

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843

Street Racing

SPONSOR(S): Soto

TIED BILLS:

IDEN./SIM. BILLS: SB 1998

|    | REFERENCE   | ACTION   | ANALYST | STAFF DIRECTOR |
|----|---|----------|---------|----------------|
| 1) | Public Safety & Domestic Security Policy Committee              | 8 Y, 0 N | Padgett | Kramer         |
| 2) | Roads, Bridges & Ports Policy Committee                         |          |         |                |
| 3) | Criminal & Civil Justice Policy Council                         |          |         |                |
| 4) | Full Appropriations Council on General Government & Health Care |          |         |                |
| 5) |   |          |         |                |

SUMMARY ANALYSIS

Criminal Penalties

Currently, a violation of s. 316.191, F.S., racing on highways, is punishable as a first degree misdemeanor and a minimum \$500 fine. A first conviction for racing on highways results in a one year driver license revocation. A second conviction for racing on highways within five years results in a two year driver license revocation.

The bill provides that a first conviction for racing on highways is punishable as a second degree misdemeanor, rather than as a first degree misdemeanor, a minimum \$250 fine, and a two year driver license suspension.

The bill increases the driver license suspension from two years to three years for a second conviction for racing on highways within five years.

The bill adds a third degree felony offense if a person is convicted of racing on highways a third time in a 10 year period. The bill provides a third conviction in a 10 year period is punishable by a minimum \$2,000 fine and a five year driver license suspension.

Impoundment

Currently, a law enforcement officer may impound for 10 business days the motor vehicle of a person arrested for racing on highways if the person arrested is either the owner or coowner of the vehicle. A vehicle that has been impounded may be released to the owner of the vehicle prior to 10 days under certain circumstances if the owner was not operating the vehicle at the time of arrest.

The bill allows a law enforcement officer to impound a motor vehicle if a person is arrested for racing on highways regardless of whether the person arrested is the owner or coowner of the vehicle. The bill increases the length of time a vehicle may be impounded to 30 business days. The bill also eliminates two exceptions in which the owner of an impounded vehicle may regain possession of the vehicle prior to the 30 day impound limit.

The Criminal Justice Impact Conference met on February 25, 2009 and determined that the bill would have an insignificant prison bed impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Currently, s. 316.191, F.S. provides that a person may not

- drive any motor vehicle, including any motorcycle, in any race<sup>1</sup>, speed competition or contest, drag race<sup>2</sup> 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; on any street, highway, or publicly accessible parking lot;
- knowingly 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.<sup>3</sup>

A person who violates any of the above provisions commits a first degree misdemeanor<sup>4</sup> and must pay a fine of not less than \$500 and not more than \$1,000. The person's driver license is also revoked for one year.<sup>5</sup>

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<sup>1</sup> "Racing" is defined to mean the use of one or more motor vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes. Section 316.191(1)(c), F.S.

<sup>2</sup> "Drag race" is defined to mean 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 316.191(1)(b), F.S.

<sup>3</sup> Section 316.191(2)(a), F.S.

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082, 775.083, F.S.

<sup>5</sup> Section 316.191(2)(a), F.S.

A person who violates any of the above provisions a second time within five years of the first conviction is subject to the same criminal penalties listed above, but is subject to a two year driver license revocation.<sup>6</sup>

Section 316.191(4), F.S. provides that a law enforcement officer may impound, for 10 business days, the motor vehicle of any person arrested for a violation of this section if the person arrested is either the owner or coowner of the vehicle.<sup>7</sup> The vehicle may be released from impoundment if the owner was not operating the vehicle at the time of arrest and:

- submits a police report which indicates the vehicle was stolen,
- submits documentation that the owner purchased the vehicle from someone other than the defendant or defendant's agent after the offense was committed,
- the court finds the family of the owner of the vehicle has no other private or public means of transportation, or
- the vehicle impounded is operated solely by the defendant's employees.<sup>8</sup>

### Proposed Changes

The bill provides that a person convicted of racing on highways commits a second degree misdemeanor<sup>9</sup> rather than a first degree misdemeanor and lowers the fine to \$250 and not more than \$500. The bill increases the length of driver license suspension to two years for a first conviction.

The bill provides that a person who commits a second violation of racing on highways within five years 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 of driver license suspension to three years for a second conviction within five years.

The bill provides that a person who commits a third violation of racing on highways within 10 years after a prior conviction for racing on highways commits a third degree felony<sup>10</sup> and must pay a fine of not less than \$2,000 and not more than \$5,000. The bill provides a person who is convicted of a third offense of racing on highways within 10 years is subject to a five year driver license suspension.

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 law enforcement can only impound a vehicle following an arrest for racing on highways if the person is the owner or coowner of the vehicle.

The bill eliminates two circumstances in which a vehicle that has been impounded by law enforcement following an arrest for racing on highways 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.

### B. SECTION DIRECTORY:

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<sup>6</sup> Section 316.191(2)(b), F.S.

<sup>7</sup> Section 316.191(4)(c), F.S.

<sup>8</sup> Section 316.193(6)(e)-(h), F.S.

<sup>9</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Section 775.082, 775.083, F.S.

<sup>10</sup> A third degree felony is punishable by up to five years imprisonment and a maximum \$5,000 fine. Sections 775.082, 775.803, 775.084, F.S.

Section 1: Cites the bill as the "Luis Rivera Ortega Street Racing Act."

Section 2: Amends s. 316.191, F.S., relating to racing on highways.

Section 3: Provides an effective date of October 1, 2009.

## II. 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:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 25, 2009 and determined this bill would have an insignificant prison bed impact.

The bill decreases the minimum fine amount for a first or second conviction for racing on highways. This may result in a decrease in revenue. The bill also adds a \$2,000 minimum penalty for a third conviction of racing on highways within 10 years. The \$2,000 fine is not currently in statute and could result in an increase in revenues, but this may not be enough offset the revenue lost from the decrease in fines for a first or second offense of racing on highways.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill provides a third conviction for racing on highways within a 10 year period is punishable as a third degree felony. The language could be amended to read third or subsequent violation for clarification purposes.
- Section 316.191, F.S. defines the term, "racing," but does not define the term "race." Since the word "race" is specifically used in the statute and "racing" is not, the statute could be amended to make the definition parallel to the statute.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES