

## CHAPTER 2021-216

### Committee Substitute for House Bill No. 833

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:

(a) “DNA analysis” means the medical and biological examination and analysis of a person’s DNA ~~person~~ to identify the presence and composition of genes in that person’s body. The term includes DNA typing and genetic testing.

(b) “DNA sample” means any human biological specimen from which DNA can be extracted or the DNA extracted from such specimen.

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

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

~~(2)(a) Except as provided in s. 817.5655, a person or entity may only perform for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens as provided in s. 943.325, DNA analysis may be performed only with express the informed consent. of the person to be tested, and The results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without express the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

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

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

817.5655 Unlawful use of DNA; penalties; exceptions.—

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

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

(3) It is unlawful for a person to willfully, and without express consent, submit another person’s DNA sample for DNA analysis or conduct or procure the conducting of another person’s DNA analysis. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

- (a) Criminal investigation or prosecution;
- (b) Complying with a subpoena, summons, or other lawful court order;
- (c) Complying with federal law;
- (d) Medical diagnosis, conducting quality assessments, improvement activities, and treatment of a patient when:

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

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

- (e) The newborn screening program established in s. 383.14;
- (f) Determining paternity under s. 409.256 or s. 742.12(1);
- (g) Performing any activity authorized under s. 943.325; or
- (h) Conducting research, and designing and preparing such research, subject to the requirements of, and in compliance with, 45 C.F.R. part 46, 21 C.F.R. parts 50 and 56, or 45 C.F.R. parts 160 and 164; or utilizing information that is deidentified consistent with 45 C.F.R. parts 160 and 164 and that is originally collected and maintained for research subject to the requirements of, and in compliance with, 45 C.F.R. part 46, 21 C.F.R. parts 50 and 56, or 45 C.F.R. parts 160 and 164.

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

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

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.