

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.