

1 HB18
2 162643-2
3 By Representatives Greer, Hanes, Whorton (R), Martin,
4 Nordgren, Lee, Williams (D), South, Fincher, Beckman, Hill
5 (J), Ledbetter, Ball, Standridge, Polizos, Butler, Wood,
6 McCutcheon and Davis
7 RFD: Judiciary
8 First Read: 03-MAR-15
9 PFD: 02/18/2015

1 ENGROSSED

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4 A BILL

5 TO BE ENTITLED

6 AN ACT

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8 To amend Section 15-18-82.1, Code of Alabama 1975,
9 to require a person sentenced to death to be executed by
10 electrocution under certain conditions.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 15-18-82.1, Code of Alabama 1975,
13 is amended to read as follows:

14 "§15-18-82.1.

15 "(a) ~~A~~ Except as provided in subsections (c) and
16 (d), a death sentence shall be executed by lethal injection,
17 unless the person sentenced to death affirmatively elects to
18 be executed by electrocution pursuant to subsection (b). The
19 sentence shall be executed pursuant to Section 15-18-82.

20 "(b) A person convicted and sentenced to death for a
21 capital crime at any time shall have one opportunity to elect
22 that his or her death sentence be executed by electrocution.
23 The election for death by electrocution is waived unless it is
24 personally made by the person in writing and delivered to the
25 warden of the correctional facility within 30 days after the
26 certificate of judgment pursuant to a decision by the Alabama
27 Supreme Court affirming the sentence of death or, if a

1 certificate of judgment is issued before July 1, 2002, the
2 election must be made and delivered to the warden within 30
3 days after July 1, 2002. If a warrant of execution is pending
4 on July 1, 2002, or if a warrant is issued within 30 days
5 after July 1, 2002, the person sentenced to death who is the
6 subject of the warrant shall waive election of electrocution
7 as the method of execution unless a written election signed by
8 the person is submitted to the warden of the correctional
9 facility no later than 48 hours after a new date for execution
10 of the death sentence is set.

11 "(c) A person sentenced to death on or after the
12 effective date of the act adding this amendatory language
13 shall be executed by electrocution if either of the following
14 occur:

15 "1. Execution by lethal injection is held to be
16 unconstitutional by a court of competent jurisdiction.

17 "2. The Commissioner of the Department of
18 Corrections certifies to the Governor that one or more of the
19 ingredients essential to carrying out execution by lethal
20 injection is unavailable through no fault of the department.

21 ~~"(c)~~ (d) If electrocution or lethal injection is held
22 to be unconstitutional by the Alabama Supreme Court under the
23 Constitution of Alabama of 1901, or held to be
24 unconstitutional by the United States Supreme Court under the
25 United States Constitution, or if the United States Supreme
26 Court declines to review any judgment holding a method of
27 execution to be unconstitutional under the United States

1 Constitution made by the Alabama Supreme Court or the United
2 States Court of Appeals that has jurisdiction over Alabama,
3 all persons sentenced to death for a capital crime shall be
4 executed by any constitutional method of execution.

5 "~~(d)~~ (e) The provisions of the opinion and all points
6 of law decided by the United States Supreme Court in Malloy v.
7 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
8 Facto Clause of the United States Constitution is not violated
9 by a legislatively enacted change in the method of execution
10 for a sentence of death validly imposed for previously
11 committed capital murders, are adopted by the Legislature as
12 the law of this state.

13 "~~(e)~~ (f) A change in the method of execution ~~shall~~
14 does not increase the punishment or modify the penalty of
15 death for capital murder. Any legislative change to the method
16 of execution for the crime of capital murder ~~shall~~ does not
17 violate Section 22 of Article I of the Constitution of Alabama
18 of 1901.

19 "~~(f)~~ (g) Notwithstanding any law to the contrary, a
20 person authorized by state law to prescribe medication and
21 designated by the Department of Corrections may prescribe the
22 drug or drugs necessary to compound a lethal injection.
23 Notwithstanding any law to the contrary, a person authorized
24 by state law to prepare, compound, or dispense medication and
25 designated by the Department of Corrections may prepare,
26 compound, or dispense a lethal injection. For purposes of this
27 section, prescription, preparation, compounding, dispensing,

1 and administration of a lethal injection ~~shall~~ does not
2 constitute the practice of medicine, nursing, or pharmacy.

3 "~~(g)~~ (h) The policies and procedures of the
4 Department of Corrections ~~for~~ related to the execution of
5 persons sentenced to death shall be exempt from the Alabama
6 Administrative Procedure Act, Chapter 22 of Title 41 and
7 Section 36-12-40.

8 "~~(h)~~ (i) No sentence of death shall be reduced as a
9 result of a determination that a method of execution is
10 declared unconstitutional under the Constitution of Alabama of
11 1901, or the Constitution of the United States. In any case in
12 which an execution method is declared unconstitutional, the
13 death sentence shall remain in force until the sentence can be
14 lawfully executed by any valid method of execution.

15 "~~(i)~~ (j) Nothing contained in this section is
16 intended to require any physician, nurse, pharmacist, or
17 employee of the Department of Corrections or any other person
18 to assist in any aspect of an execution which is contrary to
19 the person's moral or ethical beliefs."

20 "(k) The name, address, qualifications, and other
21 identifying information of any person or entity that
22 manufactures, compounds, prescribes, dispenses, supplies, or
23 administers the drugs or supplies utilized in an execution
24 shall be confidential, shall not be subject to disclosure, and
25 shall not be admissible as evidence or discoverable in any
26 action of any kind in any court or before any tribunal, board,
27 agency, or person. The same confidentiality and protections

1 shall also apply to any person who participates in an
2 execution or performs any ancillary function related to an
3 execution and shall include information contained in any
4 departmental records, including electronic records, that would
5 identify the person.

6 "(l) Subsection (k) shall not apply to a civil
7 action brought by a plaintiff, other than any action brought
8 by or on behalf of a person sentenced to death or who has been
9 executed, where the plaintiff alleges injury to his or her
10 person or property, and where the matters established as
11 confidential in subsection (k) are otherwise discoverable. In
12 such a case, the court shall enter an appropriate protective
13 order prohibiting the disclosure of the information set out in
14 subsection (k) to any person other than the parties and
15 witnesses to the civil litigation.

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 03-MAR-15

Read for the second time and placed
on the calendar..... 05-MAR-15

Read for the third time and passed
as amended..... 11-MAR-15

Yeas 76, Nays 26, Abstains 0

Jeff Woodard
Clerk