

By Senator Villalobos

37-1151-02

See HB

1                                   A bill to be entitled

2           An act relating to human cloning; creating s.

3           877.27, F.S., the "Human Cloning Prohibition

4           and Responsibility Act of 2002"; providing

5           definitions; providing that it is unlawful to

6           perform or attempt to perform human cloning, to

7           participate or assist in an attempt to perform

8           human cloning, or to ship or receive for any

9           purpose an embryo produced by human cloning or

10          any product derived from such embryo; providing

11          a penalty; providing civil penalties; providing

12          construction with respect to scientific

13          research; providing for enforcement of the act;

14          providing civil remedies; providing limitations

15          on commencement of actions; amending ss. 95.11

16          and 775.15, F.S.; providing periods of

17          limitations on actions and prosecutions for

18          violations of the act; providing an effective

19          date.

20

21 Be It Enacted by the Legislature of the State of Florida:

22

23           Section 1. Section 877.27, Florida Statutes, is

24 created to read:

25           877.27 Human Cloning Prohibition and Responsibility

26 Act.--

27           (1) SHORT TITLE.--This section may be cited as the

28 "Human Cloning Prohibition and Responsibility Act of 2002."

29           (2) DEFINITIONS.--As used in this section, the term:

30           (a) "Human cloning" means human asexual reproduction,

31 accomplished by introducing nuclear material from one or more

1 human somatic cells into a fertilized or unfertilized oocyte  
2 whose nuclear material has been removed or inactivated so as  
3 to produce a living organism, at any state of development,  
4 that is genetically virtually identical to an existing or  
5 previously existing human organism.

6 (b) "Asexual reproduction" means reproduction not  
7 initiated by the union of oocyte and sperm.

8 (c) "Somatic cell" means a diploid cell having a  
9 complete set of chromosomes obtained or derived from a living  
10 or deceased human body at any stage of development.

11 (d) "Oocyte" means an immature egg cell of the human  
12 ovary.

13 (3) HUMAN CLONING PROHIBITED.--It is unlawful for any  
14 person to knowingly:

15 (a) Perform or attempt to perform human cloning.

16 (b) Participate or assist in an attempt to perform  
17 human cloning.

18 (c) Ship or receive for any purpose an embryo produced  
19 by human cloning or any product derived from such embryo.

20 (4) PENALTIES.--

21 (a) Any person who violates any provision of  
22 subsection (3) commits a felony of the second degree,  
23 punishable as provided in s. 775.082, s. 775.083, or s.  
24 775.084, and shall be sentenced to a minimum term of  
25 imprisonment of 10 years.

26 (b) Any person who violates any provision of  
27 subsection (3) and derives pecuniary gain from such violation  
28 shall be subject to a civil penalty of not less than \$1  
29 million and not more than an amount equal to the amount of the  
30 gross pecuniary gain derived from the violation multiplied by  
31 2, if that amount is greater than \$1 million.

1           (5) CONSTRUCTION.--Nothing in this section shall be  
2 construed to restrict areas of scientific research not  
3 specifically prohibited by this section, including research in  
4 the use of nuclear transfer or other cloning techniques to  
5 produce molecules, DNA, cells other than human embryos,  
6 tissues, organs, plants, or animals.

7           (6) CIVIL REMEDIES; ENFORCEMENT.--With respect to any  
8 individual residing in the state who was produced, at any time  
9 and in any jurisdiction, by human cloning which would have  
10 been prohibited under this section if performed in this state  
11 after the effective date of this section:

12           (a) Any person participating in the production by  
13 human cloning of such individual shall be jointly and  
14 severally liable to the individual, the individual's spouse,  
15 dependents, and blood relatives, and to any woman impregnated  
16 with the individual, her spouse, and dependents, for damages  
17 for all physical, emotional, economic, or other injuries  
18 suffered by such persons at any time as a result of the use of  
19 human cloning to produce the individual. This section shall  
20 not give rise to a cause of action for wrongful life, but  
21 shall not exclude any injuries or damages associated with the  
22 continuation of life by the individual who is a product of  
23 human cloning.

24           (b) Any person participating in the production by  
25 human cloning of an individual shall be jointly and severally  
26 liable to the individual and the individual's legal guardian  
27 for support and the costs of guardianship during the  
28 individual's minority, as well as for the costs of any  
29 guardian ad litem to represent the interests of the individual  
30 in the courts of this state in any matter related to the  
31 production or legal status of the individual. The liability

1 created by this paragraph shall not cease at the age of  
2 majority if the individual suffers thereafter from any  
3 congenital defect or other disability related to the  
4 production of the individual by human cloning.

5 (c) All liabilities created under this section shall  
6 survive the death of an individual produced by human cloning.  
7 All persons and entities participating in the production by  
8 human cloning of an individual shall be jointly and severally  
9 liable to the estate of the individual for damages for  
10 injuries resulting from the death of the individual if the  
11 cause of death is related to the production of the individual  
12 by human cloning or any congenital defect in the individual.  
13 If the individual dies intestate leaving no descendants or  
14 other dependents, the cause of action created by this  
15 paragraph shall accrue to the State of Florida. In every such  
16 action for the death of the individual, exemplary damages in  
17 an amount of at least \$100,000 shall be awarded.

18 (d) The rights of recovery created by this section  
19 shall be cumulative to all other legal rights. No liability  
20 created by this section shall be reduced by the payment of any  
21 other liability or by the recovery of damages from any other  
22 source or under any other legal theory.

23 (e) The liabilities created by this section shall be  
24 strictly enforced without regard to negligence or fault. The  
25 status of a person as plaintiff or injured party upon any  
26 cause of action or legal theory shall not negate the status of  
27 such person as defendant or reduce their liability to other  
28 claimants under any cause of action created by this section.  
29 The liabilities created by this section may not be waived by  
30 any individual, nor compromised except as may be implemented  
31 through an enforceable judgment of a court of this state. No

1 affirmative defenses other than lack of jurisdiction, res  
2 judicata, satisfaction of the liability, or expiration of the  
3 statute of limitations period provided in paragraph (i) shall  
4 be allowed in any action brought pursuant to this section.

5 (f) The domicile in the State of Florida of any  
6 injured person having a cause of action under this section, or  
7 the incurring within this state of any damages recoverable  
8 under this section, shall be sufficient to establish the  
9 jurisdiction of the law of this state and its courts for all  
10 related claims arising under this section.

11 (g) Any state agency providing services to any person  
12 entitled to recovery under this section, and any private  
13 insurance company legally obligated to pay medical costs or  
14 other compensation related to conditions associated with  
15 injuries for which recovery is authorized under this act,  
16 shall be subrogated to the rights to recover under this  
17 section of any person receiving such services or benefiting  
18 from such insurance. Such subrogation shall not exceed the  
19 full cost of such services or insurance payments.

20 (h) The Attorney General is hereby empowered to bring  
21 civil actions in this or any appropriate jurisdiction to  
22 enforce the rights and obligations created under this section  
23 on behalf of the state or any resident of the state.

24 (i) An action under this section must be commenced  
25 before the expiration of 5 years after the death of the  
26 individual produced by human cloning, provided that an action  
27 for support and other damages under paragraph (b) must be  
28 commenced within 5 years after the end of the period for which  
29 liability is imposed under paragraph (b).

30 Section 2. Subsection (9) is added to section 95.11,  
31 Florida Statutes, to read:

1           95.11 Limitations other than for the recovery of real  
2 property.--Actions other than for recovery of real property  
3 shall be commenced as follows:

4           (9) FOR ACTIONS RELATED TO HUMAN CLONING.--An action  
5 founded upon a violation of s. 877.27(3) must be commenced as  
6 provided in s. 877.27(6).

7           Section 3. Paragraph (i) is added to subsection (2) of  
8 section 775.15, Florida Statutes, to read:

9           775.15 Time limitations.--

10           (2) Except as otherwise provided in this section,  
11 prosecutions for other offenses are subject to the following  
12 periods of limitation:

13           (i) A prosecution for a felony violation of s.  
14 877.27(3) must be commenced within 4 years after the violation  
15 is reported to law enforcement, or within 21 years after the  
16 birth or destruction of an individual produced by human  
17 cloning, whichever occurs first.

18           Section 4. This act shall take effect upon becoming a  
19 law.

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22           LEGISLATIVE SUMMARY

23  
24           Creates the "Human Cloning Prohibition and Responsibility  
25           Act of 2002." Defines terms for purposes of the act.  
26           Provides that it is unlawful to perform or attempt to  
27           perform human cloning, to participate or assist in an  
28           attempt to perform human cloning, or to ship or receive  
29           for any purpose an embryo produced by human cloning or  
30           any product derived from such embryo. Provides a second  
31           degree felony penalty and a minimum 10-year term of  
          imprisonment for violation. Provides civil penalties.  
          Provides construction with respect to scientific  
          research. Provides civil remedies. Provides limitations  
          for commencement of actions under the act. Provides for  
          enforcement of the act.