

By Senator Rodrigues

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1 A bill to be entitled
2 An act relating to unlawful use of DNA; amending s.
3 760.40, F.S.; prohibiting DNA analysis and disclosure
4 of DNA analysis results without authorization;
5 removing criminal penalties; creating s. 817.5655,
6 F.S.; defining terms; prohibiting the collection or
7 retention of a DNA sample of another person without
8 authorization for specified purposes; prohibiting
9 specified DNA analysis and disclosure of DNA analysis
10 results without authorization; providing criminal
11 penalties; providing exceptions; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsection (2) of section 760.40, Florida
17 Statutes, is amended to read:

18 760.40 Genetic testing; authorization ~~informed consent~~;
19 confidentiality; penalties; notice of use of results.—

20 (2)(a) ~~Except for purposes of criminal prosecution, except~~
21 ~~for purposes of determining paternity as provided in s. 409.256~~
22 ~~or s. 742.12(1), and except for purposes of acquiring specimens~~
23 ~~as provided in s. 943.325,~~ DNA analysis may be performed only
24 with authorization, as defined in s. 817.5655 ~~the informed~~
25 ~~consent of the person to be tested~~, and the results of such DNA
26 analysis, whether held by a public or private entity, are the
27 exclusive property of the person tested, are confidential, and
28 may not be disclosed without authorization ~~the consent of the~~
29 ~~person tested~~. Such information held by a public entity is

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30 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
31 of the State Constitution.

32 ~~(b) A person who violates paragraph (a) is guilty of a~~
33 ~~misdemeanor of the first degree, punishable as provided in s.~~
34 ~~775.082 or s. 775.083.~~

35 Section 2. Section 817.5655, Florida Statutes, is created
36 to read:

37 817.5655 Unlawful use of DNA; penalties; exceptions.-

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

39 (a) "Authorization" means the informed and written consent
40 of the person whose DNA is to be extracted or analyzed, or the
41 informed and written consent of the person's legal guardian or
42 authorized representative.

43 (b) "DNA analysis" means the medical and biological
44 examination and analysis of a person to identify the presence
45 and composition of genes in that person's body. The term
46 includes DNA typing and genetic testing.

47 (c) "DNA sample" means any human biological specimen from
48 which DNA can be extracted, or the DNA extracted from such
49 specimen.

50 (2) It is unlawful for a person to willfully, and without
51 authorization, collect or retain another person's DNA sample
52 with the intent to perform DNA analysis. A person who violates
53 this subsection commits a misdemeanor of the first degree,
54 punishable as provided in s. 775.082 or s. 775.083.

55 (3) It is unlawful for a person to willfully, and without
56 authorization, submit another person's DNA sample for DNA
57 analysis or to conduct or procure the conducting of another
58 person's DNA analysis. A person who violates this subsection

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59 commits a felony of the third degree, punishable as provided in
60 s. 775.082, s. 775.083 or s. 775.084.

61 (4) It is unlawful for a person to willfully, and without
62 authorization, disclose another person's DNA analysis results to
63 a third party. A person who violates this subsection commits a
64 felony of the third degree, punishable as provided in s.
65 775.082, s. 775.083 or s. 775.084.

66 (5) Each instance of collection or retention, submission or
67 analysis or disclosure in violation of this section constitutes
68 a separate violation for which a separate penalty is authorized.

69 (6) This section does not apply to a DNA sample, a DNA
70 analysis, or the results of a DNA analysis used for the purposes
71 of:

72 (a) Criminal investigation or prosecution;

73 (b) Determining paternity under s. 409.256 or s. 742.12(1);

74 or

75 (c) Performing any activity authorized under s. 943.325.

76 Section 3. This act shall take effect October 1, 2021.