



039484

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/11/2008	.	
	.	
	.	

1 The Committee on Transportation (Constantine and Baker)  
 2 recommended the following **amendment**:

**Senate Amendment (with title amendment)**

Between line(s) 315 and 316

insert:

Section 6. Section 316.191, Florida Statutes, is amended  
to read:

316.191 Racing on highways.--

(1) As used in this section, the term:

(a) "Conviction" means a determination of guilt that is  
the result of a plea or trial, regardless of whether or not  
adjudication is withheld.



039484

15           (b) "Drag race" means the operation of two or more motor  
16 vehicles in competition, arising from a challenge to demonstrate  
17 superiority of a motor vehicle or driver and the acceptance or  
18 competitive response to that challenge, either through a prior  
19 arrangement or in immediate response, from a point side by side  
20 at accelerating speeds in a competitive attempt to outdistance  
21 each other, or the operation of one or more motor vehicles over  
22 a common selected course, from the same point to the same point,  
23 for the purpose of comparing the relative speeds or power of  
24 acceleration of such motor vehicle or motor vehicles within a  
25 certain distance or time limit. A drag race may be prearranged  
26 or may occur through a competitive response to conduct on the  
27 part of one or more drivers which, under the totality of the  
28 circumstances, can reasonably be interpreted as a challenge to  
29 participate in a drag race.

30           (c) "Exhibition of acceleration" means the use of a motor  
31 vehicle in a demonstration to another person or persons,  
32 including, but not limited to, any passenger of such motor  
33 vehicle or the driver or passenger of another motor vehicle, of  
34 the motor vehicle's ability to accelerate by a sudden increase  
35 in speed causing a tire to lose firm traction with, or burn,  
36 smoke, or squeal against, the road surface which results in the  
37 vehicle's continuous acceleration to a final speed that exceeds  
38 the posted or lawful speed limit.

39           (d) "Exhibition of speed" means the use of a motor vehicle  
40 in a demonstration to another person or persons, including, but  
41 not limited to, any passenger of such motor vehicle or the  
42 driver or passenger of another motor vehicle, of the motor

Bill No. SB 1992



039484

43 vehicle's speed or handling capabilities at a speed of at least  
44 double the posted or lawful speed limit or 100 miles per hour,  
45 whichever is less.

46 (e) ~~(e)~~ "Race Racing" means the use of one or more motor  
47 vehicles in competition, arising from a challenge to demonstrate  
48 superiority of a motor vehicle or driver and the acceptance or  
49 competitive response to that challenge, either through a prior  
50 arrangement or in immediate response, in which the competitor  
51 attempts an attempt to outgain or outdistance another motor  
52 vehicle, to prevent another motor vehicle from passing, to  
53 arrive at a given destination ahead of another motor vehicle or  
54 motor vehicles, or to test the physical stamina or endurance of  
55 drivers over long-distance driving routes. A race may be  
56 prearranged or may occur through a competitive response to  
57 conduct on the part of one or more drivers which, under the  
58 totality of the circumstances, can reasonably be interpreted as  
59 a challenge to race.

60 (f) "Spectator" means any person who is knowingly present  
61 at and views an illegal race, drag race, or exhibition when such  
62 presence is the result of an affirmative choice to attend or  
63 participate in the race or exhibition. For purposes of  
64 determining whether or not an individual is a spectator, finders  
65 of fact shall consider the relationship between the racer and  
66 the individual, evidence of gambling or betting on the outcome  
67 of the race, and any other factor that would tend to show  
68 knowing attendance or participation.

Bill No. SB 1992



039484

69           (2) (a) A person operating or in actual physical control of  
70 a motor vehicle, including any motorcycle, on any street or  
71 highway or publicly accessible parking lot may not:

72           1. ~~Drive any motor vehicle, including any motorcycle, in~~  
73 ~~any race;~~

74           2. Drive in any speed competition or contest, drag race;  
75 ~~or acceleration contest, test of physical endurance, or~~

76           3. Drive in any exhibition of speed; or

77           4. Drive in any exhibition of acceleration. ~~or for the~~  
78 ~~purpose of making a speed record on any highway, roadway, or~~  
79 ~~parking lot;~~

80           (b) A person may not:

81           1.2. In any manner knowingly participate in, coordinate,  
82 facilitate, or collect moneys at any location for any such race,  
83 drag race competition, contest, test, or exhibition prohibited  
84 under paragraph (a);

85           2.3. ~~Knowingly~~ ride as a passenger in any such race, drag  
86 race competition, contest, test, or exhibition prohibited under  
87 paragraph (a); or

88           3.4. Knowingly ~~Purposefully~~ cause the movement of traffic  
89 to slow or stop for any such race, drag race competition,  
90 ~~contest, test, or exhibition prohibited under paragraph (a).~~

91           (c) A person may not be a spectator at any such race, drag  
92 race, or exhibition prohibited under paragraph (a). A vehicle  
93 parked or operated in near proximity to any such race, drag  
94 race, or exhibition under circumstances suggesting that the  
95 driver or operator of such vehicle is a spectator creates a



039484

96 rebuttable presumption that the registered owner of the vehicle  
97 is a spectator for all purposes of this section.

98 (3) (a) Any person who violates any provision of ~~this~~  
99 paragraph (2) (a) or paragraph (2) (b) commits a misdemeanor of  
100 the ~~second~~ ~~first~~ degree, punishable as provided in s. 775.082 or  
101 s. 775.083. Any person who violates any provision of ~~this~~  
102 paragraph (2) (a) or paragraph (2) (b) shall pay a fine of not  
103 less than ~~\$250~~ ~~\$500~~ and not more than ~~\$500~~ ~~\$1,000~~, and the court  
104 shall revoke the driver's license of a person so convicted for 2  
105 years regardless of whether or not adjudication is withheld ~~and~~  
106 the department shall revoke the driver license of a person so  
107 convicted for 1 year. A hearing may be requested pursuant to s.  
108 322.271.

109 (b) Any person who violates the provisions of paragraph  
110 (2) (c) commits a noncriminal violation, punishable as provided  
111 in s. 775.083, and must be cited to appear before a county judge  
112 for disposition of the violation. Any person who violates the  
113 provisions of paragraph (2) (c) shall pay a fine of not less than  
114 \$250 and not more than \$500.

115 (c) ~~(b)~~ Any person who violates any provision of paragraph  
116 (2) (a) or paragraph (2) (b) within 5 years after the date of a  
117 prior violation that resulted in a conviction for a violation of  
118 paragraph (2) (a) or paragraph (2) (b) ~~this subsection~~ commits a  
119 misdemeanor of the first degree, punishable as provided in s.  
120 775.082 or s. 775.083, and shall pay a fine of not less than  
121 \$500 and not more than \$1,000. In any second or subsequent  
122 conviction, the court may not withhold adjudication of guilt and  
123 shall revoke the driver's license of that person for 5 years.

Bill No. SB 1992



039484

124 ~~The department shall also revoke the driver license of that~~  
125 ~~person for 2 years.~~ A hearing may be requested pursuant to s.  
126 322.271.

127 (d) Any person who violates any provision of paragraph  
128 (2) (a) or paragraph (2) (b) and by reason of such violation  
129 causes or in any way contributes to causing damage to the  
130 property or person of another commits a misdemeanor of the first  
131 degree, punishable as provided in s. 775.082 or s. 775.083, and  
132 shall pay a fine of not less than \$500 and not more than \$1,000,  
133 and the court shall revoke the driver's license of a person so  
134 convicted for 2 years regardless of whether or not adjudication  
135 is withheld. A hearing may be requested pursuant to s. 322.271.

136 (e) Any person who violates any provision of paragraph  
137 (2) (a) or paragraph (2) (b) and by reason of such violation  
138 causes or in any way contributes to causing serious bodily  
139 injury to another, as defined in s. 316.1933, commits a felony  
140 of the third degree, punishable as provided in s. 775.082, s.  
141 775.083, or s. 775.084, and shall pay a fine of not less than  
142 \$1,000.

143 (f) Any person who violates any provision of paragraph  
144 (2) (a) or paragraph (2) (b) and by reason of such violation  
145 causes or in any way contributes to causing the death of any  
146 human being or unborn quick child commits the crime of racing  
147 manslaughter. In any conviction under this paragraph, the court  
148 may not withhold adjudication of guilt and shall permanently  
149 revoke the driver's license of a person so convicted. A hearing  
150 may be requested pursuant to s. 322.271. A person so convicted  
151 commits:

Bill No. SB 1992



039484

152 1. A felony of the second degree, punishable as provided  
153 in s. 775.082, s. 775.083, or s. 775.084, and shall pay a fine  
154 of not less than \$5,000; or

155 2. A felony of the first degree, punishable as provided in  
156 s. 775.082, s. 775.083, or s. 775.084, and shall pay a fine of  
157 not less than \$5,000, if:

158 a. At the time of the crash, the person knew, or should  
159 have known, that the crash occurred; and

160 b. The person failed to give information and render aid as  
161 required by s. 316.062.

162  
163 For purposes of this paragraph, the definition of the term  
164 "unborn quick child" shall be determined in accordance with the  
165 definition of viable fetus as set forth in s. 782.071. A person  
166 who is convicted of racing manslaughter shall be sentenced to a  
167 mandatory minimum term of imprisonment of 4 years.

168 (4)(e) In any case charging a violation of paragraph  
169 (2)(a) or paragraph (2)(b), the court shall be provided a copy  
170 of the driving record of the person charged and may obtain any  
171 records from any other source to determine if one or more prior  
172 convictions of the person for violation of paragraph (2)(a) or  
173 paragraph (2)(b) have occurred within 5 years prior to the  
174 charged offense; however, at trial, proof of such prior  
175 conviction must be made by certified copy of any prior judgment  
176 of conviction or judgment withholding adjudication of guilt.

177 (5)(a)(3) Whenever a law enforcement officer determines  
178 that a person has committed a violation of paragraph (2)(a) or  
179 paragraph (2)(b) was engaged in a drag race or race, as



039484

180 ~~described in subsection (1)~~, the officer may immediately arrest  
181 and take such person into custody, consistent with  
182 constitutional requirements, regardless of whether or not the  
183 offense was committed in the presence of the officer or whether  
184 the officer's determination is based upon information provided  
185 by anonymous tipsters, citizen informants, or any other source.  
186 The court may enter an order of impoundment or immobilization as  
187 a condition of incarceration or probation. Within 7 business  
188 days after the date the court issues the order of impoundment or  
189 immobilization, the clerk of the court must send notice by  
190 certified mail, return receipt requested, to the registered  
191 owner of the motor vehicle, if the registered owner is a person  
192 other than the defendant, and to each person of record claiming  
193 a lien against the motor vehicle.

194 (b) A law enforcement officer who determines that, in  
195 accordance with the provisions of paragraph (2)(c), the driver  
196 of a motor vehicle parked or operated in near proximity to any  
197 such race, drag race, or exhibition is a spectator, the officer  
198 may file a uniform traffic citation with the clerk of court of  
199 the jurisdiction wherein the offense was committed charging the  
200 registered owner of such vehicle with the proscribed offense.  
201 The clerk shall issue a notice to appear to the registered  
202 owner's last known address maintained by the department and  
203 shall schedule a mandatory court appearance before a county  
204 judge within 30 days after the filing of the citation. The  
205 failure of such person to appear as required or to comply with  
206 any fine imposed under this paragraph shall be subject to the  
207 procedures of s. 318.15 governing failures to appear or to pay.





039484

208 An officer may use any photographic or recording equipment in  
209 determining the tag number or registered owner of any vehicle  
210 pursuant to this paragraph.

211 (c) ~~(a)~~ Notwithstanding any provision of law to the  
212 contrary, the impounding agency shall release a motor vehicle  
213 under the conditions provided in s. 316.193(6) (e) and ~~(f)~~, ~~(g)~~,  
214 ~~and (h)~~, if the owner or agent presents a valid driver license  
215 at the time of pickup of the motor vehicle.

216 (d) ~~(b)~~ All costs and fees for the impoundment or  
217 immobilization, including the cost of notification, must be paid  
218 by the owner of the motor vehicle or, if the motor vehicle is  
219 leased or rented, by the person leasing or renting the motor  
220 vehicle, unless the impoundment or immobilization order is  
221 dismissed. All provisions of s. 713.78 shall apply.

222 (e) ~~(e)~~ Any motor vehicle used in violation of subsection  
223 (2) may be impounded for a period of 30 ~~10~~ business days if a  
224 law enforcement officer has arrested and taken a person into  
225 custody pursuant to this subsection ~~and the person being~~  
226 ~~arrested is the registered owner or coowner of the motor~~  
227 ~~vehicle~~. If the arresting officer finds that the criteria of  
228 this paragraph are met, the officer may immediately impound the  
229 motor vehicle. The law enforcement officer shall notify the  
230 Department of Highway Safety and Motor Vehicles of any  
231 impoundment for violation of this subsection in accordance with  
232 procedures established by the department. The provisions of  
233 paragraphs (c) ~~(a)~~ and (d) ~~(b)~~ shall be applicable to such  
234 impoundment.



039484

235        ~~(6)(4)~~ Any motor vehicle used in violation of subsection  
 236        (2) ~~by any person within 5 years after the date of a prior~~  
 237        ~~conviction of that person for a violation under subsection (2)~~  
 238        may be seized and forfeited as provided by the Florida  
 239        Contraband Forfeiture Act. This subsection shall be applicable  
 240        to all owners of the motor vehicle who are charged with a  
 241        criminal violation of subsection (2) or who negligently  
 242        entrusted their vehicle to the person charged with a criminal  
 243        violation of subsection (2), and the Florida Contraband  
 244        Forfeiture Act applies regardless of whether or not the  
 245        violation is a misdemeanor or felony. The element of negligent  
 246        entrustment is satisfied if the owner of a motor vehicle  
 247        entrusts his or her vehicle to a person knowing that such person  
 248        has previously been cited or charged with any violation of this  
 249        section, whether or not such charge or citation resulted in a  
 250        conviction ~~only be applicable if the owner of the motor vehicle~~  
 251        ~~is the person charged with violation of subsection (2).~~

252        ~~(7)(5)~~ This section does not apply to licensed or duly  
 253        authorized racetracks, drag strips, or other designated areas  
 254        set aside by proper authorities for such purposes.

255        (8) If any provision of this section is deemed  
 256        unconstitutional by any court, such unconstitutional provision  
 257        shall be deemed severable and such determination shall not  
 258        affect the enforceability of all remaining constitutional  
 259        provisions of this section.

260

261        (Redesignate subsequent sections.)

262

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

Bill No. SB 1992



039484

263 And the title is amended as follows:

264 On line(s) 24, after the first semicolon,  
265 insert:

266  
267 amending s. 316.191, F.S.; revising provisions prohibiting  
268 certain speed competitions and exhibitions; revising the  
269 definition of the terms "conviction," "drag race," and  
270 "race"; defining the terms "exhibition of acceleration,"  
271 "exhibition of speed," and "spectator"; prohibiting  
272 driving in any race, drag race, exhibition of speed, or  
273 exhibition of acceleration; prohibiting certain acts in  
274 association with a race, drag race, exhibition of speed,  
275 or exhibition of acceleration; prohibiting being a  
276 spectator at any such race, drag race, or exhibition;  
277 providing for a rebuttable presumption that a person is a  
278 spectator; providing criminal and noncriminal penalties;  
279 providing for revocation of the driver's license upon  
280 conviction; providing for disposition of citation for  
281 being a spectator; providing penalties for a second or  
282 subsequent offense; providing that a violation that causes  
283 or contributes to causing serious bodily injury to another  
284 is a felony of the third degree; providing that a  
285 violation that causes or contributes to causing the death  
286 of any human being or unborn quick child is the crime of  
287 racing manslaughter; providing penalties; providing for a  
288 determination of the definition of the term "unborn quick  
289 child"; requiring that the driving record of a person  
290 charged be provided to the court; providing criteria for

Bill No. SB 1992



039484

291 | arrest; providing procedures for charging the owner of a  
292 | motor vehicle as a spectator if the owner's vehicle is  
293 | parked or operated in near proximity to any such race,  
294 | drag race, or exhibition; providing for citations,  
295 | disposition procedures, and enforcement; providing  
296 | procedures for impoundment or immobilization of a motor  
297 | vehicle under a court order; providing for release from  
298 | impoundment under specified exceptions; requiring costs  
299 | and fees of impoundment to be paid by the owner or lessee  
300 | of the motor vehicle; providing procedures for an  
301 | arresting officer to immediately impound a motor vehicle  
302 | used in a violation; providing for the period of  
303 | impoundment; removing a requirement for impoundment that  
304 | the person being arrested is the registered owner or  
305 | coowner of the motor vehicle; providing for seizure and  
306 | forfeiture of a motor vehicle used in a violation;  
307 | removing provisions for application only after a prior  
308 | conviction and only if the owner of the motor vehicle is  
309 | the person charged with the violation; providing for a  
310 | motor vehicle used in violation to be seized and forfeited  
311 | under the Florida Contraband Forfeiture Act regardless of  
312 | whether the violation is a misdemeanor or felony;  
313 | providing for satisfaction of the element of negligent  
314 | entrustment; providing for severability;