

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 an effective date.

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

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

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

21 760.40 Genetic testing; definitions; express ~~informed~~
 22 consent required; confidentiality; ~~penalties~~; notice of use of
 23 results.—

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

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

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

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

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

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

46 ~~(2)(a)~~ Except as provided in s. 817.5655, a person or
47 entity may only perform ~~for purposes of criminal prosecution,~~
48 ~~except for purposes of determining paternity as provided in s.~~
49 ~~409.256 or s. 742.12(1), and except for purposes of acquiring~~
50 ~~specimens as provided in s. 943.325,~~ DNA analysis may be

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

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

62 Section 3. Section 817.5655, Florida Statutes, is created
63 to read:

64 817.5655 Unlawful use of DNA; penalties; exceptions.-

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

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

73 (3) It is unlawful for a person to willfully, and without
74 express consent, submit another person's DNA sample for DNA
75 analysis or conduct or procure the conducting of another

76 person's DNA analysis. A person who violates this subsection
77 commits a felony of the third degree, punishable as provided in
78 s. 775.082, s. 775.083 or s. 775.084.

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

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

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

101 (7) This section does not apply to a DNA sample, a DNA
 102 analysis, or the results of a DNA analysis used for the purposes
 103 of:

104 (a) Criminal investigation or prosecution;

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

107 (c) Complying with federal law;

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

109 1. Express consent for clinical laboratory analysis of the
 110 DNA sample was obtained by the physician who collected the DNA
 111 sample; or

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

114 (e) The newborn screening program established in s.
 115 383.14;

116 (f) Determining paternity under s. 409.256 or s.
 117 742.12(1); or

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

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