

By Senator Wise

5-1852-04

See HB 559

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 2004"; 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 in
9 commerce for any purpose an embryo produced by
10 human cloning or any product derived from such
11 embryo; providing criminal penalties; providing
12 for a minimum mandatory term of imprisonment;
13 providing civil penalties in an amount not less
14 than \$1 million; providing construction with
15 respect to scientific research; providing for
16 enforcement of the act; providing civil
17 remedies; providing limitations on commencement
18 of actions; amending ss. 95.11 and 775.15,
19 F.S.; providing periods of limitations on
20 actions and prosecutions for violations of the
21 act; providing an effective date.

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

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25 Section 1. Section 877.27, Florida Statutes, is
26 created to read:

27 877.27 Human Cloning Prohibition and Responsibility
28 Act.--

29 (1) POPULAR NAME.--This section may be referred to by
30 the popular name "Human Cloning Prohibition and Responsibility
31 Act of 2004."

1 (2) DEFINITIONS.--As used in this section:

2 (a) "Human cloning" means human asexual reproduction,
3 accomplished by introducing nuclear material from one or more
4 human somatic cells into a fertilized or unfertilized oocyte
5 whose nuclear material has been removed or inactivated so as
6 to produce a living organism, at any state of development,
7 that is genetically virtually identical to an existing or
8 previously existing human organism.

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

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

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

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

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

19 (c) Ship or receive for any purpose an embryo produced
20 by human cloning or any product derived from such embryo;
21 however, this paragraph shall not prohibit the act of entering
22 this state after having received any medical treatment,
23 including impregnation with an embryo produced by human
24 cloning, if such treatment was lawfully received in another
25 jurisdiction.

26 (4) PENALTIES.--

27 (a) Any person who violates any provision of
28 subsection (3) commits a felony of the second degree,
29 punishable as provided in s. 775.082, s. 775.083, or s.
30 775.084, and shall be sentenced to a minimum term of
31 imprisonment of 10 years.

1 (b) Any person who violates any provision of
2 subsection (3) and derives pecuniary gain from such violation
3 shall be subject to a civil penalty of not less than \$1
4 million and not more than an amount equal to the amount of the
5 gross pecuniary gain derived from the violation multiplied by
6 2, if that amount is greater than \$1 million.

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

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

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

30 (b) Any person participating in the production by
31 human cloning of an individual shall be jointly and severally

1 liable to the individual and the individual's legal guardian
2 for support and the costs of guardianship during the
3 individual's minority, as well as for the costs of any
4 guardian ad litem to represent the interests of the individual
5 in the courts of this state in any matter related to the
6 production or legal status of the individual. The liability
7 created by this paragraph shall not cease at the age of
8 majority if the individual suffers thereafter from any
9 congenital defect or other disability related to the
10 production of the individual by human cloning.

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

24 (d) The rights of recovery created by this section
25 shall be cumulative to all other legal rights. No liability
26 created by this section shall be reduced by the payment of any
27 other liability or by the recovery of damages from any other
28 source or under any other legal theory.

29 (e) The liabilities created by this section shall be
30 strictly enforced without regard to negligence or fault. The
31 status of a person as plaintiff or injured party upon any

1 cause of action or legal theory shall not negate the status of
2 such person as defendant or reduce such person's liability to
3 other claimants under any cause of action created by this
4 section. The liabilities created by this section may not be
5 waived by any individual or compromised except as may be
6 implemented through an enforceable judgment of a court of this
7 state. No affirmative defenses other than lack of
8 jurisdiction, res judicata, satisfaction of the liability, or
9 expiration of the statute of limitations period provided in
10 paragraph (i) shall be allowed in any action brought pursuant
11 to this section.

12 (f) The domicile in the State of Florida of any
13 injured person having a cause of action under this section, or
14 the incurring within this state of any damages recoverable
15 under this section, shall be sufficient to establish the
16 jurisdiction of the law of this state and its courts for all
17 related claims arising under this section.

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

27 (h) The Attorney General is empowered to bring civil
28 actions in this or any appropriate jurisdiction to enforce the
29 rights and obligations created under this section on behalf of
30 the state or any resident of the state.

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1 (i) An action under this section must be commenced
2 before the expiration of 5 years after the death of the
3 individual produced by human cloning, provided that an action
4 for support and other damages under paragraph (b) must be
5 commenced within 5 years after the end of the period for which
6 liability is imposed under paragraph (b).

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

9 95.11 Limitations other than for the recovery of real
10 property.--Actions other than for recovery of real property
11 shall be commenced as follows:

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

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

17 775.15 Time limitations.--

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

21 (i) A prosecution for a felony violation of s.
22 877.27(3) must be commenced within 4 years after the violation
23 is reported to law enforcement or within 21 years after the
24 birth or destruction of an individual produced by human
25 cloning, whichever occurs first.

26 Section 4. This act shall take effect upon becoming a
27 law.