

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 97 Street Racing  
**SPONSOR(S):** Roads, Bridges & Ports Policy Committee; Soto and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 768

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Padgett	Cunningham
2)	Roads, Bridges & Ports Policy Committee	14 Y, 0 N, As CS	Brown	Miller
3)	Transportation & Economic Development Appropriations Committee	12 Y, 0 N	Rayman	Creamer
4)	Criminal & Civil Justice Policy Council	13 Y, 0 N	Billmeier	Havlicak
5)				

### SUMMARY ANALYSIS

Section 316.191(2)(a), F.S. provides that a person may not:

- drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race 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.

A person who violates s. 316.191(2)(a), F.S. commits a first degree misdemeanor. In addition, the person shall pay a fine of not less than \$500 and not more than \$1,000, and the person's driver's license is revoked for 1 year. A person who commits a second violation of this section within 5 years after the date of a prior violation that resulted in a conviction commits a first degree misdemeanor, shall pay a fine of not less than \$500 and not more than \$1,000, and the person's driver's license is revoked for 2 years.

CS/HB 97 increases the amount of the fine a person who commits a second violation of 316.191(2), F.S. within 5 years of a prior violation shall pay to not less than \$1,000 and not more than \$3,000.

The bill provides that a person who commits a third or subsequent violation of s. 316.191(2), F.S. within 5 years of the date of a prior violation shall pay a fine of not less than \$2,000 and not more than \$5,000. The bill provides the person's driver's license shall be revoked for 4 years.

The bill has an indeterminate positive fiscal impact on state and local revenues. (See fiscal comments.)

The bill provides an effective date of October 1, 2010.

## 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:

##### Current Law

Section 316.191(2)(a), 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;
- 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.

A person who violates s. 316.191(2)(a), F.S. commits a first degree misdemeanor.<sup>3</sup> In addition, the person shall pay a fine of not less than \$500 and not more than \$1,000, and the person's driver's license is revoked for 1 year.<sup>4</sup> A person who commits a second violation within 5 years after the date of a prior violation that resulted in a conviction<sup>5</sup> for a violation of this section commits a first degree

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<sup>1</sup> "Race" is defined to mean the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in an 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. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of circumstances, can reasonably be interpreted as a challenge to race. 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 vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.

<sup>3</sup> A first degree misdemeanor is punishable by up to one year in jail and a maximum \$1,000 fine. Sections 775.082, and 775.083, F.S.

<sup>4</sup> Section 316.191(2)(a), F.S.

<sup>5</sup> "Conviction" is defined to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. Section 316.191(1)(a), F.S.

misdeemeanor, shall pay a fine of not less than \$500 and not more than \$1,000, and the person's driver's license is revoked for 2 years.<sup>6</sup>

In 2007, the Fourth District Court of Appeal ruled that s. 316.191, F.S., was unconstitutionally vague because the statutory definition of racing could include both lawful and unlawful conduct.<sup>7</sup> For example, both speeding (illegal) and the act of passing a vehicle (legal) could be included under the definition since both acts could be an attempt to outgain or outdistance another motor vehicle. The court held that the critical distinction between the lawful and unlawful conduct was the element of competition or a challenge between two drivers.<sup>8</sup> Absent such language, the court held the s. 316.191, F.S. was unconstitutionally vague on its face.<sup>9</sup>

In the 2009 legislative session, s. 316.191, F.S. was amended to address the constitutional issues raised by the Fourth District Court of Appeal.<sup>10</sup>

#### Proposed Changes

CS/HB 97 increases the amount of the fine a person who commits a second violation of 316.191(2), F.S. within 5 years of a prior violation shall pay to not less than \$1,000 and not more than \$3,000.

The bill provides that a person who commits a third or subsequent violation of s. 316.191(2), F.S. within 5 years of the date of a prior violation shall pay a fine of not less than \$2,000 and not more than \$5,000. The bill also provides in circumstances of a third or subsequent violation of s. 316.191(2), F.S., the person's driver's license shall be revoked for 4 years.

#### B. SECTION DIRECTORY:

Section 1: Provides the bill may be cited as the "Luis Rivera Ortega Street Racing Act."<sup>11</sup>

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

Section 3: Provides an effective date of October 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See fiscal comments.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

See fiscal comments.

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

<sup>7</sup> State v. Wells. 965 So.2d 834 (Fla. 4th DCA 2007).

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See, ch. 2009-85, L.O.F.

<sup>11</sup> On January 1, 2008, Luis Rivera Ortega was killed in Orlando while he was riding his bicycle and was hit by a car going approximately 70 mph in the 35-mph zone. Witnesses said the driver of the car was involved in a street race. See, [http://articles.orlandosentinel.com/2008-03-07/news/diaz07\\_1\\_street-racing-racing-deaths-drag-racing](http://articles.orlandosentinel.com/2008-03-07/news/diaz07_1_street-racing-racing-deaths-drag-racing) (last visited March 30, 2010).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill increases the minimum and maximum fine amounts for second, third, or more convictions for racing on highways within 5 years of any prior conviction of this section. It is possible that the increased fines could result in increased revenue.

The Department of Highway Safety and Motor Vehicles (DHSMV) states 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. The DHSMV may receive additional reinstatement fees, of which the amount is indeterminate. This bill will require programming modifications to the Driver License Software Information Systems of which the cost will be absorbed within existing resources.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

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

On February 17, 2010, the Roads, Bridges, & Ports Policy Committee adopted two amendments. The first amendment clarifies that the enhanced penalty for third offenses also applies to subsequent offenses thereafter. The second amendment revises the effective date of the bill from July 1, 2010 to October 1, 2010. The bill was reported favorably as a committee substitute.

This analysis reflects the committee substitute.