

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

BILL #: CS/HB 1225, 2ND ENG.

RELATING TO: Motor Vehicle Racing Contests

SPONSOR(S): Council for Healthy Communities and 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 (W/D)
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
- (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.

Previously, "racing" or "drag racing" was punishable as a moving violation. CS/HB 1225 amends section 316.191 to make the offense a second degree misdemeanor, punishable by up to one year in jail . A second or subsequent conviction within five years will be a first degree misdemeanor. The council substitute also requires the Department of Highway Safety & Motor Vehicles to suspend an offender's driver's license for one year for a first violation and for two years for a second or subsequent violation. Further, the council substitute allows a court to impound a vehicle used in a race or a drag race.

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

¹ s. 316.1935, F.S.

² s. 316.183, F.S.

³ s. 316.2956, F.S.

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

CS/HB 1225 amends section 316.191 to provide that⁶:

A person may not drive any vehicle, *including any motorcycle*, 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 *on any highway, roadway, or parking lot*, and no person shall in any manner participate in, *coordinate, facilitate, or collect moneys at any location for any such race; ride as a passenger in; or purposefully cause the movement of traffic to slow or stop for*, any such race, competition, contest, test or exhibition.⁷

⁴ Sec. 316.1925, F.S.

⁵ Sec. 316.192, F.S.

⁶ Additional language is indicated in italics.

⁷ The bill maintains the current exemption for licensed or duly authorized racetracks, drag strips, or other areas set aside by proper authorities for such purposes.

The bill makes this offense a second degree misdemeanor. A second degree misdemeanor is punishable by up to sixty days in county jail. The bill also requires the imposition of a fine of not less than \$250 nor more than \$500 and the revocation of the offender's driver's license one year.

A person who commits the offense within five years of a prior violation commits a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail. The council substitute 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 that the court be provided 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.

Impoundment of Vehicle

The council substitute provides that when an officer determines that a person was engaged in a drag race or race, the officer may arrest the offender. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. The clerk is required to send notice by certified mail to the registered owner of the vehicle (if the registered owner is someone other than the defendant) and to any lienholder. The council substitute requires the impounding agency to release the motor vehicle following conditions established in the DUI statute. The council substitute also provides that all costs and fees must be paid by the owner of the vehicle or the person renting or leasing 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:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

The council substitute creates first and second degree misemeanor 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 council substitute 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 council substitute also permits a court to order the impoundment of a person convicted of drag racing. These provisions will have a financial impact on a person convicted under the section.

D. FISCAL COMMENTS:

The council substitute requires the imposition of a minimum fine upon a conviction for drag racing which may provide for increased revenue.

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 second degree misdemeanor to drive a vehicle in a "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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee Amendments:

Under the original bill, the drag racing offenses prohibited by s. 316.191 were made a first degree misdemeanor, punishable by up to one year in jail . A second or subsequent conviction within five years was made a third degree felony. The original bill also created separate penalties for minors convicted of the offense and allowed a law enforcement officer to impound a vehicle used in a race or a drag race without any involvement by a judge. The Committee on Crime Prevention, Corrections & Safety adopted

a strike everything amendment which substantially altered the bill. Under the amendment, a first offense was made a second degree misdemeanor and a second offense that occurs within five years was made a first degree misdemeanor. The amendment also provided for the suspension of the driver's license of the offender as well as the imposition of mandatory fines. The amendment also substantially modified provisions relating to the impoundment of the offender's vehicle.

The bill, as amended, was withdrawn from the Committee on Transportation. On March 1, 2002, the Council for Healthy Communities made the bill with traveling amendment a council substitute.

Floor Amendments:

The sponsored offered an amendment which the House adopted on 2nd Reading. The amendment removed provisions in the committee substitute which related to suspension of a minor's driver's license for drag racing.

CS/HB 1225 was further amended on the Senate floor to remove a provision which would have allowed a spectator to a drag race to be cited for breach of the peace or unlawful assembly. The House later concurred with the Senate amendment to the bill.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

David De La Paz

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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