

**The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 2604

INTRODUCER: Senator Constantine

SUBJECT: Luis Rivera Ortega Street Racing Act

DATE: April 10, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/1 amendment
2.	Erickson	Cannon	CJ	Favorable
3.			JU	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends s. 316.191, F.S., relating to racing on highways, in response to the Florida Fourth District Court of Appeal ruling declaring the current statute unconstitutionally vague because the definition of “racing” encompassed both lawful and unlawful conduct. The court held the element of competition was a critical element of any race, and the absence of any language to that effect rendered the statute unconstitutionally vague.

The bill makes the following changes:

- Amends the definitions of “race” and “drag race” in s. 316.191, F.S., to require some form of competition or challenge exist; defines the terms exhibition of speed and exhibition of acceleration;
- Creates noncriminal penalties for spectators of races, drag races, and exhibitions of speed or acceleration;
- Decreases the penalty for a first violation of this section to a second degree misdemeanor;
- Increases the penalty for a violation of this section from a one-year driver’s license suspension to a two-year driver’s license suspension;

- Increases the penalty for a second violation of this section in five years from a two-year driver's license suspension to a five-year driver's license suspension;
- Provides that it is a first degree misdemeanor to violate this section and damage the person or property of another;
- Provides that it is a third degree felony to violate this section and cause serious bodily injury to another;
- Provides that a person commits racing manslaughter, a second degree felony, if the person violates this section and causes the death of another human being or unborn quick child;
- Provides that it is a first degree felony if a person commits racing manslaughter and knew, or should have known, a crash occurred and failed to render aid;
- Authorizes law enforcement officers to arrest a person for a violation of this section if the crime does not occur in the presence of the officer;
- Authorizes forfeiture of any motor vehicle used in violation of this section; and
- Authorizes forfeiture of a motor vehicle if the vehicle used in violation of this section was negligently entrusted to a person who previously has been cited or charged with a violation of this section.

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

II. Present Situation:

Unlawful Racing

Section 316.191, F.S., provides that a person may not:

- Drive any motor vehicle, including any motorcycle, in any race,¹ speed competition or contest, drag race² 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;
- In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;
- Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or
- Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

The offense is a first degree misdemeanor³ The section also requires the imposition of a fine of not less than \$500 and not more than \$1,000, and the convicted violator's driver license is revoked for 1 year, though a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

¹ "Racing" means the use of one or more vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

² "Drag race" means the operation of two or more motor 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 motor 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 motor vehicle or motor vehicles within a certain distance or time limit.

³ Sections 775.082 and 775.083, F.S., respectively, provide that a first degree misdemeanor is punishable by a jail term of up to one year, and a fine not exceeding \$500 may be imposed.

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.

Also, this 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; and 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.

A law enforcement officer is authorized to impound the motor vehicle that was used in unlawful racing for 10 business days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle. The law enforcement officer impounding the vehicle shall notify the Department of Highway Safety and Motor Vehicles of the impoundment. Additionally, any motor vehicle used for unlawful racing by a person within 5 years after the date of a prior conviction of that person for unlawful racing may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, if the owner of the vehicle is the person charged with unlawful racing.

This section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

Portions of s. 316.191, F.S., have been ruled unconstitutional. (*See State v. Wells*, 965 So.2d 834 (Fla. 4th DCA 2007)). The Fourth District Court of Appeal ruled that current s. 316.191, F.S., is unconstitutionally vague because the statutory definition of racing could include both lawful and unlawful conduct. For example, both speeding (illegal) and the act of passing a vehicle (legal) could be included under the definition since both acts could be an attempt to outgain or outdistance another motor vehicle. The court held that the critical distinction between the lawful and unlawful conduct was the element of competition or a challenge between two drivers. Absent such language, the court held s. 316.191, F.S., was unconstitutionally vague on its face.

III. Effect of Proposed Changes:

Section 1 provides a short title. Specifically, this act may be cited as the "Luis Rivera Ortega Street Racing Act."

Section 2 amends s. 316.191, F.S., creating new paragraphs and amending existing subsections and paragraphs. Provided is a description of the subsections and paragraphs as they would appear in statute if the bill were enacted.

Subsection (1) contains definitions, and the bill amends some current definitions and creates new ones as follows:

- “Conviction” means a determination of guilt that is the result of a plea or trial, regardless of whether *or not* adjudication is withheld.
- “Drag race” is redefined to mean the operation of two or more motor vehicles *in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response*, from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor 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 motor vehicle or motor vehicles within a certain distance or time limit. *A drag race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to participate in a drag race.*
- “Exhibition of acceleration” is defined to mean the use of a motor vehicle in a demonstration to another person or persons, including, but not limited to, any passenger of such motor vehicle or the driver or passenger of another motor vehicle, of the motor vehicle’s ability to accelerate by a sudden increase in speed causing a tire to lose firm traction with, or burn, smoke, or squeal against, the road surface which results in the vehicle’s continuous acceleration to a final speed that exceeds the posted or lawful speed limit.
- “Exhibition of speed” is defined to mean the use of a motor vehicle in a demonstration to another person or persons, including, but not limited to, any passenger of such motor vehicle or the driver or passenger of another motor vehicle, of the motor vehicle’s speed or handling capabilities at a speed of at least double the posted or lawful speed limit or 100 miles per hour, whichever is less.
- “Race is redefined to mean the use of one or more motor vehicles *in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.*
- “Spectator” is defined to mean any person who is knowingly present at and views an illegal race, drag race, or exhibition when such presence is the result of an affirmative choice to attend or participate in the race or exhibition. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the racer and the individual, evidence of gambling or betting on the outcome of the race, and any other factor that would tend to show knowing attendance or participation.

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

- Drive in any race;
- Drive in any drag race;
- Drive in any exhibition of speed; or
- Drive in any exhibition of acceleration.

Paragraph (2)(b) provides that a person may not:

- Knowingly participate in, coordinate, facilitate, or collect moneys at any location for any such race, *drag race*, or exhibition prohibited above.
- Knowingly ride as a passenger in any such race, *drag race*, or exhibition prohibited above.
- Knowingly cause the movement of traffic to slow or stop for any such race, *drag race*, or prohibited exhibition (as described above).

Paragraph (2)(c) provides that a person may not be a spectator at any such race, drag race, or prohibited exhibition. A vehicle parked or operated in near proximity to any such race, drag race, or exhibition under circumstances suggesting the driver or operator of such vehicle is a spectator creates a rebuttable presumption that the registered owner of the vehicle is a spectator for all purposes of this section.

Paragraph (3)(a) provides that a violation of paragraph (2)(a) or paragraph (2)(b) is a second degree misdemeanor,⁴ and requires the imposition of a fine of not less than \$250 and not more than \$500, and the convicted violator's driver license is revoked for 2 years, although a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

Paragraph (3)(b) provides that a person who commits a violation of paragraph (2)(c) commits a noncriminal violation, punishable as provided in s. 775.083, F.S.,⁵ and must be cited to appear before a county judge for disposition of the violation, and must pay a fine of not less than \$250 and not more than \$500.

Paragraph (3)(c) provides that if any person violates paragraph (2)(a) or paragraph (2)(b) 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. In any second or subsequent conviction the court may not withhold adjudication of guilt and the convicted violator's driver's license is revoked for five years, although a "hardship" hearing may be requested pursuant to s. 322.271, F.S.

Paragraph (3)(d) provides that any person who violates paragraph (2)(a) or paragraph (2)(b) and by reason of such violation causes or in any way contributes to causing serious bodily injury to another, as defined in s. 316.1933, F.S., commits a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.,⁶ and is required to pay a fine of not less than \$1,000.

⁴ Section 775.082, F.S., provides that a second degree misdemeanor is punishable by a jail term of up to 60 days.

⁵ A fine not exceeding \$500 may be imposed pursuant to this statute.

⁶ These statutes, respectively, provide for a maximum penalty of 5 years in state prison, a fine of up to \$5,000, and enhanced penalties for certain habitual felony offenders.

Paragraph (3)(e) provides that any person who violates paragraph (2)(a) or paragraph (2)(b) and by reason of such violation causes or in any way contributes to causing the death of any human being or unborn quick child commits the crime of racing manslaughter. The court may not withhold adjudication of guilt and must permanently revoke the convicted offender's driver license, although a "hardship" hearing may be requested pursuant to s. 322.271, F.S. A person so convicted commits:

- A second degree felony, punishable as provided in ss. 775.082, F.S., 775.083, F.S., or 775.084, F.S.,⁷ and must pay a fine of not less than \$5,000; or
- A first degree felony, punishable as provided in ss. 775.082, F.S., 775.083, F.S., or 775.084, F.S.,⁸ and must pay a fine of not less than \$5,000, if:
 - At the time of the crash, the person knew, or should have known, that the crash occurred; and
 - The person failed to give information and render aid as required by s. 316.062, F.S.

The definition of "unborn quick child" is determined in accordance with the definition of "viable fetus" as set forth in s. 782.071, F.S.⁹ A person who is convicted of racing manslaughter must also be sentenced to a mandatory minimum term of imprisonment of 4 years.

Subsection (4) requires that the court be provided with a copy of the violator's driving record; however, at trial, proof of such prior convictions must be made by certified copy of any prior judgment of conviction or judgment withholding adjudication of guilt.

Paragraph (5)(a) authorizes law enforcement to immediately arrest violators and take them into custody, consistent with constitutional requirements, regardless of whether or not the offense was committed in the presence of the officer or whether the officer's determination is based upon information provided by anonymous tipsters, citizen informants, or any other source.

Paragraph (5)(b) authorizes a law enforcement officer who determines that the driver of a motor vehicle parked or operated in near proximity to any such race, drag race, or exhibition is a spectator, to file a uniform traffic citation with the clerk of court of the jurisdiction wherein the offense was committed charging the registered owner of such vehicle with the proscribed offense. The clerk shall issue a notice to appear to the registered owner's last known address maintained by the Department of Highway Safety and Motor Vehicles and shall schedule a mandatory court appearance before a county judge within 30 days after the filing of the citation. The failure of such person to appear as required or to comply with any fine imposed under this paragraph is subject to the procedures of s. 318.15, F.S., governing failures to appear or to pay. An officer may use any photographic or recording equipment in determining the tag number or registered owner of any vehicle pursuant to this paragraph.

⁷ These statutes, respectively, provide for a maximum penalty of 15 years in state prison, a fine of up to \$10,000, and enhanced penalties for certain habitual felony offenders.

⁸ These statutes, respectively, provide for a maximum penalty of 30 years in state prison, a fine of up to \$10,000, and enhanced penalties for certain habitual felony offenders.

⁹ "[A] fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures."

Paragraph (5)(e) authorizes a law enforcement officer to impound the motor vehicle that was used in unlawful racing for 30 business days.

Subsection (6) provides that any motor vehicle used in violation of listed provisions may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection is applicable to all owners of the motor vehicle who are charged with a criminal violation of subsection (2), or who negligently entrusted their vehicle to the person charged with a criminal violation of subsection (2), and the Florida Contraband Forfeiture Act applies regardless of whether or not the violation is a misdemeanor or felony. The element of negligent entrustment is satisfied if the owner of a motor vehicle entrusts his or her vehicle to a person knowing such person has previously been cited or charged with any violation of s. 316.191, F.S., whether or not such charge or citation resulted in a conviction.

Subsection (8) specifies that if any provision of s. 316.191, F.S., is deemed unconstitutional by any court, such unconstitutional provision shall be deemed severable and such determination shall not affect the enforceability of all remaining constitutional provisions of s. 316.191, F.S.

Section 3 provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides any motor vehicle used in violation of this section is subject to forfeiture as provided by the Florida Contraband Forfeiture Act. The forfeiture action applies where the driver is the registered owner of the vehicle, or where a race organizer, passenger, or person who causes traffic to slow for purposes of holding a race is the registered owner and allows the driver to use their vehicle in violation of this section. A forfeiture action may also be commenced where a person negligently entrusts their

vehicle to a person who uses the vehicle in violation of this section. Additionally, the bill provides for increased driver's license suspensions for a criminal violation of this section.

C. **Government Sector Impact:**

Impact to Local Governments

The bill creates a noncriminal offense if a person is a spectator at a race, drag race, or exhibition of speed or acceleration. The fine for such noncriminal offense is no less than \$250 and no more than \$500.

The bill requires every person who is cited for the noncriminal violation of being a spectator at a race, drag race, or exhibition of speed or acceleration to appear before a judge. Based on the number of noncriminal citations issued, this could increase the judicial workload of county judges and clerks of court.

Impact to State Government

According the Department of Corrections (DOC) fiscal analysis, the bill "creates a mandatory/minimum sentencing floor for the courts but does not preclude gain-time. Impact to DOC's prison and probation populations is expected to be minimal as these acts are most likely already being prosecuted under different offense titles or statutory cites, e.g. reckless driving or vehicular manslaughter." Final impact is to be determined by the Criminal Justice Impact Conference, which has not yet met to consider the impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

Barcode 120498 by Transportation on April 1, 2008:

Replaces the term for the crime of "racing manslaughter" with "manslaughter resulting from the operation of a motor vehicle."