

ENROLLED

CS/HB 833, Engrossed 2

2021 Legislature

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An act relating to unlawful use of DNA; providing a short title; amending s. 760.40, F.S.; providing definitions; prohibiting DNA analysis and disclosure of DNA analysis results without express consent; providing applicability; removing criminal penalties; creating s. 817.5655, F.S.; prohibiting the collection or retention of a DNA sample of another person without express consent for specified purposes; prohibiting specified DNA analysis and disclosure of DNA analysis results without express consent; providing an exception; providing criminal penalties; providing exceptions; providing applicability; providing an effective date.

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

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.—

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

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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.~~

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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

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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

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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

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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.