Committee on Health Policy

CS/HB 833 — Unlawful Use of DNA

by Judiciary Committee and Rep. Tomkow and others (CS/SB 1140 by Rules Committee and Senators Rodrigues and Garcia)

The bill establishes the "Protecting DNA Privacy Act." The bill establishes four new crimes related to the unlawful use of deoxyribose nucleic acid (DNA). The bill provides that:

- It is a first degree misdemeanor for a person to willfully, and without express consent, collect or retain another person's DNA sample with the intent to perform DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, submit another person's DNA sample for DNA analysis or to conduct or procure the conducting of another person's DNA analysis.
- It is a third degree felony for a person to willfully, and without express consent, disclose another person's DNA analysis results to a third party except that a person who discloses another person's DNA analysis that were previously voluntarily disclosed by the person whose DNA was analyzed, or such person's legal guardian or authorized representative, does not commit the crime.
- It is a second degree felony 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.

The bill specifies that each instance of the above crimes constitutes a separate violation which entails a separate penalty. The bill amends s. 760.40, F.S., which is the current law governing DNA privacy, to define the terms "express consent," "exclusive property," and "DNA sample" and to conform to the changes made by the bill. The definitions established in s. 760.40, F.S., also apply to the newly created s. 817.5655, F.S.

The bill provides exceptions to the crimes established in the bill for:

- Criminal investigations and prosecutions;
- Complying with a subpoena, summons, or other lawful court order;
- Complying with federal law;
- The medical diagnosis and treatment of a patient under certain circumstances;
- The newborn screening program established in s. 383.14, F.S.;
- Determining paternity under ss. 409.256 or 742.12(1), F.S.;
- Performing any activity authorized in s. 943.325, F.S., pertaining to the criminal DNA database; and
- Conducting research pursuant to specified federal requirements.

The bill specifies that its provisions only apply to DNA samples collected in Florida and only to the use, retention, maintenance, and disclosure of DNA samples or analysis results after the bill's effective date.

This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office.

If approved by the Governor, these provisions take effect October 1, 2021.
Vote: Senate 22-18; House 85-28

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