

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1726

SPONSOR: Senator Webster

SUBJECT: Human Cloning

DATE: April 11, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>CF</u>	_____
5.	_____	_____	<u>ACJ</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

This bill creates the Human Cloning Prohibition and Responsibility Act which makes it unlawful to perform, or attempt to perform, human cloning; participate or assist in an attempt to perform human cloning; or ship or receive for any purpose an embryo produced by human cloning or any product derived from such embryo. Criminal and monetary penalties are prescribed for violations of these provisions. The bill provides civil remedies for any individual residing in the state who was produced, at any time and in any jurisdiction, by human cloning.

This bill amends ss. 95.11 and 775.15, F.S., and creates s. 877.27, F.S.

II. Present Situation:

In the Cloning Fact Sheet published by the U.S. Human Genome Project, *cloning* is described as “an umbrella term traditionally used by scientists to describe different processes for duplicating biological material.” These processes range from the replication of genes or cells for study to the creation of genetically identical animals. With the announcement in 1997 that scientists at Scotland’s Roslin Institute had cloned a sheep named Dolly using a cell taken from an adult sheep, the possibility that scientists might be able to clone a human seemed close at hand. In December 2002, the president of the company Clonaid announced that a cloned baby girl had been born in an undisclosed location. The child was not shown to the public, and her parents and the location of her birth were not identified. The Clonaid announcement ultimately was met with public skepticism, but the possibility that children were being cloned increased the likelihood that governments would decide whether, and how, to regulate human cloning.

The possibility of cloning a human raises ethical and political questions. Most of the questions concern the welfare and status of the cloned individual. Early experiments in cloning animals

produced hundreds of animals with deformities that resulted in their early death. One question asked in regard to human cloning is whether humans might be produced with severe deformities that would cause suffering and death. Another questions is who would be socially responsible for the cloned child. A third question is whether a child whose genetic material was an identical copy of another person would be treated as an individual as fully as would a child created through sexual reproduction.

The *Columbia Encyclopedia*, 6th Edition, describes the presumed advantage of sexual reproduction to a species as follows:

Sexual reproduction is of great significance in that, because of the fusion of two separate parental nuclei, the offspring inherit endlessly varied combinations of characteristics that provide a vast testing ground for new variations that may not only improve the species but ensure its survival. This probably explains the dominance of sexual reproduction among higher forms.

While many people generally accept modern agriculture techniques that involve manipulation of genetic material in animals and plants, the above-described natural combinations of genetic material in sexual reproduction has been sacrosanct in human reproduction. The possibility that humans might design the genetic make-up of other humans has led scientific, religious, and political leaders to devote attention to the ethical questions involved in human cloning. An important part of this inquiry involves the very promising field of stem cell research.

Stem cells are cells that have the ability to divide for infinite periods in culture. They give rise to specialized cells. Research involving stem cells shows the possibility of treating diseases and conditions such as Alzheimer's and Parkinson's diseases, spinal cord injury, stroke, burns, heart disease, and arthritis. The possibility that an organ could be grown from stem cells has implications for tremendous changes in organ transplants.

A significant debate about stem cells involves the source of the cells. Human stem cells can be harvested from human embryos (embryonic stem cells) or from the tissue of an adult (adult stem cells). Human embryos are the source for pluripotent stem cells—cells that are capable of giving rise to most tissues of the human organism. The development of embryos for the sole purpose of harvesting the stem cells is considered immoral by many because the embryo is killed.

In November 2001, President Bush created The President's council on Bioethics "to advise the president on issues that may emerge as a consequence of advances in biomedical science and technology" (Executive Order 13237). In particular, the council was authorized to study ethical issues connected with specific technological activities such as embryo and stem cell research. After studying the issue of human cloning, the majority, ten members of the council, voted to ban cloning for the production of children and to place a 4-year moratorium on cloning for biomedical research. The minority, seven members, voted to ban cloning for the production of children and to regulate the use of cloned embryos for research.

While, generally, there is agreement in the scientific community that cloning of humans should not be attempted, there is less agreement about the use of embryos and stem sells for research. On January 18, 2002, The National Academy of Sciences recommended that human reproductive

cloning be legally banned. "Human reproductive cloning should not now be practiced. It is dangerous and likely to fail," Dr. Irving Weissman, the chairman of the panel that made the recommendation, said while presenting the findings at a news conference.

Despite these misgivings, the panel said the issue of human reproductive cloning should be revisited in five years if a medical and scientific review suggests techniques may be safer, and if there is a public consensus that a review is warranted. While the panel called for human cloning to be banned, it said that the ban should not extend to the nuclear transfer technique, or cloning embryos for the purpose of extracting stem cells for the treatment of disease, "because of its considerable potential for developing new medical therapies for life-threatening diseases."

In March 1997, in the first federal policy directive addressing cloning, President Bill Clinton banned the use of federal funds for human cloning research. In August 2001, President George W. Bush announced that he would allow federal funding of research using the 60 existing stem cell lines. Thus federal funds will not pay for stem cell research that involves the destruction of human embryos. There is no federal law banning the use of private funds to clone a human being.

As Congress considers proposed legislation to ban human cloning (H.R. 534), state legislatures are addressing the issue as well. Seven states have passed laws banning the cloning of humans: Arkansas, California, Iowa, Louisiana, North Dakota, Rhode Island, and Virginia. In addition, Michigan prohibits the use of state funds to be used for human cloning except for the purpose of scientific research or cell-based therapies, and Missouri limits the use of state funds for human cloning research.

Chapter 95, F.S., provides for statutes of limitations within which civil actions may be initiated. The courts have recognized the purpose of the statutes of limitations as "to bar claims which have been dormant for a number of years and which have not been enforced by persons entitled to enforcement" (*Employers' Fire Insurance Company v. Continental Insurance Company*, 326 So 2d 177, Fl 1976). Section 95.11, F.S., sets forth the prescribed time frames within which actions that are not for the recovery of real property must be commenced. Actions involving certain intentional torts, including battery and assault, must be commenced within 4 years with the exception of alleged abuse as defined in ss. 39.01, 415.102, or 984.03, or incest as defined in s. 826.04, F.S. For these alleged acts, action may be initiated within the following time frames, whichever occurs later: 7 years after the age of majority; within 4 years after the injured person leaves the dependency of the abuser; or within 4 years from when the injury and the causal relationship between the injury and the abuse were discovered by the injured party.

Section 775.15, F.S., sets forth time limitations (i.e., statutes of limitations) for prosecuting crimes. Statutes of limitations for crimes are statutory creations and do not exist at common law. *State v. McCloud*, 67 So.2d 242 (Fla. 1953). Statutes of limitations are:

Construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by

sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity. *See State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966), citing excerpt from 22 C.J.S., Criminal Law s. 223.

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation.
- For a first or second degree felony violation of s. 794.011, F.S., which includes several different sexual battery offenses, there is no time limitation if the offense is reported to a law enforcement agency within 72 hours after its occurrence. Otherwise, if not reported, the statute of limitations period is four years for prosecuting a first degree felony of sexual battery, and three years for prosecuting a second degree felony of sexual battery. If the victim is under the age of 18 and the offense is not reported within 72 hours of its occurrence, the applicable statute of limitations period does not begin to run until the victim reaches the age of 18.
- For any felony that resulted in injury to a person when the felony arises from the use of a “destructive device,” there is a ten-year limitation.
- For a first degree felony, there is a four-year limitation.
- For any other felony, there is a three-year limitation.

III. Effect of Proposed Changes:

Section 1. Creates s. 877.27, F.S., which may be known as the Human Cloning Prohibition and Responsibility Act of 2003. The bill makes it unlawful to perform, or attempt to perform, human cloning; participate or assist in an attempt to perform human cloning; or ship or receive for any purpose an embryo produced by human cloning or any product derived from such embryo. The bill does not prohibit the act of entering Florida after having received any medical treatment, including impregnation with an embryo produced by human cloning, if the treatment was lawfully received in another jurisdiction.

Violating any of these prohibitions will be a second-degree felony, punishable under ss. 775.082, 775.083, or 775.084, F.S. A person who violates any of these provisions must be sentenced to a minimum 10-year prison term. A person who performed human cloning and derived pecuniary gain from the activity would be subject to a civil penalty of not less than \$1 million and not more than an amount equal to the amount of the gross pecuniary gain multiplied by 2, if the gain was greater than \$1 million.

The bill defines *human cloning*, *asexual reproduction*, and *somatic cell*, as follows:

Human cloning means human asexual reproduction, accomplished by introducing nuclear material from one or more human somatic cells into a fertilized or unfertilized oocyte (i.e., egg) whose nuclear material has been removed or inactivated so as to produce a

living organism, at any state of development, that is genetically virtually identical to an existing or previously existing human organism.

Asexual reproduction means reproduction not initiated by the union of oocyte and sperm.

Somatic cell means a diploid cell having a complete set of chromosomes obtained or derived from a living or deceased human body at any stage of development.

The bill states that this law must not be construed to restrict areas of scientific research not specifically prohibited by the law. The kind of research that would not be prohibited includes research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid (DNA), tissues, organs, plants, animals, or cells other than human embryos.

The bill provides civil remedies for any individual residing in the state who was produced, at any time and in any jurisdiction, by human cloning which would have been prohibited if performed in Florida after the effective date of this bill. Any person who participated in the cloning of the individual would be jointly and severally liable to the individual, the individual's spouse, dependents, and blood relatives, and to any woman who was impregnated with the individual and her spouse and dependents for damages for all physical, emotional, economic, or other injuries resulting from the use of human cloning. The bill specifies that the law does not provide a cause of action for wrongful life, but does not exclude injuries or damages associated with the continuation of life by the individual who is the product of human cloning.

A person who participated in the production of an individual by human cloning would be jointly and severally liable to the individual and the individual's legal guardian for support and the costs of guardianship during the individual's minority, as well as for the costs of a guardian ad litem to represent the interests of the individual in court in matters related to the production or legal status of the individual. This liability would not cease when the individual reached the age of majority if the individual suffered from any congenital defect or other disability related to the production of the individual by human cloning.

After the death of the individual produced by human cloning, the persons and entities participating in the cloning would be jointly and severally liable to the estate of the individual for damages for injuries resulting from the death of the individual if the cause of death is related to the production of the individual by human cloning or any congenital defect in the individual. If the individual died intestate leaving no descendants, the cause of action would accrue to the State of Florida. Exemplary damages of at least \$100,000 would be awarded in every action for the death of an individual.

The rights of recovery created under this bill would be cumulative to all other legal rights. The bill prohibits the reduction of liability because of the payment of any other liability or the recovery of damages from any other source or under any other legal theory. The bill states that the liabilities will be strictly enforced without regard to negligence or fault. The status of a person as plaintiff or injured party upon any cause of action or legal theory will not negate the status of the person as defendant under any cause of action created in this bill. An individual may not waive the liabilities created in this bill, and the liabilities could not be compromised except

through an enforceable judgment of a Florida court. The only allowable defenses in any action brought under this bill would be lack of jurisdiction, res judicata, satisfaction of the liability, or expiration of the statute of limitations provided in the bill. Florida courts will have jurisdiction for claims arising under this bill when an injured person having a cause of action resides in the state or incurred damages within the state. The domicile in Florida of any person having a cause of action under the bill, or the incurring of any damages recoverable under the provisions of the bill, will be sufficient to establish the jurisdiction of Florida law and Florida courts for such claims.

Any state agency providing services to any person entitled to recovery under this bill and any private insurance company legally obligated to pay medical costs will be subrogated to the rights to recover of any person receiving the services or benefiting from the insurance. The subrogation must not exceed the full cost of the services or insurance payments. The Attorney General may bring civil actions to enforce the rights and obligations created by the bill on behalf of the state or any resident of the state. An action must be brought within five years of the death of the individual produced by human cloning or within five years of the end of a period for which liability is imposed (support and costs of guardianship during the individual's minority).

Section 2. Amends s. 95.11, F.S., to add a cross-reference to s. 877.27, F.S., regarding the time limitation for commencing an action.

Section 3. Amends s. 775.15, F.S., relating to periods of limitation for prosecution for offenses, to specify that prosecutions for a felony violation of the prohibition against human cloning in s. 877.27(3), F.S., must be commenced within 4 years after the violation is reported to law enforcement, or within 21 years after the birth or destruction of an individual produced by human cloning, whichever occurs first.

Section 4. Provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A person who participated in the cloning of an individual would be responsible for costs of supporting the individual as provided in the bill. The cost is indeterminate.

C. Government Sector Impact:

The potential number of persons who might be prosecuted under this law is indeterminate. The minimum prison term specified under the bill is 10 years. The civil penalty provided is not less than \$1 million and not more than an amount equal to the gross pecuniary gain derived from the violation multiplied by 2, if that amount is greater than \$1 million.

Section 921.001, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for violation of the prohibitions against human cloning, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.