- 1 HB494
- 2 161419-3
- 3 By Representatives Jones, Merrill, Beckman, Williams (J),
- 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

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2 ENROLLED, An Act,

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

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

"\$26-21-1.

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- "(a) It is the intent of the Legislature in enacting this parental consent provision to further the important and compelling state interests of: (1) protecting minors against their own immaturity, (2) fostering the family structure and preserving it as a viable social unit, and (3) protecting the rights of parents to rear children who are members of their household.
- "(b) The Legislature finds as fact that: (1) immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, (2) the medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature, (3) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related, (4) parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child, and (5) parents who are aware that their minor daughter has had an abortion may better insure that she receives adequate medical attention after her abortion. The

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"(c) The Legislature further finds that the United

States Supreme Court has held under certain circumstances a

minor may seek permission to have an abortion without her

parent's consent by petitioning a court. The Legislature

enacts a judicial by-pass procedure for the purposes of

meeting the Constitutional standard and finds that in order to

do substantial justice it is necessary that the Alabama courts

be provided guidance in determining appropriate procedure and

evidence.

"(d) The Legislature further finds the public policy of the State of Alabama is to respect life and provide safequards to protect life in the criminal, health, and other laws of the State of Alabama; that in respecting and protecting life, there is included the unborn life of a child whose life may be subject to termination before birth by abortion and that when the mother of said unborn life is a minor who seeks an abortion through the judicial by-pass procedure, it is the interest of the State of Alabama to not only establish and protect the rights of the minor mother, but also to protect the state's public policy to protect unborn life; the protection of these interests is done, in part, by requiring judges to make determinations pursuant to the 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	quidance 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 <u>or prescription</u> of any
2	instrument, medicine, drug, or any other substance or device
3	with $\underline{\text{the}}$ 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.

abortion performed before the requirements of this act are met, and based on the applicable standard of care, is like to result in the death of the pregnant woman or is likely		" <u>(4)</u> ME	EDICAL E	MERGEN(CY. A co	ndition	that,	absent
	<u>abortion</u>	performe	ed befor	e the	requirem	ents of	this	act are
to result in the death of the pregnant woman or is likely	met, and	based or	n the ap	plicab	le stand	lard of	care,	is like
	to result	in the	death o	f the	pregnant	woman	or is	likely
result in substantial irreversible impairment of a major	result in	substar	ntial ir	revers	ible imp	airment	of a	major

"\$26-21-3.

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

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

"(c)(b) The person physician who shall perform the abortion or his or her agent agents shall obtain or be provided with the written consent from either parent or legal guardian stating the names of the minor, parent, or legal guardian, that he or she is informed that the minor desires an abortion and does consent to the abortion, the date, and the consent shall be signed by either parent or legal guardian.

The unemancipated minor shall verify on the same form, by her

1	signature and in the presence of such person who shall perform
2	the abortion or his or her agent, that the signature of the
3	parents, parent, or legal guardian is authentic. The consent
4	shall be kept as a part of the minor's patient file for four
5	years. The signatures of the parents, parent, or legal
6	quardian shall be affixed and the information required in this
7	subsection shall be on a form to be provided by, and shall be
8	written in the presence of, the physician who shall perform
9	the abortion or his or her agents. The parents, parent, or
10	legal guardian shall provide to the physician who shall
11	perform the abortion, or his or her agents, evidence of
12	parentage or legal quardianship. For parents or a parent,
13	there shall also be required a certified birth certificate of
14	the minor identifying the minor and the parents or parent. For
15	a legal guardian or adoptive parent, there shall be required a
16	duly certified court order or other official document naming
17	the legal quardian or adoptive parent as such for the minor.
18	If official photographic personal identification has not been
19	issued to any parents, parent, or legal quardian, other
20	official identification shall be acceptable, provided the
21	parents, parent, or legal guardian affirms in writing on the
22	form herein required under oath, with recognition of criminal
23	penalties, that he or she does not possess any photographic
24	identification and that the alternative personal
25	identification provided is his or her identification. The

Τ	parent, parents or legal quardian signing the consent shall
2	attest with recognition of criminal penalties that he or she
3	is the parent or legal quardian, 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

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

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

"(e)(d) A minor, including a ward of the state, who elects not to seek or does not or cannot for any reason, including unavailability or refusal by either or both parents or legal guardian, obtain consent from either of her parents 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.

- "(e) A parent, legal quardian, custodian, or any other person, shall not coerce a minor to have an abortion performed.
- "(f) The Department of Public Health shall propose within 90 days of the effective date of this act, the forms required in subsections (b) and (c).

12 "\$26-21-4.

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- "(a) A minor who elects not to seek or does not or cannot for any reason, obtain consent from either of her parents or legal guardian, may petition, on her own behalf, the juvenile court, or the court of equal standing, in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this chapter. Notice by the court to the minor's parents, parent, or legal guardian shall not be required or permitted. The requirements and procedures under this chapter shall apply and are available only to minors whether or not they who are residents of this state.
- "(b) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she

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

"(c) The court shall insure that the minor is given assistance in preparing and filing the petition and shall insure that the minor's identity is kept confidential. Such assistance may be provided by court personnel including intake personnel of juvenile probation services. The minor's identity shall be kept confidential, but her identity may be made known to the judge, any quardian ad litem, the district attorney or any representative of the district attorney's office of the county where the minor is a resident or the county where the abortion is to be performed, any appropriate court personnel, any witness who has a need to know the minor's identity, or any other person determined by the court who needs to know.

Any person who is given the identity of the minor shall keep her name confidential and shall not give it to any other person, unless otherwise ordered by the court.

1	"(d) The petition required in Section 26-21-3 $\frac{\text{(e)}}{\text{(d)}}$
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

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

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

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"(f) (q) The required consent shall be waived if the
court finds either:

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- "(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or
- "(2) That performance of the abortion would be in the best interest of the minor.

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

Τ	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	<u>justice.</u>
22	"(j) In the court's discretion, it may appoint a
23	quardian 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

attorney's office. The quardian ad litem shall further have

the responsibility of assisting and advising the court so the

court may make an informed decision and do substantial

justice. The quardian ad litem shall be compensated as

provided in Section 15-12-21.

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

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

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

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

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

L	" (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.

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

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

"\$26-21-6.

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

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

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

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

"\$26-21-7.

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"(a) No physician who complies with the parental consent requirement(s) requirements of this chapter shall be liable in any manner to the minor upon whom the abortion was performed for any claim whatsoever arising out of or based on the disclosure of any information concerning the medical condition of such minor to her parent(s) or legal guardian(s); provided that parent, parents, or legal quardian.

Notwithstanding the foregoing, a physician who performs an abortion pursuant to a court order obtained under the provisions of this chapter, shall not disclose any information regarding same to the parent(s) or legal guardian(s) parent, parents, or legal quardian of the minor unless such disclosure 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.

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

"(c) A physician or his or her agents who

demonstrates compliance with the requirements of this chapter

shall not bear criminal or civil liability for the deliberate,

intentional, or willful action by the minor or any other

person acting in concert with or on behalf of the minor to

present fabricated, altered, forged, or counterfeit

identification, certificates, or other documentation to

satisfy the parental consent requirements of this chapter."

Section 2. Section 26-21-6.1 is added to Chapter 21,

\$26-21-6.1.

Title 26, Code of Alabama 1975, as follows:

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

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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.

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4		Speaker of the House of Repr	esentatives					
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6	I	President and Presiding Office	er of the Senate					
7		House of Representative	76					
	т 1	-						
8 9		I hereby certify that the within Act originated in and was passed by the House 04-MAR-14, as amended.						
10	and was passe	, as a sing in and a sing in the sing in t						
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15	Senate	03-APR-14	- Amended and Passed					
16	House	03-APR-14	Concurred in Sen- ate Amendment					