

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 applicability; providing an  
 14          effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

30        (b) "DNA sample" means any human biological specimen from  
31 which DNA can be extracted or the DNA extracted from such  
32 specimen.

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

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

48        (2) ~~(a)~~ Except as provided in s. 817.5655, a person or  
49 entity may only perform ~~for purposes of criminal prosecution,~~  
50 ~~except for purposes of determining paternity as provided in s.~~

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

61 ~~(b) A person who violates paragraph (a) is guilty of a~~  
62 ~~misdemeanor of the first degree, punishable as provided in s.~~  
63 ~~775.082 or s. 775.083.~~

64 Section 3. Section 817.5655, Florida Statutes, is created  
65 to read:

66 817.5655 Unlawful use of DNA; penalties; exceptions.—

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

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

75 (3) It is unlawful for a person to willfully, and without

76 express consent, submit another person's DNA sample for DNA  
77 analysis or conduct or procure the conducting of another  
78 person's DNA analysis. A person who violates this subsection  
79 commits a felony of the third degree, punishable as provided in  
80 s. 775.082, s. 775.083, or s. 775.084.

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

90 (5) It is unlawful for a person to willfully, and without  
91 express consent, sell or otherwise transfer another person's DNA  
92 sample or the results of another person's DNA analysis to a  
93 third party, regardless of whether the DNA sample was originally  
94 collected, retained, or analyzed with express consent. A person  
95 who violates this subsection commits a felony of the second  
96 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
97 775.084.

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

101 authorized.

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

105 (a) Criminal investigation or prosecution;

106 (b) Complying with a subpoena, summons, or other lawful  
107 court order;

108 (c) Complying with federal law;

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

111 1. Express consent for clinical laboratory analysis of the  
112 DNA sample was obtained by the health care practitioner who  
113 collected the DNA sample; or

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

116 (e) The newborn screening program established in s.  
117 383.14;

118 (f) Determining paternity under s. 409.256 or s.  
119 742.12(1);

120 (g) Performing any activity authorized under s. 943.325;  
121 or

122 (h) Conducting research, and designing and preparing such  
123 research, subject to the requirements of, and in compliance  
124 with, 45 C.F.R. part 46, 21 C.F.R. parts 50 and 56, or 45 C.F.R.  
125 parts 160 and 164; or utilizing information that is deidentified

126 consistent with 45 C.F.R. parts 160 and 164 and that is  
127 originally collected and maintained for research subject to the  
128 requirements of, and in compliance with, 45 C.F.R. part 46, 21  
129 C.F.R. parts 50 and 56, or 45 C.F.R. parts 160 and 164.

130 (8) The provisions of this section and s. 760.40 apply  
131 only to a DNA sample collected from a person in Florida, and to  
132 use, retention, maintenance and disclosure of such person's DNA  
133 sample or the results of a DNA analysis after the effective date  
134 of this act.

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