

1 HB494
2 161419-3
3 By Representatives Jones, Merrill, Beckman, Williams (J),
4 Shedd, Weaver, Baker, Wallace, Johnson (K), Collins, Nordgren,
5 Hammon, Tuggle, Sessions, Rich, McClurkin, Greer and Henry
6 RFD: Health
7 First Read: 13-FEB-14

1
2 ENROLLED, An Act,

3 Relating to the Parental Consent Law; to amend
4 Sections 26-21-1 to 26-21-4, inclusive, and Section 26-21-7,
5 Code of Alabama 1975, and to add Section 26-21-6.1 to the Code
6 of Alabama 1975, to require the signature of a parent, legal
7 guardian, or adoptive parent of a minor to a consent form to
8 be signed in the presence of the abortion provider or agents
9 and to be accompanied with specific identification and
10 evidence, and to provide for certain alternative
11 identification and evidence requirements; to require certain
12 documents proving that a minor is emancipated to be certified
13 by the appropriate issuing authority; to prohibit a parent,
14 legal guardian, custodian, or any other person from coercing a
15 minor to have an abortion performed; to provide that the
16 Department of Public Health develop appropriate forms for the
17 consent and emancipation; to provide for certain civil actions
18 including professional disciplinary actions and license
19 suspension; to provide for the right of intervention; to
20 provide for the appointment of a guardian ad litem to
21 represent the interests of the unborn child during certain
22 proceedings; to provide for certain civil actions based on a
23 violation of Title 26, Chapter 21, Code of Alabama 1975; and
24 to provide for certain exemptions from liability for
25 physicians.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 26-21-1 to 26-21-4, inclusive,
3 and Sections 26-21-6 and 26-21-7, Code of Alabama 1975, are
4 amended to read as follows:

5 "§26-21-1.

6 "(a) It is the intent of the Legislature in enacting
7 this parental consent provision to further the important and
8 compelling state interests of: (1) protecting minors against
9 their own immaturity, (2) fostering the family structure and
10 preserving it as a viable social unit, and (3) protecting the
11 rights of parents to rear children who are members of their
12 household.

13 "(b) The Legislature finds as fact that: (1)
14 immature minors often lack the ability to make fully informed
15 choices that take account of both immediate and long-range
16 consequences, (2) the medical, emotional, and psychological
17 consequences of abortion are serious and can be lasting,
18 particularly when the patient is immature, (3) the capacity to
19 become pregnant and the capacity for mature judgment
20 concerning the wisdom of an abortion are not necessarily
21 related, (4) parents ordinarily possess information essential
22 to a physician's exercise of his or her best medical judgment
23 concerning the child, and (5) parents who are aware that their
24 minor daughter has had an abortion may better insure that she
25 receives adequate medical attention after her abortion. The

1 Legislature further finds that parental consultation is
2 usually desirable and in the best interests of the minor.

3 "(c) The Legislature further finds that the United
4 States Supreme Court has held under certain circumstances a
5 minor may seek permission to have an abortion without her
6 parent's consent by petitioning a court. The Legislature
7 enacts a judicial by-pass procedure for the purposes of
8 meeting the Constitutional standard and finds that in order to
9 do substantial justice it is necessary that the Alabama courts
10 be provided guidance in determining appropriate procedure and
11 evidence.

12 "(d) The Legislature further finds the public policy
13 of the State of Alabama is to respect life and provide
14 safeguards to protect life in the criminal, health, and other
15 laws of the State of Alabama; that in respecting and
16 protecting life, there is included the unborn life of a child
17 whose life may be subject to termination before birth by
18 abortion and that when the mother of said unborn life is a
19 minor who seeks an abortion through the judicial by-pass
20 procedure, it is the interest of the State of Alabama to not
21 only establish and protect the rights of the minor mother, but
22 also to protect the state's public policy to protect unborn
23 life; the protection of these interests is done, in part, by
24 requiring judges to make determinations pursuant to the
25 judicial by-pass procedure and to require said judges be

1 provided with sufficient evidence and information upon which
2 they may make informed and proper decisions.

3 "(e) Alabama judges are called upon to make
4 decisions not only respecting the lives of born persons, such
5 as in capital punishment cases, but also respecting the lives
6 of unborn persons, such as in judicial by-pass cases for minor
7 abortions; it is always the Legislature's intent to provide
8 guidance to the Alabama courts on how life may be best
9 protected.

10 "(f) It is not the intent of the Legislature to
11 place an undue burden on the minor's otherwise legal right to
12 make a decision on whether to obtain an abortion of her unborn
13 child; the Legislature's intent is to provide guidance and
14 assistance to minors who find themselves in the unfortunate
15 position of having to make such decisions and to courts who
16 must act in the place of parents in providing an alternative
17 by-pass mode for decision making.

18 "§26-21-2.

19 "For purposes of this chapter, the following
20 definitions shall apply:

21 "(1) MINOR. Any person under the age of 18 years;

22 "(2) EMANCIPATED MINOR. Any minor who is or has been
23 married or has by court order otherwise been legally freed
24 from the care, custody, and control of her parents;

1 "(3) ABORTION. The use or prescription of any
2 instrument, medicine, drug, or any other substance or device
3 with the intent to terminate the pregnancy of a woman known to
4 be pregnant, ~~with intent other than to increase the~~
5 ~~probability of a live birth, to preserve the life or health of~~
6 ~~the child after live birth, or to remove a dead or dying~~
7 ~~unborn child~~ knowledge that the termination by those means
8 will with reasonable likelihood cause the death of the unborn
9 child. Such use or prescription is not an abortion if done
10 with the intent to save the life or preserve the health of an
11 unborn child, remove a dead unborn child, or to deliver the
12 unborn child prematurely in order to preserve the health of
13 both the mother (pregnant woman) and her unborn child. The
14 term "abortion" as used herein does not include a procedure or
15 act to terminate the pregnancy of a woman with an ectopic
16 pregnancy, nor does it include the procedure or act to
17 terminate the pregnancy of a woman where the unborn child has
18 a lethal anomaly. For the purposes of this act a "lethal
19 anomaly" means the child would die at birth, or be stillborn.
20 For purposes of this act, the term "ectopic pregnancy" means
21 any pregnancy resulting from a fertilized egg that was
22 implanted or attached outside the uterus. The term "ectopic
23 pregnancy" also includes a pregnancy resulting from a
24 fertilized egg implanted inside the cornu of the uterus.

1 "(4) MEDICAL EMERGENCY. A condition that, absent an
2 abortion performed before the requirements of this act are
3 met, and based on the applicable standard of care, is likely
4 to result in the death of the pregnant woman or is likely to
5 result in substantial irreversible impairment of a major
6 bodily function.

7 "§26-21-3.

8 "(a) Except as otherwise provided in subsections (b)
9 and ~~(e)~~ (d) of this section and Sections 26-21-4 and 26-21-5
10 hereof, no ~~person~~ physician shall perform an abortion upon an
11 unemancipated minor unless ~~he or she~~ the physician or his or
12 her ~~agent~~ agents first ~~obtains~~ obtain the written consent of
13 either parent or the legal guardian of the minor.

14 "~~(b) If the minor's pregnancy was caused by sexual~~
15 ~~intercourse with the minor's natural father, adoptive father,~~
16 ~~or stepfather or legal guardian, then written notice to the~~
17 ~~minor's mother by certified mail shall be sufficient.~~

18 "~~(c)~~ (b) The ~~person~~ physician who shall perform the
19 abortion or his or her ~~agent~~ agents shall obtain or be
20 provided with the written consent from either parent or legal
21 guardian stating the names of the minor, parent, or legal
22 guardian, that he or she is informed that the minor desires an
23 abortion and does consent to the abortion, the date, and the
24 consent shall be signed by either parent or legal guardian.
25 ~~The unemancipated minor shall verify on the same form, by her~~

~~signature and in the presence of such person who shall perform the abortion or his or her agent, that the signature of the parents, parent, or legal guardian is authentic. The consent shall be kept as a part of the minor's patient file for four years.~~ The signatures of the parents, parent, or legal guardian shall be affixed and the information required in this subsection shall be on a form to be provided by, and shall be written in the presence of, the physician who shall perform the abortion or his or her agents. The parents, parent, or legal guardian shall provide to the physician who shall perform the abortion, or his or her agents, evidence of parentage or legal guardianship. For parents or a parent, there shall also be required a certified birth certificate of the minor identifying the minor and the parents or parent. For a legal guardian or adoptive parent, there shall be required a duly certified court order or other official document naming the legal guardian or adoptive parent as such for the minor. If official photographic personal identification has not been issued to any parents, parent, or legal guardian, other official identification shall be acceptable, provided the parents, parent, or legal guardian affirms in writing on the form herein required under oath, with recognition of criminal penalties, that he or she does not possess any photographic identification and that the alternative personal identification provided is his or her identification. The

1 parent, parents or legal guardian signing the consent shall
2 attest with recognition of criminal penalties that he or she
3 is the parent or legal guardian, has not been deprived of
4 primary custody or joint physical custody of the minor by any
5 court of law, and has not given the child up for adoption or
6 otherwise waived parental rights. If the minor does not have a
7 certified birth certificate, an abortion may be performed only
8 if the physician who shall perform the abortion certifies in
9 writing in the minor's medical record that a medical emergency
10 exists or that there is insufficient time to obtain a
11 certified birth certificate, and provided the minor can
12 provide other government issued identification. The parents,
13 parent, or minor shall obtain a certified birth certificate as
14 soon thereafter as possible and provide a certified copy to
15 the physician who performed the abortion or his or her agents,
16 and if it is not received within 90 days, he or she shall
17 report the failure to the State of Alabama Department of
18 Public Health on a form provided by the department. Any
19 certified document, a photocopy of the personal
20 identification, and any other documentation required by this
21 subsection shall be attached to the completed consent form and
22 shall be kept as a part of the minor's patient file for four
23 years. All signatures required by this amendatory act by the
24 minor, a parent or parents, a legal guardian, physician, or

1 another person shall be attested either by two witnesses, or
2 by a notary public.

3 ~~"(d)~~ (c) If the minor is emancipated, the ~~person~~
4 physician who shall perform the abortion or his or her ~~agent~~
5 agents shall obtain a written ~~statement form~~ stating the name
6 of the emancipated minor, that the minor is emancipated, the
7 type of emancipation, and the date, and the form shall be
8 signed by the emancipated minor. The written ~~statement form~~
9 shall be signed in the presence of the ~~person~~ physician who
10 shall perform the abortion or his or her ~~agent~~ agents and
11 witnessed by ~~him or her~~ the physician or the ~~agent~~ agents. The
12 emancipated minor shall also provide a license or certificate
13 of marriage, judgment, or decree of divorce, order of
14 emancipation or relieving her of the disabilities of nonage,
15 or other court document evidencing her marriage, divorce, or
16 emancipation. Any such document shall be a copy of the
17 original, duly certified by the appropriate court. ~~A copy of~~
18 ~~any such~~ Such certified document shall be attached to the
19 written ~~statement form~~ and kept as a part of the minor's
20 patient file for four years.

21 ~~"(e)~~ (d) A minor, including a ward of the state, who
22 elects not to seek or does not or cannot for any reason,
23 including unavailability or refusal by either or both parents
24 or legal guardian, obtain consent from either of her parents
25 or legal guardian under this section, may petition, on her own

1 behalf, the juvenile court, or court of equal standing, in the
2 county in which the minor resides or in the county in which
3 the abortion is to be performed for a waiver of the consent
4 requirement of this section pursuant to the procedure of
5 Section 26-21-4.

6 "(e) A parent, legal guardian, custodian, or any
7 other person, shall not coerce a minor to have an abortion
8 performed.

9 "(f) The Department of Public Health shall propose
10 within 90 days of the effective date of this act, the forms
11 required in subsections (b) and (c).

12 "§26-21-4.

13 "(a) A minor who elects not to seek or does not or
14 cannot for any reason, obtain consent from either of her
15 parents or legal guardian, may petition, on her own behalf,
16 the juvenile court, or the court of equal standing, in the
17 county in which the minor resides or in the county in which
18 the abortion is to be performed for a waiver of the consent
19 requirement of this chapter. Notice by the court to the
20 minor's parents, parent, or legal guardian shall not be
21 required or permitted. The requirements and procedures under
22 this chapter shall apply and are available only to minors
23 ~~whether or not they~~ who are residents of this state.

24 "(b) The minor may participate in proceedings in the
25 court on her own behalf. The court shall advise her that she

1 has a right to be represented by an attorney and that if she
2 is unable to pay for the services of an attorney one will be
3 appointed for her. If the court appoints an attorney to
4 represent her, such attorney shall be compensated as provided
5 in Section 15-12-21. If the minor petitioner chooses to
6 represent herself, such pleadings, documents, or evidence that
7 she may file with the court shall be liberally construed by
8 the court so as to do substantial justice. ~~Hearsay evidence~~
9 ~~shall be admissible.~~

10 "(c) The court shall insure that the minor is given
11 assistance in preparing and filing the petition ~~and shall~~
12 ~~insure that the minor's identity is kept confidential.~~ Such
13 assistance may be provided by court personnel including intake
14 personnel of juvenile probation services. The minor's identity
15 shall be kept confidential, but her identity may be made known
16 to the judge, any guardian ad litem, the district attorney or
17 any representative of the district attorney's office of the
18 county where the minor is a resident or the county where the
19 abortion is to be performed, any appropriate court personnel,
20 any witness who has a need to know the minor's identity, or
21 any other person determined by the court who needs to know.
22 Any person who is given the identity of the minor shall keep
23 her name confidential and shall not give it to any other
24 person, unless otherwise ordered by the court.

1 "(d) The petition required in Section 26-21-3~~(e)~~(d)
2 shall be made under oath and shall include all of the
3 following:

4 "(1) A statement that the petitioner is pregnant;

5 "(2) A statement that the petitioner is unmarried,
6 under 18 years of age, and unemancipated;

7 "(3) A statement that the petitioner wishes to have
8 an abortion without the consent of either parent or legal
9 guardian.

10 "(4) An allegation of either or both of the
11 following:

12 "a. That the petitioner is sufficiently mature and
13 well enough informed to intelligently decide whether to have
14 an abortion without the consent of either of her parents or
15 legal guardian.

16 "b. That one or both of her parents or her guardian
17 has engaged in a pattern of physical, sexual, or emotional
18 abuse against her, or that the consent of her parents, parent
19 or legal guardian otherwise is not in her best interest.

20 "(5) A statement as to whether the petitioner has
21 retained an attorney and the name, address, and telephone
22 number of her attorney.

23 "(e) Court proceedings shall be given such
24 precedence over other pending matters as is necessary to
25 insure that the court may reach a decision promptly, but in no

1 case, except as provided herein, shall the court fail to rule
2 within ~~72~~ 48 hours of the time the petition is filed,
3 Saturdays, Sundays, and legal holidays excluded. Provided,
4 however, this time requirement may be extended on the request
5 of the minor or any other participant in the proceeding, or by
6 order of the court for the purpose of obtaining further
7 testimony or evidence necessary for it to make an informed
8 decision and to do substantial justice. If a juvenile court
9 judge is not available for the hearing provided herein, the
10 clerk of the court in which the petition was filed shall
11 forthwith notify the presiding circuit court judge and the
12 presiding circuit court judge of the circuit shall immediately
13 appoint a district or circuit court ~~level~~ judge to hear the
14 petition.

15 "(f) Except as otherwise required by the section,
16 this court shall adhere to the Rules of Juvenile Procedure,
17 the Rules of Civil Procedure and Rules of Evidence required of
18 Alabama courts. The court shall assure that it is presented
19 sufficient probative evidence upon which to make its findings,
20 either granting or denying the minor's petition. If the court
21 determines at the initial hearing on the petition that
22 additional evidence or testimony is necessary, the court may
23 adjourn the hearing and issue instanter subpoenas or otherwise
24 permit any party or participant in the hearing to bring before

1 the court admissible evidence or testimony either in support
2 of or against the petition.

3 "~~(f)~~ (g) The required consent shall be waived if the
4 court finds either:

5 "(1) That the minor is mature and well-informed
6 enough to make the abortion decision on her own; or

7 "(2) That performance of the abortion would be in
8 the best interest of the minor.

9 "(h) In determining if either of the requirements in
10 subsection (g) are met, the court shall require that the minor
11 provide probative and admissible evidence, which may include
12 hearsay evidence, that she has been informed and understands
13 the medical procedure of abortion and its consequences and
14 that she has been informed and counseled by a qualified person
15 as to the alternatives to abortion. She shall explain each of
16 the foregoing to the court and the court shall be satisfied
17 that she is making an informed judgment and shall document its
18 finding in its order. The minor shall present such additional
19 probative evidence to the court of her maturity that
20 demonstrates to the court that she has sufficient experience
21 with and understanding of life which enables her to make
22 mature and informed decisions. Further, the minor may provide
23 to the court a substantive explanation of why she cannot
24 consult with her parent, parents, or legal guardian to assist
25 her in making the decision. It shall not be sufficient that

1 the court find the minor mature because she has requested
2 relief from the court, but rather the totality of the evidence
3 must be probative and of such weight to prove that the minor
4 is mature and well-informed enough to make the abortion
5 decision on her own, or that the performance of the abortion
6 will be in her best interest. Uncorroborated legal conclusions
7 by the minor shall not be sufficient to support a
8 determination by the court to grant her petition. In the event
9 of a denial of the petition by the court, the minor may
10 re-file the petition once for a de novo hearing with the
11 court.

12 "(i) The court shall immediately notify the district
13 attorney's office of the county in which the minor is a
14 resident, or the county where the petition was filed of the
15 filing of the petition on the day of such filing and the
16 district attorney or his or her representative shall
17 participate as an advocate for the state to examine the
18 petitioner and any witnesses, and to present evidence for the
19 purpose of providing the court with a sufficient record upon
20 which to make an informed decision and to do substantial
21 justice.

22 "(j) In the court's discretion, it may appoint a
23 guardian ad litem for the interests of the unborn child of the
24 petitioner who shall also have the same rights and obligations
25 of participation in the proceeding as given to the district

1 attorney's office. The guardian ad litem shall further have
2 the responsibility of assisting and advising the court so the
3 court may make an informed decision and do substantial
4 justice. The guardian ad litem shall be compensated as
5 provided in Section 15-12-21.

6 "(k) Either the district attorney or his or her
7 representative, or any other party in the proceeding may
8 request the court for additional time either before the
9 hearing has begun or during the hearing, if justice requires,
10 to obtain evidence, subpoena witnesses, or to obtain and
11 present any evidence or information which will be necessary
12 and appropriate for the court to make an informed decision. In
13 any event, any such delay shall not be more than one business
14 day for which the applicable court is open to the public,
15 unless justice requires an extension thereof. The length of
16 time for any such delay and the information, evidence, or
17 subpoena sought shall be within the sound discretion of the
18 trial court subject to the time constraints of the petitioner
19 related to her medical condition.

20 "(l) Although the court shall not be required or
21 permitted to contact the minor's parent, parents, or legal
22 guardian, in the event that the minor's parent, parents, or
23 legal guardian are otherwise aware of the by-pass proceeding,
24 they, he, or she shall be given notice of and be permitted to
25 participate in the proceeding and be represented by counsel

1 with all of the rights and obligations of any party to the
2 proceeding.

3 "~~(g)~~ (m) A court that conducts proceedings under this
4 section shall issue written and specific factual findings and
5 legal conclusions supporting its decision and shall order that
6 a confidential record of the evidence be maintained for at
7 least four years. A transcript of the proceedings shall be
8 recorded and if there is an appeal as provided in subsection
9 ~~(h)~~ (n), a transcript of the proceedings shall be prepared
10 forthwith.

11 "~~(h)~~ (n) An expedited confidential and anonymous
12 appeal shall be available to any minor to whom the court
13 denies a waiver of consent, the district attorney's office,
14 and any guardian ad litem, or the parent, parents, or legal
15 guardian of the minor. If notice of appeal is given, the
16 record of appeal shall be completed and the appeal shall be
17 perfected within five days from the filing of the notice of
18 appeal. Briefs shall not be required but may be permitted.
19 Because time may be of the essence regarding the performance
20 of the abortion, the Alabama Supreme Court shall issue
21 promptly such additional rules as it deems are necessary to
22 insure that appeals under this section are handled in an
23 expeditious, confidential and anonymous manner.

1 "~~(i)~~(o) All proceedings under this chapter shall be
2 confidential and anonymous. In all pleadings or court
3 documents, the minor shall be identified by initials only.

4 "~~(j)~~(p) No fees or costs shall be required of any
5 minor who avails herself of the procedures provided by this
6 section.

7 "(q) proceedings under this section and with the
8 consent of the minor for whom such proceedings are conducted,
9 the court may refer for prosecution any criminal charge that
10 may be known to said court, including, but not limited to,
11 statutory rape.

12 "§26-21-6.

13 (a) (1) Any person who intentionally performs or
14 causes to be performed an abortion in violation of the
15 provisions of this chapter or intentionally fails to conform
16 to any requirement of this chapter, shall be guilty of a Class
17 A misdemeanor. ~~Any person found guilty under this section~~
18 ~~shall immediately forfeit any professional license they may~~
19 ~~hold.~~

20 (2) Any conviction of any person for any failure to
21 comply with the requirements of this chapter may result in the
22 suspension of the person's professional license for a period
23 of at least one year and shall be reinstated after that time
24 only on such conditions as the appropriate regulatory or

1 licensing body may require to insure compliance with this
2 chapter.

3 (b) In addition to whatever remedies are available
4 under the common or statutory law of this state, failure to
5 comply with the requirements of this chapter shall provide a
6 basis for professional disciplinary action under any
7 applicable statutory or regulatory procedure for the
8 suspension or revocation of any license for physicians,
9 psychologists, licensed social workers, licensed professional
10 counselors, registered nurses, or other licensed or regulated
11 persons.

12 "§26-21-7.

13 "(a) No physician who complies with the parental
14 consent ~~requirement(s)~~ requirements of this chapter shall be
15 liable in any manner to the minor upon whom the abortion was
16 performed for any claim whatsoever arising out of or based on
17 the disclosure of any information concerning the medical
18 condition of such minor to her ~~parent(s) or legal guardian(s);~~
19 ~~provided that~~ parent, parents, or legal guardian.
20 Notwithstanding the foregoing, a physician who performs an
21 abortion pursuant to a court order obtained under ~~the~~
22 ~~provisions of~~ this chapter, shall not disclose any information
23 regarding same to the ~~parent(s) or legal guardian(s)~~ parent,
24 parents, or legal guardian of the minor unless such disclosure
25 is made pursuant to a court order. In no event shall the

1 physician be under any duty to initiate proceedings in any
2 court to secure a waiver of the parental consent requirement
3 on behalf of any minor who has requested that an abortion be
4 performed.

5 "(b) Any physician who complies with this chapter
6 may not be held civilly liable to his or her patient for
7 failure to obtain consent to the abortion required by this
8 chapter.

9 "(c) A physician or his or her agents who
10 demonstrates compliance with the requirements of this chapter
11 shall not bear criminal or civil liability for the deliberate,
12 intentional, or willful action by the minor or any other
13 person acting in concert with or on behalf of the minor to
14 present fabricated, altered, forged, or counterfeit
15 identification, certificates, or other documentation to
16 satisfy the parental consent requirements of this chapter."

17 Section 2. Section 26-21-6.1 is added to Chapter 21,
18 Title 26, Code of Alabama 1975, as follows:

19 §26-21-6.1.

20 In addition to whatever remedies are available under
21 the common or statutory law of this state, failure to comply
22 with the requirements of this chapter shall provide a basis
23 for a civil action for compensatory and/or punitive damages.
24 Any criminal conviction under this chapter shall be admissible
25 in a civil suit as prima facie evidence of a failure to obtain

1 an informed consent or parental or judicial consent. The civil
2 action may be based on a claim that the action was a result of
3 simple negligence, gross negligence, wantonness, willfulness,
4 intention, or breach of other legal standard of care. The
5 Medical Liability Act of 1987 shall not apply to any civil
6 causes of action brought pursuant to this act.

7 Section 3. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not effect the part
10 which remains.

11 Section 4. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 04-MAR-14, as amended.

Jeff Woodard
Clerk

Senate	03-APR-14	Amended and Passed
House	03-APR-14	Concurred in Senate Amendment