

HB118 INTRODUCED



1 HB118
2 W1JSB59-1
3 By Representatives Gidley, Kiel
4 RFD: Judiciary
5 First Read: 13-Jan-26
6 PFD: 06-Jan-26



4 SYNOPSIS:

5 Under existing law, all forms of abortion are
6 prohibited, except to prevent a serious health risk to
7 the unborn child's mother.

8 This bill would prohibit the manufacture,
9 distribution, mailing, transporting, delivery,
10 prescription, or any other provision of an
11 abortion-inducing drug in this state, unless such
12 manufacture, distribution, mailing, transport,
13 delivery, prescription, or other provision is solely:
14 (i) for a purpose that is not an abortion; or (ii) to
15 treat a medical emergency, remove an ectopic pregnancy,
16 or remove a dead unborn child whose death was caused by
17 a miscarriage.

18 This bill would authorize any individual to
19 bring a qui tam action against a person who violates or
20 intends to violate the prohibition, provided that
21 neither the state nor its political subdivisions may
22 bring, engage with, or intervene in such a suit.

23 This bill would prohibit a qui tam action from
24 being filed against certain parties, including, but not
25 limited to, women using abortion-inducing drugs to
26 abort or attempt to abort their own unborn child;
27 transportation network companies or delivery persons;
28 Internet service providers; air carriers; certain



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29 individuals acting under the direction of a federal
30 agency or federal law; health care facilities and
31 hospitals; health care providers who mail, distribute,
32 transport, deliver, prescribe, or otherwise provide
33 abortion-inducing drugs in this state while located
34 outside the state; and certain pharmaceutical
35 manufacturers or distributors who fail to adopt a
36 policy to implement this bill.

37 This bill would prohibit certain individuals who
38 themselves, or in concert with another: (i) commit
39 domestic violence, a sexual offense, or stalking
40 against a woman; or (ii) provide an abortion-inducing
41 drug to a woman without her knowledge, from bringing a
42 qui tam suit.

43 This bill would provide procedures relating to a
44 qui tam action, including a statute of limitation,
45 prohibitions on the disclosure of certain protected or
46 personal information, and taking of depositions.

47 This bill would provide affirmative defense to a
48 qui tam action, including, but not limited to, that the
49 defendant: (i) was unaware of the conduct that is the
50 subject of the suit; and (ii) took reasonable
51 precautions to prohibit violations of the act.

52 This bill would provide that the court must
53 award injunctive relief, a \$100,000 monetary award, and
54 court costs and reasonable attorney fees to a
55 successful qui tam relator.

56 This bill would also authorize certain civil



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actions to prevent interference with qui tam actions through "clawback" provisions that authorize a civil action in other states.

A BILL
TO BE ENTITLED
AN ACT

Relating to abortion; to add Chapter 23J, commencing with Section 26-23J-1, to Title 26 of the Code of Alabama 1975; to prohibit the manufacture, distribution, mailing, transport, delivery, prescription, or other provision of abortion-inducing drugs in this state, with limited exceptions; to authorize a qui tam action against a person who violates or intends to violate the prohibition, with exceptions; to provide procedures relating to a qui tam suit, including who may bring such a suit and appropriate defenses; to provide for remedies for successful qui tam suits; and to authorize certain civil actions to prevent interference by certain "clawback" provisions that authorize a civil action in another state.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. A new Chapter 23J, commencing with Section 26-23J-1, is added to Title 26 of the Code of Alabama 1975, to read as follows:

§26-23J-1

For the purposes of this chapter, the following terms



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have the following meanings:

(1) ABORTION. The same meaning as provided in Section 26-23H-3.

(2) ABORTION-INDUCING DRUG. The same meaning as provided in Section 26-23E-3.

(3) DELIVERY NETWORK COMPANY. A business entity that offers or uses a digital network to arrange for the delivery of food, beverages, or consumer goods from a restaurant or retail establishment to a delivery customer. The term does not include an entity that only delivers products that the entity produces or stores on the entity's premises.

(4) DELIVERY PERSON. An individual who undertakes a digitally prearranged delivery in the state using a digital network company's digital network.

(5) DIGITAL NETWORK. Any online-enabled application, website, or system offered by either of the following:

a. A transportation network company that enables the prearrangement of rides between passengers and drivers.

b. A delivery network company that enables digitally prearranged drives.

(6) DIGITALLY PREARRANGED DELIVERY. The transport and delivery or attempted delivery of goods to a delivery customer which is prearranged through a delivery network company's digital network, including the selection or collection of items for delivery by an individual using a delivery network company's digital network and other tasks incidental to delivery.

(7) DIGITALLY PREARRANGED RIDE. A ride in a personal



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vehicle between points chosen by a passenger which is prearranged through a digital network.

(8) DRIVER. An individual who undertakes a digitally prearranged ride between points chosen by a passenger.

(9) HEALTH CARE FACILITY. The meaning as provided in Section 22-11A-60, except the term does not include a hospital.

(10) HEALTH CARE PROVIDER. An individual who is licensed, certified, or otherwise authorized by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term does not include a physician.

(11) HOSPITAL. The same meaning as provided under Section 22-21-410, including any such hospital owned, maintained, or operated by this state.

(12) MEDICAL EMERGENCY. The same meaning as provided under Section 26-23H-3.

(13) PHYSICIAN. An individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(14) PHYSICIAN GROUP. An entity that is formed by a physician or group of physicians to provide medical services. The term includes, but is not limited to, any professional organization, partnership, limited liability partnership, nonprofit health corporation, or company formed by a physician or group of physicians.

(15) TRANSPORTATION NETWORK COMPANY. A corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a passenger to prearrange with a driver,



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exclusively through the entity's digital network, a digitally prearranged ride. The term does not include an entity that provides any of the following:

a. Street-hail taxicab services.

b. Limousine or other car services arranged by a method other than through a digital network.

c. Shared expense carpool or vanpool arrangements.

d. A type of ride service for which: (i) the fee received by the driver does not exceed the driver's costs of providing the ride; or (ii) the driver receives a fee that exceeds the driver's costs associated with providing the ride but makes not more than three round-trips per day between the driver's or passenger's place of employment and the driver's or passenger's home.

(16) WOMAN. The same meaning as provided in Section 1-1-1.

§26-23J-2

(a) This chapter does not apply to, and a civil action under this chapter may not be brought against, any of the following:

(1) A hospital.

(2) A health care facility licensed, owned, maintained, or operated by this state.

(3) A health care provider, other than a provider against whom a qui tam action may be brought in accordance with Section 26-23J-4(d)(7).

(4) A physician, other than a physician against whom a qui tam action may be brought in accordance with Section



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26-23J-4(d)(7).

(5) A physician group.

(6) An Internet service provider or an Internet service provider's affiliates or subsidiaries.

(7) An Internet search engine.

(8) A cloud service provider solely providing access or connection to or from:

a. An Internet website; or

b. Information or content on the Internet or on a facility, system, or network that is not under the cloud service provider's control, including transmission, downloading, intermediate storage, access software, or other services.

(9) A person who manufactures, distributes, mails, transports, delivers, prescribes, provides, or possesses abortion-inducing drugs in this state solely for one or more of the following purposes:

a. Treating a medical emergency.

b. Removing an ectopic pregnancy.

c. Removing a dead, unborn child whose death was caused by miscarriage.

d. A purpose that does not include performing, inducing, attempting, or assisting an abortion, other than an abortion performed in response to a medical emergency.

(b) This chapter may not be construed to require the actual performance, inducement, or attempted performance of an abortion in order for an individual to bring a civil action authorized by this chapter.



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197 §26-23J-3

198 (a) Except as provided by subsection (b) or Section
199 26-23J-2, a person may not:

200 (1) Manufacture or distribute an abortion-inducing drug
201 in this state; or

202 (2) Mail, transport, deliver, prescribe, or provide an
203 abortion-inducing drug in any manner to or from any individual
204 or location in this state.

205 (b) This section does not prohibit:

206 (1) Speech or conduct protected by the First Amendment
207 to the United States Constitution or protected by Section 4,
208 Article I of the Constitution of Alabama of 2022;

209 (2) Conduct a pregnant woman takes in the course of
210 aborting or attempting to abort the woman's unborn child;

211 (3) The manufacture, distribution, mailing, transport,
212 delivery, prescribing, provision, or possession of an
213 abortion-inducing drug solely for one or more of the purposes
214 described by Section 26-23J-2(a)(9); or

215 (4) Conduct a person takes under the direction of a
216 federal agency, contractor, or employee to carry out a duty
217 under federal law, if prohibiting that conduct would violate
218 the doctrine of preemption or intergovernmental immunity.

219 (c)(1) This section may be enforced only through a qui
220 tam action brought under this chapter.

221 (2) No other direct or indirect enforcement of this
222 section may be taken or threatened by this state, a political
223 subdivision of this state, a district or county attorney, or
224 any officer or employee of this state or a political



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subdivision of this state against any person, by any means whatsoever, except through a qui tam action brought under this chapter.

(d) This section does not preclude or limit the enforcement of any other law or rule against conduct that is independently prohibited by the other law or rule and that would remain prohibited by the other law or rule in the absence of this section.

§26-23J-4

(a) An individual, other than this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, has standing to bring and may bring a qui tam action against a person who:

- (1) Violates Section 26-23J-3; or
- (2) Intends to violate Section 26-23J-3.

(b) An action brought under this section must be brought in the name of the qui tam relator, who is an assignee of this state's claim for relief. Notwithstanding any other law, the transfer of this state's claim to the qui tam relator is absolute, with the state retaining no interest in the subject matter of the claim.

(c) A qui tam relator may not bring an action under this section if the action is preempted by 47 U.S.C. § 230(c).

(d) A qui tam action may not be brought against any of the following under this section:

- (1) A woman for using, obtaining, or seeking to obtain abortion-inducing drugs to abort or attempt to abort her unborn child.



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(2) A person acting under the direction of a federal agency, contractor, or employee who is carrying out a duty under federal law if the imposition of liability would violate the doctrine of preemption or intergovernmental immunity.

(3) A transportation network company or a driver for using a transportation network company's digital network to provide a digitally prearranged ride.

(4) A delivery network company or a delivery person for using a delivery network company's digital network to provide a digitally prearranged delivery.

(5) A person to whom this chapter does not apply and against whom a civil action under this chapter may not be brought under Section 26-23J-2.

(6) A health care provider or physician, unless the qui tam relator pleads and proves that the health care provider or physician engaged in conduct constituting a violation of Section 26-23J-3 while located outside this state.

(7) A pharmaceutical manufacturer, pharmaceutical distributor, or common carrier, unless the qui tam relator pleads and proves that the defendant failed to adopt and implement a policy to not distribute, mail, transport, deliver, provide, or possess abortion-inducing drugs other than for one or more of the purposes described by Section 26-23J-2(a)(9).

(e) A qui tam action may not be brought by any of the following:

(1) An individual who has impregnated a woman through conduct constituting a sexual offense under Article 4, Chapter



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281 6 of Title 13A.

282 (2) An individual who has committed conduct
283 constituting domestic violence in the first, second, or third
284 degree under Article 7, Chapter 6 of Title 13A, or an offense
285 against the family under Chapter 13 of Title 13A, or has been
286 determined by a court to have perpetrated domestic or family
287 violence.

288 (3) An individual who provided an abortion-inducing
289 drug to a pregnant woman for the purpose of performing,
290 inducing, or attempting an abortion without the woman's
291 consent or knowledge.

292 (4) An individual who has been convicted of an offense
293 under Article 5, Chapter 6 of Title 13A.

294 (5) An individual who acts in concert or participation
295 with an individual described by this subsection.

296 (f) Notwithstanding any rule of civil procedure adopted
297 under Title 6 or any other law, an action brought under this
298 section may not be litigated on behalf of a claimant class or
299 a defendant class, and a court may not certify a class in the
300 action.

301 (g) An individual may bring an action under this
302 section not later than six years after the date the cause of
303 action accrues.

304 §26-23J-5

305 (a) (1) It is an affirmative defense to an action
306 brought under Section 26-23J-4 that the defendant:

307 a. Was unaware the defendant was engaged in the conduct
308 prohibited by Section 26-23J-3; and



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b. Took reasonable precautions to ensure the defendant would not violate Section 26-23J-3.

(2) The defendant has the burden of proving an affirmative defense under this section by a preponderance of the evidence.

(b) The following are affirmative defenses to an action brought under Section 26-23J-4:

(1) The imposition of civil liability on the defendant will violate the defendant's rights under federal law, including the United States Constitution.

(2) The defendant has standing to assert the rights of a third party under the tests for third-party standing established by the United States Supreme Court and demonstrates that the imposition of civil liability on the defendant will violate the third party's rights under federal law, including the United States Constitution.

(3) The imposition of civil liability on the defendant will violate the defendant's rights under the Constitution of Alabama of 2022.

(4) The imposition of civil liability on the defendant will violate limits on extraterritorial jurisdiction imposed by the United States Constitution or the Constitution of Alabama of 2022.

(c) The following are not defenses to an action brought under Section 26-23J-4:

(1) A defendant's ignorance or mistake of law, including a defendant's mistaken belief that the requirements or provisions of this chapter are unconstitutional or were



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337 unconstitutional.

338 (2) A defendant's reliance on any court decision that
339 has been vacated, reversed, or overruled on appeal or by a
340 subsequent court, even if that court decision had not been
341 vacated, reversed, or overruled when the cause of action
342 accrued.

343 (3) A defendant's reliance on a state or federal court
344 decision that is not binding on the court in which the action
345 has been brought.

346 (4) A defendant's reliance on a federal agency
347 regulation or action that has been repealed, superseded, or
348 declared invalid or unconstitutional, even if the federal
349 agency regulation or action had not been repealed, superseded,
350 or declared invalid or unconstitutional when the cause of
351 action accrued.

352 (5) The laws of another state or jurisdiction,
353 including an abortion shield law, unless the Constitution of
354 Alabama of 2022 or federal law compels the court to enforce
355 that law.

356 (6) Non-mutual issue preclusion or non-mutual claim
357 preclusion.

358 (7) Sovereign immunity, governmental immunity, or
359 official immunity, other than sovereign immunity, governmental
360 immunity, or official immunity applicable to any of the
361 following:

362 a. A hospital owned, maintained, or operated by this
363 state that facilitates the availability of or makes available
364 abortion-inducing drugs solely for one or more of the purposes



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described by Section 26-23J-2.

b. A political subdivision of this state that facilitates the availability of or makes available abortion-inducing drugs solely for one or more of the purposes described by Section 26-23J-2(a)(9).

c. A physician or health care provider who prescribes, distributes, administers, or otherwise makes available abortion-inducing drugs solely for one or more of the purposes described by Section 26-23J-4(a)(9), if the physician or health care provider is: (i) employed by a hospital owned or operated by this state or a political subdivision of this state; and (ii) acting within the scope of the physician's or health care provider's employment.

(8) A claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional or federally protected rights of third parties, except as provided by subsection (b).

(9) Consent to the abortion by the claimant or the unborn child's mother.

§26-23J-6

(a) Notwithstanding any other law, if a qui tam relator prevails in an action brought under Section 26-23J-4, the court shall award to the relator all of the following:

(1) Injunctive relief sufficient to prevent the defendant from violating Section 26-23J-3.

(2) An amount of not less than one hundred thousand dollars (\$100,000) for each violation of Section 26-23J-3.

(3) Costs and reasonable attorney fees.



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(b) A court may not award relief under subdivisions (a) (2) or (a) (3) in response to a violation of Section 26-23J-3 if the defendant demonstrates both of the following:

(1) A court previously ordered the defendant to pay an amount under subdivision (a) (2) in another action for that particular violation.

(2) The court order described by subdivision (1) has not been vacated, reversed, or overturned.

(c) A court may not award costs or attorney fees under the Alabama Rules of Civil Procedure or any other rule adopted by the Supreme Court of Alabama to a defendant against whom an action is brought under Section 26-23J-4. This subsection does not preclude a court from sanctioning a litigant or attorney for frivolous, malicious, or bad-faith conduct.

§26-23J-7

(a) The state, a political subdivision of the state, or an officer or employee thereof may not do any of the following:

(1) Act in concert or participation with a qui tam relator bringing an action under Section 26-23J-4.

(2) Establish or attempt to establish any type of agency or fiduciary relationship with a qui tam relator bringing an action under Section 26-23J-4.

(3) Attempt to control or influence an individual's decision to bring an action under Section 26-23J-4 or that individual's conduct of the litigation.

(4) Intervene in an action brought under Section 26-23J-4.



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(b) This section does not prohibit the state, a political subdivision of the state, or an officer or employee thereof from filing an amicus curiae brief in an action brought under Section 26-23J-4 if the state, the political subdivision, the officer, or the employee does not act in concert or participation with the qui tam relator.

§26-23J-8

Notwithstanding any other law to the contrary:

(1) The courts of this state have personal jurisdiction over a defendant sued under Section 26-23J-4 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution, and the defendant may be served outside this state;

(2) The law of this state applies to an action brought under Section 26-23J-4 to the maximum extent permitted by the Constitution of Alabama of 2022, and federal law, including the United States Constitution;

(3) Any contractual provision that requires or purports to require application of the laws of a different jurisdiction, or that requires or purports to require a qui tam action under Section 26-23J-4 to be litigated in a particular forum, is void based on this state's public policy and is not enforceable in any court; and

(4) A court may not apply the law of another state or jurisdiction to any qui tam action brought under Section 26-23J-4 unless the Constitution of Alabama of 2022 or federal law compels the court to apply that law.

§26-23J-9



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(a) For purposes of this section, the term "clawback provision" refers to any law of another state or jurisdiction which authorizes the bringing of a civil action against a person for any of the following:

(1) Bringing or engaging in an action authorized by this chapter, or attempting, intending, or threatening to do so.

(2) Bringing or engaging in an action that alleges a violation of any state or federal law related to abortion, or attempting, intending, or threatening to do so.

(3) Providing legal representation or any type of assistance to a person who brings or engages in an action described by this subsection.

(b) Notwithstanding any law to the contrary and except as otherwise provided by federal law or the Constitution of Alabama of 2022, the laws of this state apply to all of the following:

(1) Conduct described by subsection (a).

(2) An action brought against a person for engaging in conduct described by subsection (a).

(3) An action brought under a clawback provision against a resident of this state.

(4) Testifying as a witness in an action described by this subsection.

(5) An action brought under subsection (d).

(c) Notwithstanding any law to the contrary:

(1) In an action described by subdivision (a)(1) or (a)(2), the court shall, on request, issue a temporary,



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preliminary, or permanent injunction that restrains each defendant in the action, each person in privity with the defendant, and each person with whom the defendant is in active concert or participation from: (i) bringing an action under any clawback provision against a claimant or prosecutor, a person in privity with the claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor; or (ii) continuing to litigate an action under any clawback provision which has been brought against a claimant or prosecutor, a person in privity with the claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor;

(2) The doctrines of res judicata and collateral estoppel preclude a defendant against whom a judgment is entered in an action described by subdivision (a)(1) or (a)(2) and each person in privity with the defendant from litigating or relitigating any claim or issue under any clawback provision against a claimant, prosecutor, or person in privity with the claimant or prosecutor that was raised or could have been raised as a claim, cross-claim, counterclaim, or affirmative defense under the federal or this state's rules of civil procedure; and

(3) A court of this state may not enforce an out-of-state judgment obtained in an action brought under a clawback provision unless federal law or the Constitution of Alabama of 2022 requires the court to enforce the judgment.

(d)(1) Notwithstanding any other law to the contrary,



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if an action is brought or judgment is entered against a person under a clawback provision based wholly or partly on the person's decision to engage in conduct described by subsection (a), that person is entitled to injunctive relief and damages from any person who brought the action or obtained the judgment or who sought to enforce the judgment.

Notwithstanding any other law, the relief described by this subsection must include the following:

a. Compensatory damages, including money damages in an amount equal to the judgment damages and costs, expenses, and reasonable attorney fees spent in defending the action.

b. Costs, expenses, and reasonable attorney fees incurred in bringing an action under this subsection.

c. Additional amounts consisting of the greater of twice the sum of the damages, costs, expenses, and fees described by paragraphs a. and b., or one hundred thousand dollars (\$100,000).

d. Injunctive relief that restrains each person who brought the action under the clawback provision, each person in privity with the person, and each person acting in concert or participation with the person from all of the following:

1. Bringing further actions under any clawback provision against the person against whom the action was brought, each person in privity with the person, or any person providing legal representation or any type of assistance to the person.

2. Continuing to litigate any actions brought under a clawback provision against the persons described by



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533 subparagraph 1.

534 3. Enforcing or attempting to enforce any judgment
535 obtained in any actions brought under a clawback provision
536 against the persons described by subparagraph 1.

537 (2) Neither of the following is a defense to an action
538 brought under this subsection:

539 a. The claimant failed to seek recovery under this
540 subsection in an action brought against the claimant under a
541 clawback provision.

542 b. A court in a preceding action brought against the
543 claimant declined to recognize or enforce this subsection or
544 held any provision of that subsection invalid,
545 unconstitutional, or preempted by federal law, notwithstanding
546 the doctrines of issue or claim preclusion.

547 Section 2. This act shall become effective on October
548 1, 2026.