

Bill No. CS for SB 1316

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Campbell moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 11, line 23, delete that line		
15			
16	and insert:		
17	Section 3. Section 316.1939, Florida Statutes, is		
18	created to read:		
19	<u>316.1939 Refusal to submit to testing; penalties.--</u>		
20	<u>(1) Any person who has refused to submit to a chemical</u>		
21	<u>or physical test of his or her breath, blood, or urine, as</u>		
22	<u>described in s. 316.1932, and:</u>		
23	<u>(a) Whom the arresting law enforcement officer had</u>		
24	<u>probable cause to believe was driving or in actual physical</u>		
25	<u>control of a motor vehicle in this state while under the</u>		
26	<u>influence of alcoholic beverages or controlled substances;</u>		
27	<u>(b) Who was placed under lawful arrest for a violation</u>		
28	<u>of s. 316.193, unless such test was requested pursuant to s.</u>		
29	<u>316.1932(1)(c);</u>		
30	<u>(c) Who was informed that if he or she refused to</u>		
31	<u>submit to such test his or her privilege to operate a motor</u>		

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1 vehicle would be suspended for a period of 1 year or, in the
2 case of a second or subsequent refusal, for a period of 18
3 months, and that the refusal to submit to such test is a
4 misdemeanor; and

5 (d) Who, after having been so informed, refused to
6 submit to any such test when requested to do so by a law
7 enforcement officer or correctional officer

8
9 commits a misdemeanor of the first degree and is subject to
10 punishment as provided in s. 775.082 or s. 775.083.

11 (2) The disposition of any administrative proceeding
12 that relates to the suspension of a person's driving privilege
13 does not affect a criminal action under this section.

14 (3) The disposition of a criminal action under this
15 section does not affect any administrative proceeding that
16 relates to the suspension of a person's driving privilege.

17 Section 4. Section 316.1932, Florida Statutes, 1998
18 Supplement, is amended to read:

19 316.1932 Breath, blood, and urine tests for alcohol,
20 chemical substances, or controlled substances; implied
21 consent; refusal ~~right to refuse~~--

22 (1)(a) Any person who accepts the privilege extended
23 by the laws of this state of operating a motor vehicle within
24 this state is, by so operating such vehicle, deemed to have
25 given his or her consent to submit to an approved chemical
26 test or physical test including, but not limited to, an
27 infrared light test of his or her breath for the purpose of
28 determining the alcoholic content of his or her blood or
29 breath, and to a urine test for the purpose of detecting the
30 presence of chemical substances as set forth in s. 877.111 or
31 controlled substances, if the person is lawfully arrested for

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1 any offense allegedly committed while the person was driving
2 or was in actual physical control of a motor vehicle while
3 under the influence of alcoholic beverages, chemical
4 substances, or controlled substances. The chemical or
5 physical breath test must be incidental to a lawful arrest and
6 administered at the request of a law enforcement officer who
7 has reasonable cause to believe such person was driving or was
8 in actual physical control of the motor vehicle within this
9 state while under the influence of alcoholic beverages. The
10 urine test must be incidental to a lawful arrest and
11 administered at a detention facility or any other facility,
12 mobile or otherwise, which is equipped to administer such
13 tests at the request of a law enforcement officer who has
14 reasonable cause to believe such person was driving or was in
15 actual physical control of a motor vehicle within this state
16 while under the influence of controlled substances. The urine
17 test shall be administered at a detention facility or any
18 other facility, mobile or otherwise, which is equipped to
19 administer such tests in a reasonable manner that will ensure
20 the accuracy of the specimen and maintain the privacy of the
21 individual involved. The administration of one type of test
22 does not preclude the administration of another type of test.
23 The person shall be told that his or her failure to submit to
24 any lawful test of his or her breath or urine, or both, is a
25 misdemeanor and will result in the suspension of the person's
26 privilege to operate a motor vehicle for a period of 1 year
27 for a first refusal, or for a period of 18 months if the
28 driving privilege of such person has been previously suspended
29 as a result of a refusal to submit to such a test or tests.
30 The refusal to submit to a chemical or physical breath test or
31 to a urine test upon the request of a law enforcement officer

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1 as provided in this section is admissible into evidence in any
2 criminal proceeding.

3 (b)1. The blood-alcohol level must be based upon grams
4 of alcohol per 100 milliliters of blood. The breath-alcohol
5 level must be based upon grams of alcohol per 210 liters of
6 breath.

7 2. An analysis of a person's breath, in order to be
8 considered valid under this section, must have been performed
9 substantially according to methods approved by the Department
10 of Law Enforcement. For this purpose, the department may
11 approve satisfactory techniques or methods. Any insubstantial
12 differences between approved techniques and actual testing
13 procedures in any individual case do not render the test or
14 test results invalid.

15 (c) Any person who accepts the privilege extended by
16 the laws of this state of operating a motor vehicle within
17 this state is, by operating such vehicle, deemed to have given
18 his or her consent to submit to an approved blood test for the
19 purpose of determining the alcoholic content of the blood or a
20 blood test for the purpose of determining the presence of
21 chemical substances or controlled substances as provided in
22 this section if there is reasonable cause to believe the
23 person was driving or in actual physical control of a motor
24 vehicle while under the influence of alcoholic beverages or
25 chemical or controlled substances and the person appears for
26 treatment at a hospital, clinic, or other medical facility and
27 the administration of a breath or urine test is impractical or
28 impossible. As used in this paragraph, the term "other medical
29 facility" includes an ambulance or other medical emergency
30 vehicle. The blood test shall be performed in a reasonable
31 manner. Any person who is incapable of refusal by reason of

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1 unconsciousness or other mental or physical condition is
2 deemed not to have withdrawn his or her consent to such test.
3 A blood test may be administered whether or not the person is
4 told that his or her failure to submit to such a blood test is
5 a misdemeanor and will result in the suspension of the
6 person's privilege to operate a motor vehicle upon the public
7 highways of this state. Any person who is capable of refusal
8 shall be told that his or her failure to submit to such a
9 blood test is a misdemeanor and will result in the suspension
10 of the person's privilege to operate a motor vehicle for a
11 period of 1 year for a first refusal, or for a period of 18
12 months if the driving privilege of the person has been
13 suspended previously as a result of a refusal to submit to
14 such a test or tests. The refusal to submit to a blood test
15 upon the request of a law enforcement officer is admissible in
16 evidence in any criminal proceeding.

17 (d) If the arresting officer does not request a
18 chemical or physical breath test of the person arrested for
19 any offense allegedly committed while the person was driving
20 or was in actual physical control of a motor vehicle while
21 under the influence of alcoholic beverages or controlled
22 substances, such person may request the arresting officer to
23 have a chemical or physical test made of the arrested person's
24 breath or a test of the urine or blood for the purpose of
25 determining the alcoholic content of the person's blood or
26 breath or the presence of chemical substances or controlled
27 substances; and, if so requested, the arresting officer shall
28 have the test performed.

29 (e)1. By applying for a driver's license and by
30 accepting and using a driver's license, the person holding the
31 driver's license is deemed to have expressed his or her

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1 consent to the provisions of this section.

2 2. A nonresident or any other person driving in a
3 status exempt from the requirements of the driver's license
4 law, by his or her act of driving in such exempt status, is
5 deemed to have expressed his or her consent to the provisions
6 of this section.

7 3. A warning of the consent provision of this section
8 shall be printed above the signature line on each new or
9 renewed driver's license.

10 (f)1. The tests determining the weight of alcohol in
11 the defendant's blood or breath shall be administered at the
12 request of a law enforcement officer substantially in
13 accordance with rules of the Department of Law Enforcement.
14 Such rules must specify precisely the test or tests that are
15 approved by the Department of Law Enforcement for reliability
16 of result and ease of administration, and must provide an
17 approved method of administration which must be followed in
18 all such tests given under this section. However, the failure
19 of a law enforcement officer to request the withdrawal of
20 blood does not affect the admissibility of a test of blood
21 withdrawn for medical purposes.

22 2.a. Only a physician, certified paramedic, registered
23 nurse, licensed practical nurse, other personnel authorized by
24 a hospital to draw blood, or duly licensed clinical laboratory
25 director, supervisor, technologist, or technician, acting at
26 the request of a law enforcement officer, may withdraw blood
27 for the purpose of determining its alcoholic content or the
28 presence of chemical substances or controlled substances
29 therein. However, the failure of a law enforcement officer to
30 request the withdrawal of blood does not affect the
31 admissibility of a test of blood withdrawn for medical

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1 purposes.

2 b. Notwithstanding any provision of law pertaining to
3 the confidentiality of hospital records or other medical
4 records, if a health care provider, who is providing medical
5 care in a health care facility to a person injured in a motor
6 vehicle crash, becomes aware, as a result of any blood test
7 performed in the course of that medical treatment, that the
8 person's blood-alcohol level meets or exceeds the
9 blood-alcohol level specified in s. 316.193(1)(b), the health
10 care provider may notify any law enforcement officer or law
11 enforcement agency. Any such notice must be given within a
12 reasonable time after the health care provider receives the
13 test result. Any such notice shall be used only for the
14 purpose of providing the law enforcement officer with
15 reasonable cause to request the withdrawal of a blood sample
16 pursuant to this section.

17 c. The notice shall consist only of the name of the
18 person being treated, the name of the person who drew the
19 blood, the blood-alcohol level indicated by the test, and the
20 date and time of the administration of the test.

21 d. Nothing contained in s. 395.3025(4), s. 455.667, or
22 any applicable practice act affects the authority to provide
23 notice under this section, and the health care provider is not
24 considered to have breached any duty owed to the person under
25 s. 395.3025(4), s. 455.667, or any applicable practice act by
26 providing notice or failing to provide notice. It shall not be
27 a breach of any ethical, moral, or legal duty for a health
28 care provider to provide notice or fail to provide notice.

29 e. A civil, criminal, or administrative action may not
30 be brought against any person or health care provider
31 participating in good faith in the provision of notice or

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1 failure to provide notice as provided in this section. Any
 2 person or health care provider participating in the provision
 3 of notice or failure to provide notice as provided in this
 4 section shall be immune from any civil or criminal liability
 5 and from any professional disciplinary action with respect to
 6 the provision of notice or failure to provide notice under
 7 this section. Any such participant has the same immunity with
 8 respect to participating in any judicial proceedings resulting
 9 from the notice or failure to provide notice.

10 3. The person tested may, at his or her own expense,
 11 have a physician, registered nurse, other personnel authorized
 12 by a hospital to draw blood, or duly licensed clinical
 13 laboratory director, supervisor, technologist, or technician,
 14 or other person of his or her own choosing administer an
 15 independent test in addition to the test administered at the
 16 direction of the law enforcement officer for the purpose of
 17 determining the amount of alcohol in the person's blood or
 18 breath or the presence of chemical substances or controlled
 19 substances at the time alleged, as shown by chemical analysis
 20 of his or her blood or urine, or by chemical or physical test
 21 of his or her breath. The failure or inability to obtain an
 22 independent test by a person does not preclude the
 23 admissibility in evidence of the test taken at the direction
 24 of the law enforcement officer. The law enforcement officer
 25 shall not interfere with the person's opportunity to obtain
 26 the independent test and shall provide the person with timely
 27 telephone access to secure the test, but the burden is on the
 28 person to arrange and secure the test at the person's own
 29 expense.

30 4. Upon the request of the person tested, full
 31 information concerning the test taken at the direction of the

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1 law enforcement officer shall be made available to the person
2 or his or her attorney.

3 5. A hospital, clinical laboratory, medical clinic, or
4 similar medical institution or physician, certified paramedic,
5 registered nurse, licensed practical nurse, other personnel
6 authorized by a hospital to draw blood, or duly licensed
7 clinical laboratory director, supervisor, technologist, or
8 technician, or other person assisting a law enforcement
9 officer does not incur any civil or criminal liability as a
10 result of the withdrawal or analysis of a blood or urine
11 specimen, or the chemical or physical test of a person's
12 breath pursuant to accepted medical standards when requested
13 by a law enforcement officer, regardless of whether or not the
14 subject resisted administration of the test.

15 (2) The results of any test administered pursuant to
16 this section for the purpose of detecting the presence of any
17 controlled substance shall not be admissible as evidence in a
18 criminal prosecution for the possession of a controlled
19 substance.

20 (3) Notwithstanding any provision of law pertaining to
21 the confidentiality of hospital records or other medical
22 records, information relating to the alcoholic content of the
23 blood or breath or the presence of chemical substances or
24 controlled substances in the blood obtained pursuant to this
25 section shall be released to a court, prosecuting attorney,
26 defense attorney, or law enforcement officer in connection
27 with an alleged violation of s. 316.193 upon request for such
28 information.

29 Section 5. Subsection (1) of section 316.1933, Florida
30 Statutes, 1998 Supplement, is amended to read:

31 316.1933 Blood test for impairment or intoxication in

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1 cases of death or serious bodily injury; right to use
2 reasonable force.--

3 (1) ~~Notwithstanding any recognized ability to refuse~~
4 ~~to submit to the tests provided in s. 316.1932 or any~~
5 ~~recognized power to revoke the implied consent to such tests,~~
6 If a law enforcement officer has probable cause to believe
7 that a motor vehicle driven by or in the actual physical
8 control of a person under the influence of alcoholic
9 beverages, any chemical substances, or any controlled
10 substances has caused the death or serious bodily injury of a
11 human being, such person shall submit, upon the request of a
12 law enforcement officer, to a test of the person's blood for
13 the purpose of determining the alcoholic content thereof or
14 the presence of chemical substances as set forth in s. 877.111
15 or any substance controlled under chapter 893. The law
16 enforcement officer may use reasonable force if necessary to
17 require such person to submit to the administration of the
18 blood test. The blood test shall be performed in a reasonable
19 manner. The term "serious bodily injury" means an injury to
20 any person, including the driver, which consists of a physical
21 condition that creates a substantial risk of death, serious
22 personal disfigurement, or protracted loss or impairment of
23 the function of any bodily member or organ.

24 Section 6. This act shall take effect July 1, 1999,
25 except that sections 3, 4, and 5 of this act shall take effect
26 October 1, 1999.

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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 On page 1, line 20, delete that line

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1 and insert:

2 liability; creating s. 316.1939, F.S.;

3 providing that it is a first-degree misdemeanor

4 for a person to refuse to submit to a chemical

5 test of his or her breath, blood, or urine upon

6 the request of a law enforcement officer who

7 has reasonable cause to believe such person was

8 driving under the influence of alcohol or

9 drugs; requiring warnings concerning the

10 consequences of refusing to take these tests;

11 providing that the prosecution of such offense

12 does not affect an administrative action to

13 suspend a person's driving privilege; providing

14 that an administrative action to suspend a

15 person's driving privilege does not affect

16 prosecution of the offense of refusing to

17 submit to a test for the presence of alcohol or

18 drugs; amending s. 316.1932, F.S.; requiring

19 that a person be informed that it is a crime to

20 fail to submit to a test for the presence of

21 alcohol or drugs upon the request of a law

22 enforcement officer; amending s. 316.1933,

23 F.S.; deleting a reference to the person's

24 ability to refuse to submit to certain tests;

25 providing effective dates.

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