

STORAGE NAME: h1225a.cpcs.doc
DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1225
RELATING TO: Motor Vehicle Racing Contests
SPONSOR(S): Representative Arza
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
(2) TRANSPORTATION
(3) HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

Currently racing or drag racing is punishable as a moving violation. HB 1225 amends section 316.191 to make the offense a first degree misdemeanor, punishable by up to one year in jail . A second or subsequent conviction within five years will be a third degree felony. The bill also requires the Department of Highway Safety & Motor Vehicles to suspend an offender's driver's license for up to one year for a first violation and up to two years for a second or subsequent violation.

The bill also allows a law enforcement officer to impound a vehicle used in a race or a drag race .

Note: It is expected that the sponsor will offer a **strike-everything amendment** which will substantially alter the bill. Under the amendment, the offense of racing or drag racing will be a second degree misdemeanor for a first offense and a first degree misdemeanor for a second offense that occurs within five years. The amendment also provides for the suspension of the driver's license of the offender as well as the imposition of mandatory fines. The amendment also clarifies provisions relating to the impoundment of the offender's vehicle.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill creates misdemeanor and felony offenses based on behavior that is currently treated as a moving violation. The bill also provides for impoundment of a vehicle after an arrest for a violation of the section.

B. PRESENT SITUATION:

Chapter 316 is known as the Florida Uniform Traffic Control Law. Offenses contained within the chapter include both criminal offenses and non-criminal traffic infractions which are classified as either moving violations or nonmoving violations. For example, fleeing or eluding an officer is considered a criminal violation¹, driving at an unlawful speed is considered a moving violation² and having improper window sunscreening material³ is considered a nonmoving violation.

Section 318.18 lists the penalties which are to be imposed for violations of Chapter 316. With certain exceptions, a sixty dollar fine is imposed for all moving violations. s. 318.18(3)(a), F.S.

Section 316.191 currently provides the following:

No 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.

The section also defines the terms "drag race" and "racing" as follows:

"Drag race" is defined as 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.

"Racing" is defined as 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

¹ s. 316.1935, F.S.

² s. 316.183, F.S.

³ s. 316.2956, F.S.

or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

The section contains exceptions for racing in licensed places or other areas set aside by proper authorities for such purposes.

The violation contained in the section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a pedestrian violation or, if the infraction resulted from the operation of a vehicle, as a moving violation.

Careless Driving

The “careless driving” statute⁴ provides as follows:

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

(2) Any person who violates this section shall be cited for a moving violation, punishable as provided in chapter 318.

The offense is considered a moving violation.

Reckless Driving

The “reckless driving” statute⁵ (s. 316.192, F.S.) provides as follows:

Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

The offense is punishable by a fine for a first or second conviction. The offense is a first degree misdemeanor if property damage occurs and a third degree felony if serious bodily injury occurs.

C. EFFECT OF PROPOSED CHANGES:

Criminal Offenses of Racing or Drag Racing

As explained above, section 316.191 currently provides that any person who drives “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” commits a moving violation.

HB 1227 amends this section to include these acts when performed on any highway, roadway or parking lot. Further, the bill makes the offense a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail. The bill also requires the imposition of a fine of not less than \$250 nor more than \$750 and the revocation of the offender’s driver’s license for up to one year.

⁴ Sec. 316.1925, F.S.

⁵ Sec. 316.192, F.S.

A person who commits the offense within five years of a prior violation commits a third degree felony. The bill requires the imposition of a fine of not less than \$500 nor more than \$1,000 and the revocation of the offender's driver's license for two years. The bill also requires the court to obtain from the Department of Highway Safety and Motor Vehicles (DHSMV) a copy of the offender's driving record upon a violation of the section in order to determine if the offender has a prior violation of the section. The bill prohibits a judge from striking a prior conviction in order to avoid sentencing the offender for a felony.

The bill also provides that no person shall in any manner facilitate, aid or abet or participate or be a spectator in any drag race or race "nor shall such person for the purpose of speed competition obstruct or cause in any manner, or place a barricade or obstruction that causes, the movement of traffic to slow or stop" in any such race or drag race. A violation of this section is a second degree misdemeanor punishable by up to sixty days in jail. The bill further provides that when three or more people gather for the purpose of violating this provision, "it shall constitute a breach of the peace" and be punishable as a second degree misdemeanor. See, s. 870.02, F.S.

Minors

The bill provides that when a minor drives a vehicle in a "race" or "drag race", the offense is a second degree misdemeanor rather than a first degree misdemeanor. A second violation is a first degree misdemeanor. The bill also provides that a minor may be ordered to serve detention of up to three days in a secure detention for a first violation (up to fifteen days for a second violation) and to perform 100 hours of community service (not less than 100 nor more than 250 for a second violation). For a second violation, if possible, the community service must be served in a hospital emergency room or "other medical environment that deals on a regular basis with trauma patients and gunshot wounds." The bill provides that the judge may further revoke, suspend, or withhold the issuance of a driver's license of a person less than 18 for one year as an alternative to sentencing the person to:

1. Probation as defined in s. 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.
2. Probation as defined in s. 985.03 or 948.001, commitment to the Department of Juvenile Justice, community control, or incarceration if the person is convicted of such violation as an adult and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

The bill provides that a minor who facilitates, aids or abets, participates or is a spectator to a race or drag race commits a second degree misdemeanor. However, in lieu of the punishment provided for a second degree misdemeanor (jail for up to 60 days), the court may impose a fine of not less than \$100 or more than \$500. Alternatively, the judge may require the minor to perform public service to satisfy the fine at the minimum wage prevailing in the state at the time of sentence. The bill also provides that a second conviction for this offense is a second degree misdemeanor. The minor must be ordered to perform not less than 50 not more than 150 hours of community service. The bill also provides that a judge may revoke, suspend or withhold a minor's driver's license in lieu of other punishment as described above.

Impoundment of Vehicle

The bill provides that when an officer determines that a person was engaged in a drag race or race, the officer may arrest the offender and impound the vehicle used for not less than five days in any police or towing company impound.

The bill also provides that the impounding agency must release the motor vehicle to the registered owner of the vehicle prior to the end of the impoundment period if the vehicle was stolen, if the person who engaged in the race was not authorized to operate the vehicle, if the owner is a rental car agency or "if, prior to the conclusion of the impoundment period, a citation or notice is dismissed, criminal charges are not filed by the state attorney because of a lack of evidence, or the charges are otherwise dismissed by the court." If the vehicle is released prior to the end of the impoundment period, neither the person charged with the violation nor the owner is responsible for towing and storage charges and the motor vehicle may not be sold to satisfy the charges.

A vehicle can only be released if the owner presents a valid driver's license and proof of current vehicle registration or if ordered by a court. An impounded vehicle shall be released to the legal owner of the vehicle on or before the 30th day of impoundment if all of the following conditions are met:

1. The legal owner is a motor vehicle dealer, bank or other licensed financial institution in the state or is a person other than the registered owner who holds a security interest in the vehicle.
2. The legal owner pays all towing and storage fees related to the impoundment of the vehicle. No lien sale processing fees shall be charged to a legal owner who redeems the vehicle on or before the 15th day after impoundment.
3. The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

The bill also provides for reimbursement of the owner for expenses for towing and storage charges by the person who drove the vehicle.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

The bill provides that it is a third degree felony if a person violates this section within five years of a prior violation. The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

The bill creates first and second degree felony offenses for behavior that is currently treated as a moving violation. This may have an indeterminate impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that the Department of Highway Safety and Motor Vehicles revoke the driver's license of a person convicted under the section for one year for a first violation and for two years for a second violation within five years of the first. The bill also permits a law enforcement officer to impound the vehicle of a person convicted under the section for not less than 5 days. These provisions will have a financial impact on a person convicted under the section.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Among other provisions, the bill makes it a first degree misdemeanor to "race". Racing occurs when a person uses a vehicle 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 routes.” This appears to criminalize behavior - attempting to outgain, outdistance or prevent another vehicle from passing - that occurs often in everyday driving.

The bill also makes it a second degree misdemeanor to be a “spectator” to a drag race or race. The term “spectator” is not defined in the section or elsewhere in the chapter. As noted above, a race can occur when one car attempts to outgain another. The bill does not appear to require that the spectator had prior knowledge that the race was about to occur. It is unclear under the bill if a person who observed this driving behavior could be charged with being a “spectator”. Committee staff is not aware of any other criminal offenses that could occur through the mere observance of a criminal act.

The bill allows a law enforcement officer to impound a vehicle used in a race or drag race “for not less than five days”. It is not clear how long the term of impoundment could be or who will set the term of impoundment. Unlike the provision in section 322.34 which authorizes the impoundment of a vehicle after a conviction for driving with a suspended license, the bill only contains a brief mention of any involvement by a judge in the impoundment⁶ and apparently does not require the judge to set a period of impoundment or impose conditions on the impoundment. By contrast, section 316.193 authorizes impoundment of a vehicle for a specified period of time after a first, second or third conviction for DUI, rather than upon an arrest. Also, unlike the provisions contained in section 322.34 and in section 316.193, the bill does not require that the law enforcement agency send notice to any registered owners of the vehicle (other than the offender), any person claiming a lien against the vehicle or any rental car company.

In two paragraphs contained within subsections⁷ relating to a second or subsequent for drag racing, the bill provides that a court may revoke, suspend or withhold issuance of a driver license of a person less than 18 as an alternative to sentencing the person to probation or commitment to DJJ if the person is adjudicated delinquent for such violation and has not previously been convicted delinquent for any criminal offense, regardless of whether adjudication was withheld. It appears that this provision may be misplaced within the bill because by definition, a person who has previously been convicted of a drag racing offense would be ineligible for the alternative sentencing which only applies to offenders who have not previously been convicted of a crime. In other words, as currently placed, the provision apparently only applies to a second violation of the drag racing statute then excludes offenders who have previously been convicted of a criminal offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted a strike everything amendment that is traveling with the bill. The amendment substantially alters the bill. Under the amendment, the offenses or racing and drag racing will be a second degree misdemeanor for a first offense and a first degree misdemeanor for a second offense that occurs within five years (rather than a first degree misdemeanor for a first violation and a third degree felony for a second violation under the bill). The bill also applies to people who “coordinate, facilitate, or collect moneys at any location for any such race, or ride as a passenger in, or purposefully cause the movement or traffic to slow or stop” for any such race, competition, contest, test or exhibition. The amendment also provides for the suspension of the driver’s license of the offender as well as the imposition of mandatory fines. The amendment also clarifies provisions relating to the impoundment of the offender’s vehicle.

⁶ The subsection provides that “any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court.”

⁷ Subsections (6) and (8) of section 316.191.

STORAGE NAME: h1225a.cpcs.doc

DATE: February 21, 2002

PAGE: 8

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer