

HB 427

2023

1 A bill to be entitled
2 An act relating to health care authority and consent;
3 amending s. 744.441, F.S.; authorizing certain persons
4 to act on behalf of a ward before a guardian is
5 appointed; amending s. 817.5655, F.S.; prohibiting the
6 sale or transfer of the DNA of another person for
7 purposes of DNA analysis; revising exemptions from
8 prosecution of certain crimes related to the unlawful
9 use of DNA samples, DNA analyses, or the results of
10 DNA analyses; revising applicability; amending s.
11 1014.06, F.S.; authorizing health care practitioners
12 and providers to obtain verbal parental consent for
13 the provision of health care services, medical
14 procedures, and the prescription of medicinal drugs to
15 a minor child under certain circumstances; requiring
16 health care practitioners and providers to document
17 certain information when written parental consent is
18 not obtained; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (2) of section 744.441, Florida
23 Statutes, is amended to read:

24 744.441 Powers of guardian upon court approval.—After
25 obtaining approval of the court pursuant to a petition for

26 authorization to act:

27 (2) A plenary guardian or a limited guardian of a ward may
 28 sign an order not to resuscitate as provided in s. 401.45(3).
 29 When a plenary guardian or a limited guardian of a ward seeks to
 30 obtain approval of the court to sign an order not to
 31 resuscitate, if required by exigent circumstances, the court
 32 must hold a preliminary hearing within 72 hours after the
 33 petition is filed, and:

34 (a) Rule on the relief requested immediately after the
 35 preliminary hearing; or

36 (b) Conduct an evidentiary hearing not later than 4 days
 37 after the preliminary hearing and rule on the relief requested
 38 immediately after the evidentiary hearing.

39
 40 This subsection does not prevent a person with authority under
 41 s. 765.401, to act on behalf of the ward before a guardian is
 42 appointed.

43 Section 2. Subsections (5), (7), and (8) of section
 44 817.5655, Florida Statutes, are amended, and subsection (1) of
 45 that section is republished, to read:

46 817.5655 Unlawful use of DNA; penalties; exceptions.—

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

50 (5) It is unlawful for a person to willfully, and without

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51 | express consent, sell or otherwise transfer another person's DNA
52 | sample for purposes of DNA analysis or the results of another
53 | person's DNA analysis to a third party, regardless of whether
54 | the DNA sample was originally collected, retained, or analyzed
55 | with express consent. A person who violates this subsection
56 | commits a felony of the second degree, punishable as provided in
57 | s. 775.082, s. 775.083, or s. 775.084.

58 | (7) This section and s. 760.40 do not apply to a DNA
59 | sample, a DNA analysis, or the results of a DNA analysis used
60 | for the purposes of:

61 | (a) Criminal investigation or prosecution;

62 | (b) Complying with a subpoena, summons, or other lawful
63 | court order;

64 | (c) Complying with federal law;

65 | (d) Treatment, payment, or health care operations as those
66 | terms are defined in 45 C.F.R. s. 164.501 ~~Medical diagnosis,~~
67 | ~~conducting quality assessments, improvement activities, and~~
68 | ~~treatment of a patient~~ when:

69 | 1. Express consent for clinical laboratory analysis of the
70 | DNA sample was obtained ~~by the health care practitioner who~~
71 | ~~collected the DNA sample;~~ or

72 | 2. Performed by a clinical laboratory certified by the
73 | Centers for Medicare and Medicaid Services;

74 | (e) The newborn screening program established in s.
75 | 383.14;

76 (f) Determining paternity under s. 409.256 or s.
77 742.12(1);

78 (g) Performing any activity authorized under s. 943.325;
79 or

80 (h) Conducting research, and designing and preparing such
81 research, subject to the requirements of, and in compliance
82 with, 45 C.F.R. part 46, 21 C.F.R. parts 50 and 56, or 45 C.F.R.
83 parts 160 and 164; or utilizing information that is deidentified
84 consistent with 45 C.F.R. parts 160 and 164 and that is
85 originally collected and maintained for research subject to the
86 requirements of, and in compliance with, 45 C.F.R. part 46, 21
87 C.F.R. parts 50 and 56, or 45 C.F.R. parts 160 and 164.

88 (8) ~~The provisions of~~ This section and s. 760.40 apply
89 only to the collection, use, analysis, submission, maintenance,
90 or disclosure of a DNA sample collected from a person in this
91 state Florida, and to use, retention, maintenance, and
92 ~~disclosure of such person's DNA sample or the results of a DNA~~
93 ~~analysis~~ after the effective date of this act.

94 Section 3. Subsections (3), (4), and (5) of section
95 1014.06, Florida Statutes, are renumbered as subsections (4),
96 (5), and (6), respectively, subsections (1) and (2) of that
97 section are amended, and a new subsection (3) is added to that
98 section to read:

99 1014.06 Parental consent for health care services.—

100 (1) Except as otherwise provided by law, a health care

101 practitioner, as defined in s. 456.001, or an individual
102 employed by such health care practitioner may not provide or
103 solicit or arrange to provide health care services or prescribe
104 medicinal drugs to a minor child without first obtaining written
105 parental consent or, if the parent is not able to provide
106 written consent, verbal parental consent that is documented by
107 the health care practitioner and witnessed by another health
108 care practitioner at a hospital or surgical center licensed
109 under chapter 395 or a clinical facility exempt from licensure
110 under s. 400.9905(4) (e) and (h).

111 (2) Except as otherwise provided by law or a court order,
112 a provider, as defined in s. 408.803, may not allow a medical
113 procedure to be performed on a minor child in its facility
114 without first obtaining written parental consent or, if the
115 parent is not able to provide written consent, verbal parental
116 consent that is documented by the provider and witnessed by
117 another provider at a hospital or surgical center licensed under
118 chapter 395 or a clinical facility exempt from licensure under
119 s. 400.9905(4) (e) and (h).

120 (3) When written parental consent is not obtained and
121 verbal parental consent is obtained as provided under
122 subsections (1) and (2), the health care practitioner or
123 provider must also document the reason why the parent was unable
124 to provide written parental consent.

125 Section 4. This act shall take effect July 1, 2023.