

By Senator Constantine

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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

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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

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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 "Luis
81 Rivera Ortega Street Racing Act."

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

84 316.191 Racing on highways.--

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

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86 (a) "Conviction" means a determination of guilt that is the
87 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 a
96 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 or
100 may occur through a competitive response to conduct on the part
101 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 in
109 speed causing a tire to lose firm traction with, or burn, smoke,
110 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.

113 (d) "Exhibition of speed" means the use of a motor vehicle
114 in a demonstration to another person or persons, including, but

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115 not limited to, any passenger of such motor vehicle or the driver
116 or passenger of another motor vehicle, of the motor vehicle's
117 speed or handling capabilities at a speed of at least double the
118 posted or lawful speed limit or 100 miles per hour, whichever is
119 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 arrive
127 at a given destination ahead of another motor vehicle or motor
128 vehicles, or to test the physical stamina or endurance of drivers
129 over long-distance driving routes. A race may be prearranged or
130 may occur through a competitive response to conduct on the part
131 of one or more drivers that, under the totality of the
132 circumstances, can reasonably be interpreted as a challenge to
133 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 the
140 individual, evidence of gambling or betting on the outcome of the
141 race, and any other factor that would tend to show knowing
142 attendance or participation.

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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; or~~
149 ~~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 race,
168 or exhibition under circumstances suggesting that the driver or
169 operator of such vehicle is a spectator shall create a rebuttable
170 presumption that the registered owner of the vehicle is a
171 spectator for all purposes of this section.

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172 (3) (a) Any person who violates any provision of this
173 paragraph (2) (a) or paragraph (2) (b) commits a misdemeanor of the
174 second ~~first~~ degree, punishable as provided in s. 775.082 or s.
175 775.083. Any person who violates any provision of this paragraph
176 (2) (a) or paragraph (2) (b) shall pay a fine of not less than \$250
177 \$500 and not more than \$500 ~~\$1,000~~, and the court shall revoke
178 the driver license of a person so convicted for 2 years
179 regardless of whether or not adjudication is withheld and the
180 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 in
185 s. 775.083, and must be cited to appear before a county judge for
186 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 \$500
195 and not more than \$1,000. In any second or subsequent conviction,
196 the court may not withhold adjudication of guilt and shall revoke
197 the driver license of that person for 5 years. ~~The department~~
198 shall also revoke the driver license of that person for 2 years.
199 A hearing may be requested pursuant to s. 322.271.

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200 (d) Any person who violates any provision of paragraph
201 (2) (a) or paragraph (2) (b) and by reason of such violation causes
202 or in any way contributes to causing damage to the property or
203 person of another commits a misdemeanor of the first degree,
204 punishable as provided in s. 775.082 or s. 775.083, and shall pay
205 a fine of not less than \$500 and not more than \$1,000, and the
206 court shall revoke the driver license of a person so convicted
207 for 2 years regardless of whether or not adjudication is
208 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 causes
211 or in any way contributes to causing serious bodily injury to
212 another, as defined in s. 316.1933, commits a felony of the third
213 degree, punishable as provided in s. 775.082, s. 775.083, or s.
214 775.084, and shall pay a fine of not less than \$1,000.

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

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

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

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

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

233
234 For purposes of this paragraph, the definition of the term
235 "unborn quick child" shall be determined in accordance with the
236 definition of viable fetus as set forth in s. 782.071. A person
237 who is convicted of racing manslaughter shall be sentenced to a
238 mandatory minimum term of imprisonment of 4 years.

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

248 (5)(a)(3) Whenever a law enforcement officer determines
249 that a person has committed a violation of paragraph (2)(a) or
250 paragraph (2)(b) was engaged in a drag race or race, as described
251 in subsection (1), the officer may immediately arrest and take
252 such person into custody, consistent with constitutional
253 requirements, regardless of whether or not the offense was
254 committed in the presence of the officer or whether the officer's
255 determination is based upon information provided by anonymous
256 tipsters, citizen informants, or any other source. The court may
257 enter an order of impoundment or immobilization as a condition of

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258 incarceration or probation. Within 7 business days after the date
259 the court issues the order of impoundment or immobilization, the
260 clerk of the court must send notice by certified mail, return
261 receipt requested, to the registered owner of the motor vehicle,
262 if the registered owner is a person other than the defendant, and
263 to each person of record claiming a lien against the motor
264 vehicle.

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

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

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

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

305 (6) ~~(4)~~ Any motor vehicle used in violation of subsection
306 (2) ~~by any person within 5 years after the date of a prior~~
307 ~~conviction of that person for a violation under subsection (2)~~
308 may be seized and forfeited as provided by the Florida Contraband
309 Forfeiture Act. This subsection shall be applicable to all owners
310 of the motor vehicle who are either charged with a criminal
311 violation of subsection (2) or who negligently entrusted their
312 vehicle to the person charged with a criminal violation of
313 subsection (2), and the Florida Contraband Forfeiture Act shall
314 apply regardless of whether or not the violation is a misdemeanor
315 or felony. The element of negligent entrustment is satisfied if

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316 the owner of a motor vehicle entrusts his or her vehicle to a
317 person knowing that such person has previously been cited or
318 charged with any violation of this section, whether or not such
319 charge or citation resulted in a conviction ~~only be applicable if~~
320 ~~the owner of the motor vehicle is the person charged with~~
321 ~~violation of subsection (2).~~

322 (7) ~~(5)~~ This section does not apply to licensed or duly
323 authorized racetracks, drag strips, or other designated areas set
324 aside by proper authorities for such purposes.

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

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