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LEGISLATIVE ACTION

Senate

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House

Senator Rodrigues moved the following:

1 **Senate Substitute for Amendment (481276) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. This act may be cited as the "Protecting DNA
7 Privacy Act."

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

10 760.40 Genetic testing; definitions; express informed
11 consent required; confidentiality; ~~penalties~~; notice of use of



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12 results.-

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

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

18 (b) "DNA sample" means any human biological specimen from
19 which DNA can be extracted or the DNA extracted from such
20 specimen.

21 (c) "Exclusive property" means the right of the person
22 whose DNA has been extracted or analyzed to exercise control
23 over his or her DNA sample and any results of his or her DNA
24 analysis with regard to the collection, use, retention,
25 maintenance, disclosure, or destruction of such sample or
26 analysis results.

27 (d) "Express consent" means authorization by the person
28 whose DNA is to be extracted or analyzed, or such person's legal
29 guardian or authorized representative, evidenced by an
30 affirmative action demonstrating an intentional decision, after
31 the person receives a clear and prominent disclosure regarding
32 the manner of collection, use, retention, maintenance, or
33 disclosure of a DNA sample or results of a DNA analysis for
34 specified purposes. A single express consent may authorize every
35 instance of a specified purpose or use.

36 (2) ~~(a)~~ Except as provided in s. 817.5655, a person or
37 entity may only perform ~~for purposes of criminal prosecution,~~
38 ~~except for purposes of determining paternity as provided in s.~~
39 ~~409.256 or s. 742.12(1), and except for purposes of acquiring~~
40 ~~specimens as provided in s. 943.325,~~ DNA analysis may be



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41 ~~performed only with express the informed consent of the person~~
42 ~~to be tested, and~~ The results of such DNA analysis, whether held
43 by a public or private entity, are the exclusive property of the
44 person tested, are confidential, and may not be disclosed
45 without express the consent of the person tested. Such
46 information held by a public entity is exempt from the
47 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
48 Constitution.

49 ~~(b) A person who violates paragraph (a) is guilty of a~~
50 ~~misdemeanor of the first degree, punishable as provided in s.~~
51 ~~775.082 or s. 775.083.~~

52 Section 3. Section 817.5655, Florida Statutes, is created
53 to read:

54 817.5655 Unlawful use of DNA; penalties; exceptions.-

55 (1) As used in this section, the terms "DNA analysis," "DNA
56 sample," and "express consent" have the same meanings as in s.
57 760.40(1)(a), (b), and (d), respectively.

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

63 (3) It is unlawful for a person to willfully, and without
64 express consent, submit another person's DNA sample for DNA
65 analysis or conduct or procure the conducting of another
66 person's DNA analysis. A person who violates this subsection
67 commits a felony of the third degree, punishable as provided in
68 s. 775.082, s. 775.083, or s. 775.084.

69 (4) It is unlawful for a person to willfully, and without



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70 express consent, disclose another person's DNA analysis results
71 to a third party. A person who violates this subsection commits
72 a felony of the third degree, punishable as provided in s.
73 775.082, s. 775.083, or s. 775.084. A person who discloses
74 another person's DNA analysis results that were previously
75 voluntarily disclosed by the person whose DNA was analyzed, or
76 such person's legal guardian or authorized representative, does
77 not violate this subsection.

78 (5) It is unlawful for a person to willfully, and without
79 express consent, sell or otherwise transfer another person's DNA
80 sample or the results of another person's DNA analysis to a
81 third party, regardless of whether the DNA sample was originally
82 collected, retained, or analyzed with express consent. A person
83 who violates this subsection commits a felony of the second
84 degree, punishable as provided in s. 775.082, s. 775.083, or s.
85 775.084.

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

89 (7) This section and section 760.40 do not apply to a DNA
90 sample, a DNA analysis, or the results of a DNA analysis used
91 for the purposes of:

92 (a) Criminal investigation or prosecution;

93 (b) Complying with a subpoena, summons, or other lawful
94 court order;

95 (c) Complying with federal law;

96 (d) Medical diagnosis, conducting quality assessments,
97 improvement activities, and treatment of a patient when:

98 1. Express consent for clinical laboratory analysis of the



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99 DNA sample was obtained by the health care practitioner who
100 collected the DNA sample; or
101 2. Performed by a clinical laboratory certified by the
102 Centers for Medicare and Medicaid Services;
103 (e) The newborn screening program established in s. 383.14;
104 (f) Determining paternity under s. 409.256 or s. 742.12(1);
105 (g) Performing any activity authorized under s. 943.325; or
106 (h) Conducting research, and designing and preparing such
107 research, subject to the requirements of, and in compliance
108 with, 45 C.F.R. part 46, 21 C.F.R. parts 50 and 56, or 45 C.F.R.
109 parts 160 and 164; or utilizing information that is deidentified
110 consistent with 45 C.F.R. parts 160 and 164 and that is
111 originally collected and maintained for research subject to the
112 requirements of, and in compliance with, 45 C.F.R. part 46, 21
113 C.F.R. parts 50 and 56, or 45 C.F.R. parts 160 and 164.
114 (8) The provisions of this section and s. 760.40 apply only
115 to a DNA sample collected from a person in Florida, and to use,
116 retention, maintenance and disclosure of such person's DNA
117 sample or the results of a DNA analysis after the effective date
118 of this act.

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

120
121 ===== T I T L E A M E N D M E N T =====

122 And the title is amended as follows:

123 Delete everything before the enacting clause
124 and insert:

125 A bill to be entitled
126 An act relating to unlawful use of DNA; providing a
127 short title; amending s. 760.40, F.S.; providing



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128 definitions; prohibiting DNA analysis and disclosure
129 of DNA analysis results without express consent;
130 providing applicability; removing criminal penalties;
131 creating s. 817.5655, F.S.; prohibiting the collection
132 or retention of a DNA sample of another person without
133 express consent for specified purposes; prohibiting
134 specified DNA analysis and disclosure of DNA analysis
135 results without express consent; providing an
136 exception; providing criminal penalties; providing
137 exceptions; providing applicability; providing an
138 effective date.