

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 1164
 SPONSOR: Senator Villalobos
 SUBJECT: Human Cloning
 DATE: February 27, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable
2.	Forgas	Johnson	JU	Fav/1 amendment
3.	Cellon	Cannon	CJ	Favorable
4.	_____	_____	APJ	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

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. A minimum 10-year prison term and a civil penalty of not less than \$1 million is 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, and creates s. 877.27, Florida Statutes.

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.

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 question 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*, 5th Edition, describes the presumed advantage of sexual reproduction to a species as follows:

Because of the myriad genes in the nucleus of every parent cell, the probability of two individuals inheriting identical characteristics is almost zero; thus innumerable new variations constantly undergo testing for survival advantages in the individual's environment. The evolutionary flexibility that results from sexuality at some stage of the reproductive cycle seems not only beneficial but necessary in maintaining the adaptability of the species.

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.

In March of 1997, President Bill Clinton banned the use of federal funds for human cloning research. This moratorium currently remains in effect. President Clinton asked the National Bioethics Advisory Commission (NBAC) to address within 90 days the ethical and legal issues surrounding the cloning of human beings. The commission concluded "...at this time it is morally unacceptable for anyone in the public or private sector, whether in research or clinical setting, to attempt to create a child using somatic cell nuclear transfer cloning."

On July 31, 2001, the U.S. House of Representatives voted 265-162 to ban all human cloning in the United States by passage of H.R. 2505, sponsored by Rep. Dave Weldon (R-Fla.), a physician. The bill provides that anyone who clones or attempts to clone a human being, as well as anyone involved in the trafficking of cloned embryos, would face up to 10 years in prison and civil penalties of at least \$1 million. Certain "cloning techniques" would still be allowed, as long as they did not produce human embryos.

In November 2001, researchers at Advanced Cell Technology in Worcester, Massachusetts announced that they had cloned human embryos consisting of four-to-six cells that grew for only a few hours. The embryos were created from a single human cell and a human egg. The announcement was followed by a renewed focus on the ethical and medical questions involved with human cloning.

On January 16, 2002, President George W. Bush named a 17-member panel of philosophers, theologians, attorneys, and medical experts to comprise the newly created President's Council on Bioethics. The council will address issues of human cloning and of experimentation on cloned human embryos.

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 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.”

While 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 cells for research. Stem cells are cells that have the ability to divide for infinite periods in a 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.

The debate about stem cells involves the source of the 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 August 2001, President 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.

As Congress considers proposed legislation to ban human cloning, state legislatures are addressing the issue as well. Four states have passed laws banning the cloning of humans: California, Louisiana, Missouri, and Rhode Island. 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.

III. Effect of Proposed Changes:

Section 1. creates s. 877.27, F.S., 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.

Violating any of these prohibitions will be a second-degree felony, punishable under ss. 775.082, 775.083, or 775.084, F.S. The bill provides that the 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*, *somatic cell*, and *oocyte*, 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 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.

Oocyte means an immature egg cell of the human ovary.

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), cells other than human embryos, tissues, organs, plants, or animals.

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.

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 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 Art. VII, s. 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 Art. III, s. 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 Attorney General is responsible for bringing civil actions on behalf of the state or any resident of the state under the provisions of the bill.

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. The Conference has not yet considered this bill.

VI. Technical Deficiencies:

It should be noted that Amendment #1 removes the definition of the term “oocyte” from the bill, yet the term is used in the definitions of “human cloning” and “asexual reproduction.” These definitions may be important if the bill faces a legal challenge with regard to vagueness.

VII. Related Issues:

The bill does not specify where any civil penalty that is collected as a result of an action brought under the provisions of the bill will be deposited.

VIII. Amendments:

#1 by Judiciary

Removes the definition of the term “oocyte” from the bill.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
