

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 Judiciary Committee

BILL: CS/CS/SB 1998

INTRODUCER: Criminal Justice Committee, Transportation Committee, and Senator Constantine

SUBJECT: Luis Rivera Ortega Street Racing Act

DATE: April 14, 2009 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill amends Florida’s street racing statute by increasing certain fines and driver’s license suspensions for violators. Specifically, the bill reduces the penalty for a first offense but increases the length the violator’s driver’s license may be suspended from one to two years. For a second conviction of the statute within five years, the bill increases the length the violator’s driver’s license may be suspended from two to three years. Additionally, the bill adds a third-degree felony offense if a person is convicted of an unlawful racing violation a third or subsequent time in a five year period.

The bill also increases the length of time a vehicle used in violation of the statute may be impounded from 10 to 30 business days. The bill eliminates two exceptions in which the owner of an impounded vehicle may regain possession of the vehicle prior to the 30-day impound limit.

This act is to be cited as the “Luis Rivera Ortega Street Racing Act.”

This bill substantially amends section 316.19, Florida Statutes.

II. Present Situation:

Over the decades, auto racing has become one of the most popular sports in the country. However, movies like *Rebel Without a Cause* or *The Fast and the Furious* have led to unsanctioned and illegal auto racing that takes place on public roads, often called street racing.¹ Drag racing is a type of illegal street racing and originated in California's Mojave Desert in the early 1930s.² Unlike racetracks, illegal street racing is often done on public roads and encourages spectators to stand at arms-length away from the race. Because of the dangers involved in street racing, many states have enacted laws regulating or prohibiting it.

Florida enacted its street racing law in 1971, now codified in s. 316.191, F.S., titled "Racing on highways."³ Section 316.191(2), F.S., provides that a person may not:

- Drive any motor vehicle, including any motorcycle, in any race,⁴ speed competition or contest, drag race⁵ 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 for violating one of the above provisions is a first-degree misdemeanor.⁶ The statute also requires the imposition of a fine of not less than \$500 and not more than \$1,000, and the Department of Highway Safety and Motor Vehicles (DHSMV or department) may revoke the

¹ See Jeremy Clar, *Chapter 411: Putting the Brakes on the Dangerous Street Racing Phenomenon in California*, 34 MCGEORGE L. REV. 372 (2003).

² Nat'l Hot Rod Ass'n, *NHRA History: Drag Racing's Fast Start*, <http://sportsman.nhra.com/content/about.asp?articleid=3263&zoneid=101> (last visited April 10, 2009).

³ Chapter 71-135, s. 1, Laws of Fla. When the statute was first enacted, it was codified in s. 316.186, F.S. The initial statute provided that "[n]o person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition."

⁴ "Race" is not a defined term in the statute. "Racing" means the use of one or more motor 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 to test the physical stamina or endurance of drivers over long-distance driving routes. Section 316.192(1)(c), F.S.

⁵ "Drag race" is defined as 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. Section 316.192(1)(b), F.S.

⁶ Sections 775.082 and 775.083, F.S., provide that a first-degree misdemeanor is punishable by a term of imprisonment not to exceed one year, a \$1,000 fine, or both.

violator's driver's license for one year, although a "hardship" hearing may be requested pursuant to s. 322.271, F.S.⁷

If the violator commits the unlawful racing violation within five years after the date of a prior unlawful racing violation that resulted in a conviction, the violator still commits a first-degree misdemeanor and must pay a fine of not less than \$500 and not more than \$1,000. However, the violator's driver's license is revoked for two years, and a "hardship" hearing may be requested pursuant to s. 322.271, F.S.⁸

Also, the court must be provided with a copy of the violator's driving record in any case charging a person of a violation of the statute. The statute authorizes a law enforcement officer to immediately arrest violators and take them into custody, and authorizes the court to enter an order of impoundment or immobilization of the motor vehicle as a condition of incarceration or probation.⁹ Section 316.191(4), F.S., 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.

The statute provides that any motor vehicle that was used in unlawful racing may be impounded 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 shall notify DHSMV of the impoundment.¹⁰ Additionally, any motor vehicle used for unlawful racing by a person within five 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.¹¹

The statute specifies that it does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.¹²

In *State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007), the court ruled that s. 316.191, F.S., was unconstitutionally vague because the statutory definition of "racing" could include both lawful and unlawful behavior. For example, the "outgain and outdistance" term used in the definition of racing could encompass passing and accelerating from a stop, both of which are legal activities. However, the definition of racing could also encompass illegal activities such as speeding. The court held that the critical distinction between the lawful and unlawful conduct was the element of competition and, absent such language, s. 316.191, F.S., was facially unconstitutional.¹³

⁷ Section 322.271, F.S., provides the department with the authority to modify a revocation, cancellation, or suspension order. During a hearing, the person whose license has been revoked may show that the revocation causes a serious hardship and precludes the person from carrying out his or her normal business occupation.

⁸ Section 316.191(2)(b), F.S.

⁹ Section 316.191(4), F.S.

¹⁰ Section 316.191(4)(c), F.S.

¹¹ Section 316.191(5), F.S.

¹² Section 316.191(6), F.S.

¹³ *Wells*, 965 So. 2d at 839.

In contrast, a year later the court in *Reaves v. State*, 979 So. 2d 1066 (Fla. 1st DCA 2008), found that s. 316.191, F.S., did include an element of competition, even though the definition of the term “racing” does not mention competition. When reading the related statutory provisions together as a whole, the court found that:

[S]ection 316.191(2)(a)(1) [sic] prohibits drivers from engaging in, among other things, “any race, speed *competition* or *contest*, [or] drag race or acceleration contest.” Moreover, the legislature defined “drag race” as when two vehicles engage “in a *competitive* attempt to outdistance each other.” Reading these provisions together, the statute cannot be applied unless vehicles are “competing” with each other.¹⁴

Accordingly, the court found s. 316.191, F.S., facially constitutional and recognized conflict with the Fourth District Court of Appeal’s decision in *Wells*.

III. Effect of Proposed Changes:

This bill provides that the act may be cited as the “Luis Rivera Ortega Street Racing Act.”¹⁵

This bill amends s. 316.191, F.S., relating to racing on highways. Specifically, the bill amends s. 316.191(2)(a), F.S., to provide that a person operating or in actual physical control of a motor vehicle, including any motorcycle, on any street or highway or public parking lot may not:

- Drive in any race;¹⁶
- Drive in any drag race;¹⁷ or
- Drive in any exhibition of speed or acceleration.¹⁸

The bill also provides that a person may not:

- In any manner participate in, coordinate, facilitate, or collect moneys at any location for any race, drag race, or exhibition;
- Knowingly ride as a passenger in any race, drag race, or exhibition; or
- Purposefully cause the movement of traffic to slow or stop for any such race, drag race, or exhibition.¹⁹

The bill amends the definition of “racing” by using the word “race” and defining it 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

¹⁴ *Reaves*, 979 So. 2d at 1072 (internal citations omitted) (emphasis in original).

¹⁵ In 2007, Luis Rivera Ortega was killed while he was riding his bike and was hit by a car going between 50 and 70 mph in a 35-mph zone. Witnesses said the driver of the car was involved in a street race. See George Diaz, *Deadly, Illicit Racing Needs to be Stopped*, THE ORLANDO SENTINEL, Jan. 23, 2009, at B1; *Man Arrested in Teen’s Street Racing Death*, CENTRAL FLA. NEWS 13, Jan. 17, 2009 (on file with the Senate Committee on Judiciary).

¹⁶ The bill deletes “speed competition or contest.”

¹⁷ The bill deletes “acceleration contest” and “test of physical endurance.”

¹⁸ The bill deletes “for the purpose of making a speed record.”

¹⁹ The terms “competition, contest, test” are deleted from the statute and the bill uses the term “drag racing” instead.

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.” The bill specifies that the race may be prearranged or may occur through a competitive response, which can be interpreted as a challenge to race.

The bill provides that a first violation s. 316.191(2), F.S., is a second-degree misdemeanor,²⁰ rather than a first-degree misdemeanor, and requires the imposition of a fine of not less than \$250 and not more than \$500. The bill increases the length the violator’s driver’s license is revoked from one year to two years for a first conviction, regardless of whether adjudication is withheld. A “hardship” hearing may still be requested pursuant to s. 322.271, F.S.

The bill provides that a person who commits a second violation of the statute within five years of the first violation commits a first-degree misdemeanor and must pay a fine of not less than \$500 and not more than \$1,000. The bill increases the length the violator’s driver’s license is revoked from two years to three years, although a “hardship” hearing may be requested pursuant to s. 322.271, F.S.

The bill creates a new penalty section that provides that a person who commits a third or subsequent violation of the statute within five years after a prior conviction commits a third-degree felony²¹ and must pay a fine of not less than \$2,000 and not more than \$5,000. The bill provides that a person who is convicted of a third offense within five years is subject to a five-year driver’s license suspension. A “hardship” hearing may be requested pursuant to s. 322.271, F.S.

The bill increases the length of time a vehicle may be impounded by law enforcement to a period of 30 business days. The bill also eliminates the requirement that a vehicle may only be impounded following an arrest for unlawful racing if the person arrested is the owner or co-owner of the vehicle.

The bill eliminates the following two circumstances in which a vehicle that has been impounded may be released:

- If the family of the owner of the vehicle has no other means of transportation; or
- If the vehicle impounded is operated solely by the defendant’s employees.

The bill further amends s. 316.191, F.S., to include a severability clause. Specifically, the bill provides 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.

²⁰ A second-degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days, a fine not to exceed \$500, or both. Sections 775.082 and 775.083, F.S.

²¹ A third-degree felony is punishable by a term of imprisonment not to exceed five years, a fine not to exceed \$5,000, or both. Sections 775.082 and 775.083, F.S.

The effective date of the bill is October 1, 2009.

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 will have a fiscal impact on persons who violate s. 316.191, F.S., by increasing fines for violators and increasing the length of time for driver's license suspensions.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 25, 2009, and estimated that this bill will have an insignificant prison bed impact.²²

The bill decreases the minimum fine amount for a first conviction for unlawful racing under s. 316.191, F.S. This appears it could result in a decrease in revenue. However, according to the Department of Highway Safety and Motor Vehicles (DHSMV or department), the bill "may generate additional revenues for local and state governments as a result of the penalties of racing, drag racing or exhibition of speed or acceleration."²³ The department also estimated that it may receive additional reinstatement fees; however, the exact fiscal benefit to the department is unknown.

According to the department, the bill will require programming modifications to the Driver License Software Information Systems, but the cost of this programming will be absorbed by the department.²⁴

²² See Dep't of Corrections, Legislative Affairs, *SB 1998 – Luis Rivera Ortega Street Racing Act – 2009* (Mar. 3, 2009) (on file with the Senate Committee on Judiciary).

²³ Dep't of Highway Safety and Motor Vehicles, *Agency Bill Analysis SB 1998* (Mar. 10, 2009) (on file with the Senate Committee on Judiciary).

²⁴ *Id.*

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.)

CS/CS by Criminal Justice on April 6, 2009:

The committee substitute:

- Provides that a person who commits a third or subsequent violation of racing on highways within five years after a prior conviction for racing on highways commits a third-degree felony, must pay a fine of not less than \$2,000 and not more than \$5,000, and is subject to a five-year driver license suspension; and
- Modifies the definition of “racing” by changing the word “racing” to “race” and providing language in the definition of “race” that indicates competition.

CS by Transportation on March 25, 2009:

The committee substitute:

- Defines the term “race” which was referred to in s. 316.191, F.S., but not specifically defined;
- Clarifies a third or *subsequent* violation within a *three* year period is punishable as a third-degree felony; and
- Changes the effective date to October 1, 2009, to allow sufficient time for implementation to make necessary programming modifications, which addresses a concern made by the Department of Highway Safety and Motor Vehicles.

B. Amendments:

None.