

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Tomkow offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause 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
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 to identify the

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16 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 or the 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 a person's authorization,
28 evidenced by an affirmative action demonstrating an intentional
29 decision. Such consent may only be obtained in response to a
30 disclosure that clearly and prominently displays or presents
31 information regarding the manner of collection, use, retention,
32 maintenance, or disclosure of a DNA sample or results of a DNA
33 analysis for a specified purpose. Such information must be
34 presented in a format and for a sufficient period of time that
35 would enable a reasonable person to ascertain and understand the
36 information. Express consent may be given by the person whose
37 DNA is to be extracted or analyzed or such person's legal
38 guardian or authorized representative.

39 ~~(2)(a) Except as provided in s. 817.5655 for purposes of~~
40 ~~criminal prosecution, except for purposes of determining~~

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41 ~~paternity as provided in s. 409.256 or s. 742.12(1), and except~~
42 ~~for purposes of acquiring specimens as provided in s. 943.325, a~~
43 ~~person or entity may only perform DNA analysis may be performed~~
44 ~~only with express consent. ~~the informed consent of the person to~~~~
45 ~~be tested, and~~ The results of such DNA analysis, whether held by
46 a public or private entity, are the exclusive property of the
47 person tested, are confidential, and may not be disclosed
48 without express ~~the consent of the person tested~~. Such
49 information held by a public entity is exempt from the
50 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
51 Constitution.

52 ~~(b) A person who violates paragraph (a) is guilty of a~~
53 ~~misdemeanor of the first degree, punishable as provided in s.~~
54 ~~775.082 or s. 775.083.~~

55 Section 3. Section 817.5655, Florida Statutes, is created
56 to read:

57 817.5655 Unlawful use of DNA; penalties; exceptions.-

58 (1) As used in this section, the terms "DNA analysis,"
59 "DNA sample," and "express consent" have the same meaning as
60 provided in s. 760.40(1).

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

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

72 (4) It is unlawful for a person to willfully, and without
73 express consent, disclose another person's DNA analysis results
74 to a third party. A person who violates this subsection commits
75 a felony of the third degree, punishable as provided in s.
76 775.082, s. 775.083 or s. 775.084.

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

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

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

97 1. Express consent for clinical laboratory analysis of
98 the DNA sample was obtained by the physician who collected the
99 DNA sample; or

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

102 (e) The Newborn Screening Program within the Florida
103 Department of Health under s. 383.14;

104 (f) Determining paternity under s. 409.256 or s.
105 742.12(1); or

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

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

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109
110 **T I T L E A M E N D M E N T**

111 Remove lines 3-11 and insert:

112 760.40, F.S.; defining terms; prohibiting DNA analysis and
113 disclosure of DNA analysis results without express consent;

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114 providing applicability; removing criminal penalties; creating
115 s. 817.5655, F.S.; defining terms; prohibiting the collection or
116 retention of a DNA sample of another person without express
117 consent for specified purposes; prohibiting specified DNA
118 analysis and disclosure of DNA analysis results without express
119 consent; providing criminal penalties; providing exceptions;
120 providing an