless of whether or not
 88 adjudication is withheld.

89 (b) "Drag race" means the operation of two or more motor
 90 vehicles in competition, arising from a challenge to demonstrate
 91 superiority of a motor vehicle or driver and the acceptance or
 92 competitive response to that challenge, either through a prior
 93 arrangement or in immediate response, from a point side by side
 94 at accelerating speeds in a competitive attempt to outdistance
 95 each other, or the operation of one or more motor vehicles over
 96 a common selected course, from the same point to the same point,
 97 for the purpose of comparing the relative speeds or power of
 98 acceleration of such motor vehicle or motor vehicles within a
 99 certain distance or time limit. A drag race may be prearranged
 100 or may occur through a competitive response to conduct on the
 101 part of one or more drivers that, under the totality of the
 102 circumstances, can reasonably be interpreted as a challenge to
 103 participate in a drag race.

104 (c) "Exhibition of acceleration" means the use of a motor
 105 vehicle in a demonstration to another person or persons,
 106 including, but not limited to, any passenger of such motor
 107 vehicle or the driver or passenger of another motor vehicle, of
 108 the motor vehicle's ability to accelerate by a sudden increase
 109 in speed causing a tire to lose firm traction with, or burn,
 110 smoke, or squeal against, the road surface which results in the
 111 vehicle's continuous acceleration to a final speed that exceeds
 112 the posted or lawful speed limit.

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113 (d) "Exhibition of speed" means the use of a motor vehicle
114 in a demonstration to another person or persons, including, but
115 not limited to, any passenger of such motor vehicle or the
116 driver or passenger of another motor vehicle, of the motor
117 vehicle's speed or handling capabilities at a speed of at least
118 double the posted or lawful speed limit or 100 miles per hour,
119 whichever is less.

120 (e) ~~(e)~~ "Race ~~Racing~~" means the use of one or more motor
121 vehicles in competition, arising from a challenge to demonstrate
122 superiority of a motor vehicle or driver and the acceptance or
123 competitive response to that challenge, either through a prior
124 arrangement or in immediate response, in which the competitor
125 attempts ~~an attempt~~ to outgain or outdistance another motor
126 vehicle, to prevent another motor vehicle from passing, to
127 arrive at a given destination ahead of another motor vehicle or
128 motor vehicles, or to test the physical stamina or endurance of
129 drivers over long-distance driving routes. A race may be
130 prearranged or may occur through a competitive response to
131 conduct on the part of one or more drivers that, under the
132 totality of the circumstances, can reasonably be interpreted as
133 a challenge to race.

134 (f) "Spectator" means any person who is knowingly present
135 at and views an illegal race, drag race, or exhibition when such
136 presence is the result of an affirmative choice to attend or
137 participate in the race or exhibition. For purposes of
138 determining whether or not an individual is a spectator, finders
139 of fact shall consider the relationship between the racer and
140 the individual, evidence of gambling or betting on the outcome

141 of the race, and any other factor that would tend to show
 142 knowing attendance or participation.

143 (2) (a) A person operating or in actual physical control of
 144 a motor vehicle, including any motorcycle, on any street or
 145 highway or publicly accessible parking lot may not:

146 1. ~~Drive any motor vehicle, including any motorcycle, in~~
 147 ~~any race;~~

148 2. Drive in any speed competition or contest, drag race;
 149 ~~or acceleration contest, test of physical endurance, or~~

150 3. Drive in any exhibition of speed; or

151 4. Drive in any exhibition of acceleration. ~~or for the~~
 152 ~~purpose of making a speed record on any highway, roadway, or~~
 153 ~~parking lot;~~

154 (b) A person may not:

155 1.2. ~~In any manner knowingly~~ participate in, coordinate,
 156 facilitate, or collect moneys at any location for any such race,
 157 drag race competition, contest, test, or exhibition prohibited
 158 under paragraph (a);

159 2.3. ~~Knowingly ride as a passenger in any such race, drag~~
 160 ~~race competition, contest, test, or exhibition prohibited under~~
 161 paragraph (a); or

162 3.4. Knowingly Purposefully cause the movement of traffic
 163 to slow or stop for any such race, drag race competition,
 164 ~~contest, test, or exhibition prohibited under paragraph (a).~~

165 (c) A person may not be a spectator at any such race, drag
 166 race, or exhibition prohibited under paragraph (a). A vehicle
 167 parked or operated in near proximity to any such race, drag
 168 race, or exhibition under circumstances suggesting that the

169 driver or operator of such vehicle is a spectator shall create a
 170 rebuttable presumption that the registered owner of the vehicle
 171 is a spectator for all purposes of this section.

172 (3) (a) Any person who violates any provision of ~~this~~
 173 paragraph (2) (a) or paragraph (2) (b) commits a misdemeanor of
 174 the ~~second~~ ~~first~~ degree, punishable as provided in s. 775.082 or
 175 s. 775.083. Any person who violates any provision of ~~this~~
 176 paragraph (2) (a) or paragraph (2) (b) shall pay a fine of not
 177 less than ~~\$250~~ ~~\$500~~ and not more than ~~\$500~~ ~~\$1,000~~, and the court
 178 shall revoke the driver license of a person so convicted for 2
 179 years regardless of whether or not adjudication is withheld ~~and~~
 180 ~~the department shall revoke the driver license of a person so~~
 181 ~~convicted for 1 year.~~ A hearing may be requested pursuant to s.
 182 322.271.

183 (b) Any person who violates the provisions of paragraph
 184 (2) (c) commits a noncriminal violation, punishable as provided
 185 in s. 775.083, and must be cited to appear before a county judge
 186 for disposition of the violation. Any person who violates the
 187 provisions of paragraph (2) (c) shall pay a fine of not less than
 188 \$250 and not more than \$500.

189 ~~(c) (b)~~ Any person who violates any provision of paragraph
 190 (2) (a) or paragraph (2) (b) within 5 years after the date of a
 191 prior violation that resulted in a conviction for a violation of
 192 paragraph (2) (a) or paragraph (2) (b) ~~this subsection~~ commits a
 193 misdemeanor of the first degree, punishable as provided in s.
 194 775.082 or s. 775.083, and shall pay a fine of not less than
 195 \$500 and not more than \$1,000. In any second or subsequent
 196 conviction, the court may not withhold adjudication of guilt and

197 shall revoke the driver license of that person for 5 years. ~~The~~
 198 ~~department shall also revoke the driver license of that person~~
 199 ~~for 2 years.~~ A hearing may be requested pursuant to s. 322.271.

200 (d) Any person who violates any provision of paragraph
 201 (2) (a) or paragraph (2) (b) and by reason of such violation
 202 causes or in any way contributes to causing damage to the
 203 property or person of another commits a misdemeanor of the first
 204 degree, punishable as provided in s. 775.082 or s. 775.083, and
 205 shall pay a fine of not less than \$500 and not more than \$1,000,
 206 and the court shall revoke the driver license of a person so
 207 convicted for 2 years regardless of whether or not adjudication
 208 is withheld. A hearing may be requested pursuant to s. 322.271.

209 (e) Any person who violates any provision of paragraph
 210 (2) (a) or paragraph (2) (b) and by reason of such violation
 211 causes or in any way contributes to causing serious bodily
 212 injury to another, as defined in s. 316.1933, commits a felony
 213 of the third degree, punishable as provided in s. 775.082, s.
 214 775.083, or s. 775.084, and shall pay a fine of not less than
 215 \$1,000.

216 (f) Any person who violates any provision of paragraph
 217 (2) (a) or paragraph (2) (b) and by reason of such violation
 218 causes or in any way contributes to causing the death of any
 219 human being or unborn quick child commits the crime of racing
 220 manslaughter. In any conviction under this paragraph, the court
 221 may not withhold adjudication of guilt and shall permanently
 222 revoke the driver license of a person so convicted. A hearing
 223 may be requested pursuant to s. 322.271. A person so convicted
 224 commits:

225 1. A felony of the second degree, punishable as provided
 226 in s. 775.082, s. 775.083, or s. 775.084, and shall pay a fine
 227 of not less than \$5,000; or

228 2. A felony of the first degree, punishable as provided in
 229 s. 775.082, s. 775.083, or s. 775.084, and shall pay a fine of
 230 not less than \$5,000, if:

231 a. At the time of the crash, the person knew, or should
 232 have known, that the crash occurred; and

233 b. The person failed to give information and render aid as
 234 required by s. 316.062.

235
 236 For purposes of this paragraph, the definition of the term
 237 "unborn quick child" shall be determined in accordance with the
 238 definition of viable fetus as set forth in s. 782.071. A person
 239 who is convicted of racing manslaughter shall be sentenced to a
 240 mandatory minimum term of imprisonment of 4 years.

241 (4)(e) In any case charging a violation of paragraph
 242 (2)(a) or paragraph (2)(b), the court shall be provided a copy
 243 of the driving record of the person charged and may obtain any
 244 records from any other source to determine if one or more prior
 245 convictions of the person for violation of paragraph (2)(a) or
 246 paragraph (2)(b) have occurred within 5 years prior to the
 247 charged offense; however, at trial, proof of such prior
 248 conviction must be made by certified copy of any prior judgment
 249 of conviction or judgment withholding adjudication of guilt.

250 (5)(a)(3) Whenever a law enforcement officer determines
 251 that a person has committed a violation of paragraph (2)(a) or
 252 paragraph (2)(b) was engaged in a drag race or race, as

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253 ~~described in subsection (1),~~ the officer may immediately arrest
254 and take such person into custody, consistent with
255 constitutional requirements, regardless of whether or not the
256 offense was committed in the presence of the officer or whether
257 the officer's determination is based upon information provided
258 by anonymous tipsters, citizen informants, or any other source.
259 The court may enter an order of impoundment or immobilization as
260 a condition of incarceration or probation. Within 7 business
261 days after the date the court issues the order of impoundment or
262 immobilization, the clerk of the court must send notice by
263 certified mail, return receipt requested, to the registered
264 owner of the motor vehicle, if the registered owner is a person
265 other than the defendant, and to each person of record claiming
266 a lien against the motor vehicle.

267 (b) A law enforcement officer who determines that, in
268 accordance with the provisions of paragraph (2)(c), the driver
269 of a motor vehicle parked or operated in near proximity to any
270 such race, drag race, or exhibition is a spectator, the officer
271 may file a uniform traffic citation with the clerk of court of
272 the jurisdiction wherein the offense was committed charging the
273 registered owner of such vehicle with the proscribed offense.
274 The clerk shall issue a notice to appear to the registered
275 owner's last known address maintained by the department and
276 shall schedule a mandatory court appearance before a county
277 judge within 30 days after the filing of the citation. The
278 failure of such person to appear as required or to comply with
279 any fine imposed under this paragraph shall be subject to the
280 procedures of s. 318.15 governing failures to appear or to pay.

281 An officer may use any photographic or recording equipment in
 282 determining the tag number or registered owner of any vehicle
 283 pursuant to this paragraph.

284 (c)~~(a)~~ Notwithstanding any provision of law to the
 285 contrary, the impounding agency shall release a motor vehicle
 286 under the conditions provided in s. 316.193(6)(e) and ~~(f), (g),~~
 287 ~~and (h)~~, if the owner or agent presents a valid driver license
 288 at the time of pickup of the motor vehicle.

289 (d)~~(b)~~ All costs and fees for the impoundment or
 290 immobilization, including the cost of notification, must be paid
 291 by the owner of the motor vehicle or, if the motor vehicle is
 292 leased or rented, by the person leasing or renting the motor
 293 vehicle, unless the impoundment or immobilization order is
 294 dismissed. All provisions of s. 713.78 shall apply.

295 (e)~~(e)~~ Any motor vehicle used in violation of subsection
 296 (2) may be impounded for a period of 30 ~~10~~ business days if a
 297 law enforcement officer has arrested and taken a person into
 298 custody pursuant to this subsection ~~and the person being~~
 299 ~~arrested is the registered owner or coowner of the motor~~
 300 ~~vehicle~~. If the arresting officer finds that the criteria of
 301 this paragraph are met, the officer may immediately impound the
 302 motor vehicle. The law enforcement officer shall notify the
 303 Department of Highway Safety and Motor Vehicles of any
 304 impoundment for violation of this subsection in accordance with
 305 procedures established by the department. The provisions of
 306 paragraphs (c)~~(a)~~ and (d)~~(b)~~ shall be applicable to such
 307 impoundment.

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308 ~~(6)-(4)~~ Any motor vehicle used in violation of subsection
309 ~~(2) by any person within 5 years after the date of a prior~~
310 ~~conviction of that person for a violation under subsection (2)~~
311 may be seized and forfeited as provided by the Florida
312 Contraband Forfeiture Act. This subsection shall be applicable
313 to all owners of the motor vehicle who are either charged with a
314 criminal violation of subsection (2) or who negligently
315 entrusted their vehicle to the person charged with a criminal
316 violation of subsection (2), and the Florida Contraband
317 Forfeiture Act shall apply regardless of whether or not the
318 violation is a misdemeanor or felony. The element of negligent
319 entrustment is satisfied if the owner of a motor vehicle
320 entrusts his or her vehicle to a person knowing that such person
321 has previously been cited or charged with any violation of this
322 section, whether or not such charge or citation resulted in a
323 conviction only be applicable if the owner of the motor vehicle
324 ~~is the person charged with violation of subsection (2).~~

325 ~~(7)-(5)~~ This section does not apply to licensed or duly
326 authorized racetracks, drag strips, or other designated areas
327 set aside by proper authorities for such purposes.

328 (8) If any provision of this section is deemed
329 unconstitutional by any court, such unconstitutional provision
330 shall be deemed severable and such determination shall not
331 affect the enforceability of all remaining constitutional
332 provisions of this section.

333 Section 3. This act shall take effect October 1, 2008.