

HB 0559

2004

A bill to be entitled

An act relating to human cloning; creating s. 877.27, F.S., the "Human Cloning Prohibition and Responsibility Act of 2004"; providing definitions; providing that it is unlawful to perform or attempt to perform human cloning, to participate or assist in an attempt to perform human cloning, or to ship or receive in commerce for any purpose an embryo produced by human cloning or any product derived from such embryo; providing criminal penalties; providing for a minimum mandatory term of imprisonment; providing civil penalties in an amount not less than \$1 million; providing construction with respect to scientific research; providing for enforcement of the act; providing civil remedies; providing limitations on commencement of actions; amending ss. 95.11 and 775.15, F.S.; providing periods of limitations on actions and prosecutions for violations of the act; providing an effective date.

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

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

877.27 Human Cloning Prohibition and Responsibility Act.--

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

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

(a) "Human cloning" means human asexual reproduction, accomplished by introducing nuclear material from one or more

HB 0559

2004

30 human somatic cells into a fertilized or unfertilized oocyte
 31 whose nuclear material has been removed or inactivated so as to
 32 produce a living organism, at any state of development, that is
 33 genetically virtually identical to an existing or previously
 34 existing human organism.

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

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

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

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

43 (b) Participate or assist in an attempt to perform human
 44 cloning.

45 (c) Ship or receive for any purpose an embryo produced by
 46 human cloning or any product derived from such embryo; however,
 47 this paragraph shall not prohibit the act of entering this state
 48 after having received any medical treatment, including
 49 impregnation with an embryo produced by human cloning, if such
 50 treatment was lawfully received in another jurisdiction.

51 (4) PENALTIES.--

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

56 (b) Any person who violates any provision of subsection
 57 (3) and derives pecuniary gain from such violation shall be
 58 subject to a civil penalty of not less than \$1 million and not

HB 0559

2004

59 more than an amount equal to the amount of the gross pecuniary
60 gain derived from the violation multiplied by 2, if that amount
61 is greater than \$1 million.

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

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

73 (a) Any person participating in the production by human
74 cloning of such individual shall be jointly and severally liable
75 to the individual, the individual's spouse, dependents, and
76 blood relatives, and to any woman impregnated with the
77 individual, her spouse, and dependents, for damages for all
78 physical, emotional, economic, or other injuries suffered by
79 such persons at any time as a result of the use of human cloning
80 to produce the individual. This section shall not give rise to a
81 cause of action for wrongful life but shall not exclude any
82 injuries or damages associated with the continuation of life by
83 the individual who is a product of human cloning.

84 (b) Any person participating in the production by human
85 cloning of an individual shall be jointly and severally liable
86 to the individual and the individual's legal guardian for
87 support and the costs of guardianship during the individual's

HB 0559

2004

88 minority, as well as for the costs of any guardian ad litem to
 89 represent the interests of the individual in the courts of this
 90 state in any matter related to the production or legal status of
 91 the individual. The liability created by this paragraph shall
 92 not cease at the age of majority if the individual suffers
 93 thereafter from any congenital defect or other disability
 94 related to the production of the individual by human cloning.

95 (c) All liabilities created under this section shall
 96 survive the death of an individual produced by human cloning.
 97 All persons and entities participating in the production by
 98 human cloning of an individual shall be jointly and severally
 99 liable to the estate of the individual for damages for injuries
 100 resulting from the death of the individual if the cause of death
 101 is related to the production of the individual by human cloning
 102 or any congenital defect in the individual. If the individual
 103 dies intestate leaving no descendants or other dependents, the
 104 cause of action created by this paragraph shall accrue to the
 105 state. In every such action for the death of the individual,
 106 exemplary damages in an amount of at least \$100,000 shall be
 107 awarded.

108 (d) The rights of recovery created by this section shall
 109 be cumulative to all other legal rights. No liability created by
 110 this section shall be reduced by the payment of any other
 111 liability or by the recovery of damages from any other source or
 112 under any other legal theory.

113 (e) The liabilities created by this section shall be
 114 strictly enforced without regard to negligence or fault. The
 115 status of a person as plaintiff or injured party upon any cause
 116 of action or legal theory shall not negate the status of such

HB 0559

2004

117 person as defendant or reduce such person's liability to other
 118 claimants under any cause of action created by this section. The
 119 liabilities created by this section may not be waived by any
 120 individual or compromised except as may be implemented through
 121 an enforceable judgment of a court of this state. No affirmative
 122 defenses other than lack of jurisdiction, res judicata,
 123 satisfaction of the liability, or expiration of the statute of
 124 limitations period provided in paragraph (i) shall be allowed in
 125 any action brought pursuant to this section.

126 (f) The domicile in the State of Florida of any injured
 127 person having a cause of action under this section, or the
 128 incurring within this state of any damages recoverable under
 129 this section, shall be sufficient to establish the jurisdiction
 130 of the law of this state and its courts for all related claims
 131 arising under this section.

132 (g) Any state agency providing services to any person
 133 entitled to recovery under this section, and any private
 134 insurance company legally obligated to pay medical costs or
 135 other compensation related to conditions associated with
 136 injuries for which recovery is authorized under this act, shall
 137 be subrogated to the rights to recover under this section of any
 138 person receiving such services or benefiting from such
 139 insurance. Such subrogation shall not exceed the full cost of
 140 such services or insurance payments.

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

HB 0559

2004

145 (i) An action under this section must be commenced before
 146 the expiration of 5 years after the death of the individual
 147 produced by human cloning, provided that an action for support
 148 and other damages under paragraph (b) must be commenced within 5
 149 years after the end of the period for which liability is imposed
 150 under paragraph (b).

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

153 95.11 Limitations other than for the recovery of real
 154 property.--Actions other than for recovery of real property
 155 shall be commenced as follows:

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

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

161 775.15 Time limitations.--

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

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

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