

1 AN ACT relating to DNA.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "DNA analysis" or "Deoxyribonucleic acid analysis" means the medical*  
7 *and biological examination and analysis of a person's DNA to identify the*  
8 *presence and composition of genes in that person's body, and includes DNA*  
9 *typing and genetic testing;*

10 *(b) "DNA sample" or "Deoxyribonucleic acid sample" means any human*  
11 *biological specimen from which DNA can be extracted or the DNA*  
12 *extracted from such specimen;*

13 *(c) "Exclusive property" means the right of the person whose DNA has been*  
14 *extracted or analyzed to exercise control over his or her DNA sample and*  
15 *any results of his or her DNA analysis with regard to collection, use,*  
16 *retention, maintenance, disclosure, or destruction of the sample or analysis*  
17 *results; and*

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

26 *(2) Except as otherwise provided in this section, a person or entity may only perform*  
27 *DNA analysis with express consent. The results of a DNA analysis, whether held*

1 by a public or private entity, are the exclusive property of the person tested, are  
2 confidential, and may not be disclosed without express consent.

3 (3) It shall be unlawful for a person to willfully, and without express consent:

4 (a) Collect or retain another person's DNA sample with the intent to perform  
5 DNA analysis;

6 (b) Submit another person's DNA sample for DNA analysis or conduct or  
7 procure the conducting of another person's DNA analysis;

8 (c) Disclose another person's DNA analysis results to a third party. A person  
9 who discloses another person's DNA analysis results that were previously  
10 voluntarily disclosed by the person whose DNA was analyzed, or that  
11 person's legal guardian or authorized representative, does not violate this  
12 subsection; or

13 (d) Sell or otherwise transfer another person's DNA sample or the results of  
14 another person's DNA analysis to a third party, regardless of whether the  
15 DNA sample was originally collected, retained, or analyzed with express  
16 consent.

17 (4) (a) Any person who violates subsection (3)(a) of this section shall be guilty of a  
18 Class A misdemeanor.

19 (b) Any person who violates subsection (3)(b) or (c) of this section shall be  
20 guilty of a Class D felony.

21 (c) Any person who violates subsection (3)(d) of this section shall be guilty of a  
22 Class C felony.

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

26 (6) This section does not apply to a DNA sample, a DNA analysis, or the results of a  
27 DNA analysis used for the purposes of:

- 1        (a) Criminal investigation or prosecution, including testing pursuant to KRS  
2                422.285 or 422.287;
- 3        (b) Complying with a subpoena, summons, or other lawful court order;
- 4        (c) Complying with federal law;
- 5        (d) Medical diagnosis, conducting quality assessments, improvement activities,  
6                and treatment of a patient when:
- 7                1. Express consent for clinical laboratory analysis of the DNA sample  
8                        was obtained by the health care practitioner who collected the DNA  
9                        sample; or
- 10                2. Performed by a clinical laboratory certified by the Centers for  
11                        Medicare and Medicaid Services;
- 12        (e) The newborn screening programs established in KRS 214.155, 214.160, and  
13                214.175;
- 14        (f) Determining paternity under KRS 405.430, 406.091, or 620.350;
- 15        (g) Performing any activity authorized under KRS 17.170, 17.175, and 17.510;  
16                or
- 17        (h) Conducting research, and designing and preparing such research, subject  
18                to the requirements of, and in compliance with, 45 C.F.R. pt. 46, 21 C.F.R.  
19                pts. 50 and 56, or 45 C.F.R. pts. 160 and 164; or utilizing information that  
20                is deidentified consistent with 45 C.F.R. pts. 160 and 164 and that is  
21                originally collected and maintained for research subject to the requirements  
22                of, and in compliance with, 45 C.F.R. pt. 46, 21 C.F.R. pts. 50 and 56, or 45  
23                C.F.R. pts. 160 and 164, as may be amended.

24        ➔Section 2. This Act may be cited as the Protecting DNA Privacy Act.