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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/RS/2R

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04/29/2021 10:56 AM

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Senator Rodrigues moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

760.40 Genetic testing; definitions; express informed  
consent required; confidentiality; ~~penalties~~; notice of use of  
results.-



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

13 (a) "DNA analysis" means the medical and biological

14 examination and analysis of a person's DNA ~~person~~ to identify

15 the presence and composition of genes in that person's body. The

16 term includes DNA typing and genetic testing.

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

18 which DNA can be extracted or the DNA extracted from such

19 specimen.

20 (c) "Exclusive property" means the right of the person

21 whose DNA has been extracted or analyzed to exercise control

22 over his or her DNA sample and any results of his or her DNA

23 analysis with regard to the collection, use, retention,

24 maintenance, disclosure, or destruction of such sample or

25 analysis results.

26 (d) "Express consent" means authorization by the person

27 whose DNA is to be extracted or analyzed, or such person's legal

28 guardian or authorized representative, evidenced by an

29 affirmative action demonstrating an intentional decision, after

30 the person receives a clear and prominent disclosure regarding

31 the manner of collection, use, retention, maintenance, or

32 disclosure of a DNA sample or results of a DNA analysis for a

33 specified purpose.

34 (2) ~~(a)~~ Except as provided in s. 817.5655, a person or

35 entity may only perform ~~for purposes of criminal prosecution,~~

36 ~~except for purposes of determining paternity as provided in s.~~

37 ~~409.256 or s. 742.12(1), and except for purposes of acquiring~~

38 ~~specimens as provided in s. 943.325,~~ DNA analysis may be

39 performed only with express ~~the informed consent.~~ of the person

40 ~~to be tested,~~ and The results of such DNA analysis, whether held



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41 by a public or private entity, are the exclusive property of the  
42 person tested, are confidential, and may not be disclosed  
43 without express the consent of the person tested. Such  
44 information held by a public entity is exempt from the  
45 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
46 Constitution.

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

50 Section 3. Section 817.5655, Florida Statutes, is created  
51 to read:

52 817.5655 Unlawful use of DNA; penalties; exceptions.-

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

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

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

67 (4) It is unlawful for a person to willfully, and without  
68 express consent, disclose another person's DNA analysis results  
69 to a third party. A person who violates this subsection commits



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

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

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

87 (7) This section does not apply to a DNA sample, a DNA  
88 analysis, or the results of a DNA analysis used for the purposes  
89 of:

90 (a) Criminal investigation or prosecution;

91 (b) Complying with a subpoena, summons, or other lawful  
92 court order;

93 (c) Complying with federal law;

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

95 1. Express consent for clinical laboratory analysis of the  
96 DNA sample was obtained by the health care practitioner who  
97 collected the DNA sample; or

98 2. Performed by a clinical laboratory certified by the



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99 Centers for Medicare and Medicaid Services;

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

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

102 or

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

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

105

106 ===== T I T L E A M E N D M E N T =====

107 And the title is amended as follows:

108 Delete everything before the enacting clause

109 and insert:

110 A bill to be entitled

111 An act relating to unlawful use of DNA; providing a

112 short title; amending s. 760.40, F.S.; providing

113 definitions; prohibiting DNA analysis and disclosure

114 of DNA analysis results without express consent;

115 providing applicability; removing criminal penalties;

116 creating s. 817.5655, F.S.; prohibiting the collection

117 or retention of a DNA sample of another person without

118 express consent for specified purposes; prohibiting

119 specified DNA analysis and disclosure of DNA analysis

120 results without express consent; providing an

121 exception; providing criminal penalties; providing

122 exceptions; providing an effective date.