

By the Committee on Rules; and Senators Rodrigues and Garcia

595-03822-21

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

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

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17           Section 1. This act may be cited as the "Protecting DNA  
18 Privacy Act."

19           Section 2. Subsections (1) and (2) of section 760.40,  
20 Florida Statutes, are amended to read:

21           760.40 Genetic testing; definitions; express informed  
22 consent required; confidentiality; ~~penalties~~; notice of use of  
23 results.—

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

25           (a) "DNA analysis" means the medical and biological  
26 examination and analysis of a person's DNA ~~person~~ to identify  
27 the presence and composition of genes in that person's body. The  
28 term includes DNA typing and genetic testing.

29           (b) "DNA sample" means any human biological specimen from

595-03822-21

20211140c1

30 which DNA can be extracted or the DNA extracted from such  
31 specimen.

32 (c) "Exclusive property" means the right of the person  
33 whose DNA has been extracted or analyzed to exercise control  
34 over his or her DNA sample and any results of his or her DNA  
35 analysis with regard to the collection, use, retention,  
36 maintenance, disclosure, or destruction of such sample or  
37 analysis results.

38 (d) "Express consent" means authorization by the person  
39 whose DNA is to be extracted or analyzed, or such person's legal  
40 guardian or authorized representative, evidenced by an  
41 affirmative action demonstrating an intentional decision, after  
42 the person receives a clear and prominent disclosure regarding  
43 the manner of collection, use, retention, maintenance, or  
44 disclosure of a DNA sample or results of a DNA analysis for a  
45 specified purpose.

46 (2)(a) Except as provided in s. 817.5655, a person or  
47 entity may only perform for purposes of criminal prosecution,  
48 except for purposes of determining paternity as provided in s.  
49 409.256 or s. 742.12(1), and except for purposes of acquiring  
50 specimens as provided in s. 943.325, DNA analysis may be  
51 performed only with express the informed consent. of the person  
52 to be tested, and The results of such DNA analysis, whether held  
53 by a public or private entity, are the exclusive property of the  
54 person tested, are confidential, and may not be disclosed  
55 without express the consent of the person tested. Such  
56 information held by a public entity is exempt from the  
57 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
58 Constitution.

595-03822-21

20211140c1

59 ~~(b) A person who violates paragraph (a) is guilty of a~~  
60 ~~misdemeanor of the first degree, punishable as provided in s.~~  
61 ~~775.082 or s. 775.083.~~

62 Section 3. Section 817.5655, Florida Statutes, is created  
63 to read:

64 817.5655 Unlawful use of DNA; penalties; exceptions.—

65 (1) As used in this section, the terms "DNA analysis," "DNA  
66 sample," and "express consent" have the same meanings as in s.  
67 760.40(1)(a), (b), and (d), respectively.

68 (2) It is unlawful for a person to willfully, and without  
69 express consent, collect or retain another person's DNA sample  
70 with the intent to perform DNA analysis. A person who violates  
71 this subsection commits a misdemeanor of the first degree,  
72 punishable as provided in s. 775.082 or s. 775.083.

73 (3) It is unlawful for a person to willfully, and without  
74 express consent, submit another person's DNA sample for DNA  
75 analysis or conduct or procure the conducting of another  
76 person's DNA analysis. A person who violates this subsection  
77 commits a felony of the third degree, punishable as provided in  
78 s. 775.082, s. 775.083, or s. 775.084.

79 (4) It is unlawful for a person to willfully, and without  
80 express consent, disclose another person's DNA analysis results  
81 to a third party. A person who violates this subsection commits  
82 a felony of the third degree, punishable as provided in s.  
83 775.082, s. 775.083, or 775.084. A person who discloses another  
84 person's DNA analysis results that were previously voluntarily  
85 disclosed by the person whose DNA was analyzed, or such person's  
86 legal guardian or authorized representative, does not violate  
87 this subsection.

595-03822-21

20211140c1

88       (5) It is unlawful for a person to willfully, and without  
89 express consent, sell or otherwise transfer another person's DNA  
90 sample or the results of another person's DNA analysis to a  
91 third party, regardless of whether the DNA sample was originally  
92 collected, retained, or analyzed with express consent. A person  
93 who violates this subsection commits a felony of the second  
94 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
95 775.084.

96       (6) Each instance of collection or retention, submission or  
97 analysis, or disclosure in violation of this section constitutes  
98 a separate violation for which a separate penalty is authorized.

99       (7) This section does not apply to a DNA sample, a DNA  
100 analysis, or the results of a DNA analysis used for the purposes  
101 of:

102       (a) Criminal investigation or prosecution;

103       (b) Complying with a subpoena, summons, or other lawful  
104 court order;

105       (c) Complying with federal law;

106       (d) Medical diagnosis and treatment of a patient when:

107       1. Express consent for clinical laboratory analysis of the  
108 DNA sample was obtained by the health care practitioner who  
109 collected the DNA sample; or

110       2. Performed by a clinical laboratory certified by the  
111 Centers for Medicare and Medicaid Services;

112       (e) The newborn screening program established in s. 383.14;

113       (f) Determining paternity under s. 409.256 or s. 742.12(1);

114 or

115       (g) Performing any activity authorized under s. 943.325.

116       Section 4. This act shall take effect October 1, 2021.