

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

REPRODUCTIVE HEALTH SERVICES, on  
behalf of its patients, physicians, and staff; and  
JUNE AYERS, RN,

Plaintiffs,

v.

LUTHER STRANGE, in his official capacity as  
Attorney General of the State of Alabama; and  
DARYL D. BAILEY, in his official capacity as  
District Attorney of Montgomery County,  
Alabama,

Defendants.

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DERRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
CIVIL ACTION DISTRICT ALA

Case No. \_\_\_\_\_

COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

**PRELIMINARY STATEMENT**

1. Since 1987, Alabama law has required that before a physician can perform an abortion on a young woman under the age of 18, he or she must obtain the consent of one of the minor's parents or legal guardians. As required by the United States Constitution, this preexisting law provided an alternative mechanism by which a minor who was sufficiently mature to decide to terminate her pregnancy, or a minor for whom an abortion was in her best interests, could waive that requirement by obtaining an order from a juvenile court, or a court of equal standing (the "judicial bypass").

2. In 2014, the Alabama Legislature passed House Bill 494 (the "Act"). It was signed into law by the Governor and became effective July 1, 2014. The Act radically alters the judicial

bypass process in a wholly unprecedented manner that goes well beyond any judicial bypass statute that has ever been upheld by a federal court.<sup>1</sup> Unlike any other judicial bypass statute in the country—and in outright defiance of longstanding precedent mandating that judicial bypass statutes ensure the confidentiality of a minor seeking a bypass—the Act transforms the judicial bypass procedure from an *ex parte* hearing into an adversarial proceeding by authorizing the participation of the district attorney, a guardian ad litem for the minor’s fetus, and the minor’s parents in the bypass process. The Act gives these parties expansive powers, including the power to subpoena *any* witness (whether that be the minor’s teacher, her employer, her aunt, or her boyfriend) to testify against the minor at the bypass hearing. In an equally unprecedented manner—and similarly in defiance of undisturbed precedent mandating that judicial bypass statutes ensure the expeditious resolution of bypass petitions—the Act accords these adverse parties the right to significantly delay the resolution of a minor’s bypass petition, including by granting adverse parties the right to appeal a juvenile court judgment in the minor’s favor.

3. The Act’s amendments to the judicial bypass procedure will irreparably harm Plaintiffs’ minor patients in numerous ways. Some minors who participate in a judicial bypass process that breaches their confidentiality will be abused, thrown out of their homes, or prevented from having an abortion. Other minors will be deterred from seeking a bypass, and will resort to illegal and unsafe abortions, or will be forced to seek parental consent even if it is not safe to do so. And the Act’s failure to ensure that the bypass proceedings are resolved expeditiously will delay some minors past the point when they can obtain an abortion, and force them to bear children against their will.

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<sup>1</sup> A copy of the Act is attached hereto as Exhibit A.

4. Because the Act violates the constitutional rights of Plaintiffs' minor patients, and in order to avert the irreparable harms it would impose, Plaintiffs seek declaratory and injunctive relief.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. § 1331 and 28 U.S.C. §§ 1343(a)(3)-(4).

6. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district and three of the Defendants are located in this district.

### **PARTIES**

#### **A. Plaintiffs**

8. Plaintiff Reproductive Health Services ("RHS") is a licensed abortion facility, located in Montgomery, Alabama, that has provided safe and legal abortion services to women from Alabama and neighboring states for more than 35 years. RHS provides a range of high-quality reproductive health care services, including routine pap smears and well-woman exams; testing for sexually transmitted infections; contraceptive counseling and care, including Depo Provera shots; pregnancy testing and all options counseling; abortion services; and referrals for pre-natal care and/or adoption services. RHS provides abortion services to adults and minors, including minors who require a judicial bypass from the requirement of parental consent. RHS is the only licensed abortion facility in Montgomery. RHS sues on behalf of its patients, physicians, and staff.

9. Plaintiff June Ayers is a registered nurse, and has been the owner and Administrator of Plaintiff RHS for the past 30 years.

**B. Defendants**

10. Defendant Luther Strange is the Attorney General of Alabama, located at 501 Washington Avenue, Montgomery, Alabama. The Attorney General may – at “any time he or she deems proper” – “superintend and direct the prosecution of any criminal case in any of the courts of this state,” Ala. Code § 36-15-14 (2014), and may also “direct any district attorney to aid and assist in the investigation or prosecution of any case in which the state is interested,” Ala. Code § 36-15-15 (2014). Additionally, the Attorney General “shall give the district attorneys of the several circuits any opinion, instruction or advice necessary or proper to aid them in the proper discharge of their duties.” *Id.* As such, Defendant Strange is responsible for criminal enforcement of the Act, and for instructing district attorneys whom the Act directs to participate in judicial bypass proceedings. Defendant Strange is sued in his official capacity.

11. Defendant Daryl D. Bailey is the District Attorney for Montgomery County, located at 251 South Lawrence Street, Montgomery, Alabama. District attorneys have the power to “draw up all indictments and to prosecute all indictable offenses” within their territory. Ala. Code § 12-17-184(2) (2014). Additionally, the Act charges Defendant Bailey (or his representative) with participating in judicial bypass proceedings in Montgomery County. *See* Ala. Code § 26-21-4(i) (2014). As such, Defendant Bailey is responsible for criminal enforcement of the Act, and for carrying out the Act’s mandate that district attorneys participate in judicial bypass proceedings. Defendant Bailey is sued in his official capacity.

**STATUTORY FRAMEWORK**

**A. Alabama’s Parental Consent Law Prior to the Act**

12. Since 1987, Alabama has barred a physician from performing an abortion on an unemancipated minor unless the physician or his or her agents first obtain the consent of a parent or legal guardian of the minor. Ala. Code § 26-21-3(a) (2014). As is required by the United States Constitution, this preexisting law provided for a judicial bypass procedure, under which a minor could seek a court order waiving the requirement of parental consent if the court found either that the minor is sufficiently mature to consent to an abortion on her own or that the abortion is in the minor's best interests. Ala. Code §§ 26-21-3(d), 26-21-4(g) (2013); *see also Bellotti v. Baird*, 443 U.S. 622 (1979).

13. The preexisting law expressly required that the court ensure that a minor's identity was kept confidential as she attempted to utilize the bypass process, and did not permit any persons other than court personnel to know the minor's identity. Ala. Code § 26-21-4 (c) (2013).

14. Prior to the Act, Alabama law contemplated that the bypass proceeding would involve only the minor and the judge. It did not authorize the involvement of the local district attorney, a guardian ad litem to represent the interests of the fetus, the minor's parents, or any other parties or persons. *See* Ala. Code § 26-21-4 (2013). The preexisting law likewise did not permit the Court or anyone else to subpoena witnesses to testify against the minor at a bypass proceeding. *See* Ala. Code § 26-21-4 (2013). Additionally, only the minor was permitted to appeal a denial of a bypass. Ala. Code § 26-21-4(n) (2013).

15. Until the passage of the Act, judicial bypass proceedings were "available to minors whether or not they [were] residents of th[e] state." Ala. Code § 26-21-4(a) (2013).

**B. The Act's Changes to the Judicial Bypass Process**

16. The Act makes significant and unprecedented changes to the judicial bypass process such that it no longer provides an effective, confidential, and expeditious alternative to parental consent, in violation of minors' constitutional rights.

17. Unlike the judicial bypass statutes of every other state with a parental involvement law, the Act transforms the judicial bypass proceeding from an *ex parte* hearing into an adversarial one. In particular, the Act requires that when a minor files a bypass petition, the court "shall immediately notify the district attorney's office of the county in which the minor is a resident, or the county where the petition was filed of the filing of the petition." Ala. Code § 26-21-4(i) (2014). Under the Act, the district attorney or his or her representative "shall" participate in the minor's bypass proceeding "as an advocate for the state." *Id.* The Act makes clear that the state's interest is "not only to . . . protect the rights of the minor mother, but also to protect the state's public policy to protect unborn life." Ala. Code § 26-21-1(d) (2014).

18. Additionally, the Act authorizes the court to appoint a guardian ad litem to represent "the interests of the unborn child" at the minor's hearing. Ala. Code § 26-21-4(j) (2014).

19. The Act also requires that, if a minor's parents or guardians are already otherwise aware of the bypass proceeding, the court must give them notice of the proceeding and permission "to participate in the proceeding and be represented by counsel with all of the rights and obligations of any party to the proceeding." Ala. Code § 26-21-4(l) (2014).

20. The Act gives these three categories of adverse parties expansive powers. Each is authorized to cross-examine the minor and any witnesses. Ala. Code §§ 26-21-1(d), (j), (l) (2014). Moreover, the Act likewise authorizes any of these adverse parties, as well as the court, to subpoena any witness to testify against the minor. Ala. Code § 26-21-4(f), (k) (2014).

21. The Act eliminates any meaningful right of a minor to maintain confidentiality during the bypass process. It expressly states that the minor's identity may be revealed to "the judge, any guardian 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." Ala. Code § 26-21-4(c) (2014).

22. The Act likewise gives the district attorney, the guardian ad litem for the fetus, and the minor's parents the ability to delay the resolution of the minor's petition in multiple respects. It provides that the trial court shall rule on a minor's bypass petition within forty-eight hours, not including Saturdays, Sundays and legal holidays, but that "this time requirement may be extended on the request of the minor or any other participant in the proceeding, or by order of the court for the purpose of obtaining further testimony or evidence necessary for it to make an informed decision and to do substantial justice." Ala. Code § 26-21-4(e) (2014). Preexisting law allowed only the minor to seek such an adjournment. Ala. Code § 26-21-4(e) (2013). The Act gives the court discretion to determine the number and length of such delays, stating that "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." Ala. Code § 26-21-4(k) (2014).

23. While the prior Alabama law allowed only the minor, and no other party, to appeal a trial court's ruling on the petition, the Act permits the district attorney, the fetus's guardian ad litem, and/or the minor's parents to appeal a trial court decision to grant a minor's bypass petition.

24. The Act also restricts the bypass process "to minors who are residents of this state." Ala. Code § 26-21-4(a) (2014).

25. The Act provides that “[a]ny 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.” Ala. Code § 26-21-6(a)(1) (2014). Plaintiff RHS’s physicians and Plaintiff Ayers also face potential suspension and/or permanent revocation of their professional licenses for failure to comply with the Act. The Act states that “[a]ny 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 licensing body may require to insure compliance with this chapter.” Ala. Code § 26-21-6(a)(2) (2014). It further provides that “[i]n 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.” Ala. Code § 26-21-6(a)(3) (2014).

### **FACTUAL ALLEGATIONS**

#### **A. Minors Seeking Abortion**

26. Legal abortion is one of the safest medical procedures in the United States, both for minors and adult women. The rate of complications from abortion is extremely low—less than 0.3% of abortion patients have complications requiring hospitalization—and minors have even lower rates of complications than do adult women. Plaintiff RHS’s rate of complications is even lower.



27. While abortion is an incredibly safe procedure, the risks of the procedure increase as pregnancy progresses. Each week of delay increases the risks of the procedure, and delays that prolong a woman's pregnancy into the second trimester increase both the medical risk and the financial cost of the procedure.

28. In Alabama and throughout the United States, most minors who have an abortion do so with the knowledge of one or both of the minor's parents. Of those minors who feel they cannot involve a parent, most involve another trusted adult in their decision to seek an abortion. The younger the minor, the more likely she will be to involve a parent in her decision to obtain an abortion.

29. When a minor does not involve a parent in her decision to terminate her pregnancy, she generally has compelling reasons, including the fear of physical violence; of being forced to leave home; of being disowned; or of being forced to carry an unwanted pregnancy to term.

30. For a minor who cannot involve a parent in her decision to have an abortion and who must seek a judicial bypass, the ability to maintain her confidentiality during the bypass process is essential. For minors at risk of being abused, thrown out of the house, or disowned, their safety turns on whether or not they can pursue a judicial bypass confidentially.

31. Additionally, many minors seeking a judicial bypass are not only concerned about maintaining confidentiality with respect to their parents, but are also fearful that others in their lives will find out that the minor is pregnant and seeking an abortion. If others in the minor's life learn about her circumstances, it not only increases the risk of a breach of confidentiality with respect to a parent, but is also harmful to the minor in and of itself, given the intensely private nature of the decision about whether to terminate a pregnancy.

32. When minors cannot be certain that the bypass system will guarantee their confidentiality, some will go to extreme lengths, including but not limited to obtaining an illegal abortion, self-inducing an abortion, or having a child they did not wish to have for fear of retribution if they were to end their pregnancy.

33. The American Medical Association, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the Society for Adolescent Health and Medicine, and the American Public Health Association, among other health professional organizations, all conclude that minors should be permitted to obtain an abortion without mandated parental consent. Based upon a review of the research, these organizations have recognized that minors are competent to consent to abortion, that mandatory parental consent laws do not enhance family communication, and that such laws harm minors by delaying their ability to obtain an abortion.

34. Research establishes that most minors between the ages of 14 and 17 are as competent as adults to consent to an abortion. These minors seeking an abortion are able to understand their options, the risks and benefits of each, and are able to make informed and independent decisions.

**B. The Effect of the Act on Plaintiffs' Patients**

35. The Act fails to assure a minor that a bypass hearing and any appeals that follow will be conducted in a way that satisfactorily preserves her confidentiality and provides her with an effective and expeditious opportunity to seek a waiver of the parental consent requirement, even if she is mature and/or the abortion is in her best interests.

36. The Act's provisions requiring that the district attorney's office participate in the proceeding, permitting the minor's parents or guardian to participate in the proceeding, permitting

a guardian ad litem for the fetus to participate in the proceeding, and permitting the court and any of these adverse parties to subpoena *any* witness create a bypass procedure that fails to protect minors' confidentiality.

37. The experience of going to court is frightening and intimidating for many minors, and this is especially true in the context of seeking judicial authorization for an abortion, which necessarily involves addressing deeply personal matters to a judge. It is terrifying to minors who seek a bypass that the decision about whether she can have an abortion—one that will literally change the course of her life—is in the hands of a stranger. This fear will be significantly increased due to the Act's provisions including the adverse parties in the proceeding, and the fact that the minor will have to address these private matters in front of all of these parties and be cross-examined by them about the details of her personal and sexual lives and her choice to seek an abortion.

38. As if having to face all these parties were not enough, the minor also will not know who else will appear at her bypass proceeding, as any of these parties may subpoena witnesses to come testify. Witnesses who would have information relevant to the minor's maturity and/or best interests include her partner, her friends, her teachers, her relatives, her coaches, her neighbors, and/or her employer. The Act grants adverse parties the right to subpoena these witnesses and others to participate in the bypass hearing, which will cause the witnesses to learn that the minor is sexually active, pregnant, and desires an abortion. For many minors, the "option" of such a proceeding will be no option at all and they will choose not to seek court approval. Such a proceeding is, moreover, the very opposite of confidential.

39. The Act puts some minors at risk of severe harm because the parents of some minors for whom parental notice is not in their best interests will learn of their daughter's

pregnancy and planned abortion. This will occur either because their situation is discovered as they attempt to utilize the non-confidential bypass process or because the bypass process is so daunting that minors feel they have no option but to seek consent from their parents. Some of these minors will be abused, others will be forced to continue their pregnancies and have a child they did not want, and still others will be kicked out of their homes and cut off from their families. Even if their parents do not learn of their circumstances, minors will be harmed from the loss of confidentiality as others in their lives are informed that the minor is pregnant and seeking an abortion.

40. The Act further harms Plaintiffs' minor patients by creating a bypass procedure that is not expeditious. Proceedings in the trial court can be delayed by the unprecedented right of adverse parties to adjourn the proceedings. Moreover, even if a minor is granted a bypass, the Act's equally unprecedented provision permitting parties other than the minor to appeal the court's grant of a bypass will significantly delay a minor's ability to obtain an abortion by as long as a month.

41. Such delays will push some minors past the point of being able to obtain an abortion. Plaintiff RHS performs abortions only up to 14 weeks as dated from the woman's last menstrual period ("LMP"), and most if not all of its minor patients lack the financial resources and capacity to travel to a distant abortion provider who performs abortions later in gestation. The next-closest provider of abortions after 14 weeks LMP is in Tuscaloosa—a more than 200-mile round-trip journey.

42. Additionally, even for minors who are not pushed past the point of being able to obtain an abortion, the delays imposed by the Act will increase the medical risks of the procedure.

43. Plaintiffs' patients have no adequate remedy at law.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(Substantive Due Process – Right to an Effective, Confidential, and Expeditious Judicial Bypass)**

44. The allegations of paragraphs 1 through 43 are incorporated as though fully set forth herein.

45. The Act's judicial bypass provisions violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution by failing to provide an adequate judicial bypass to the parental consent requirement.

### **COUNT II**

#### **(Substantive Due Process – Right to Informational Privacy)**

46. The allegations of paragraphs 1 through 45 are incorporated as though fully set forth herein.

47. The Act's judicial bypass provisions violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution by permitting adverse parties and the court to disclose deeply sensitive, private information about the minor to others, including to any potential witness.

### **COUNT III**

#### **(Right to Travel)**

48. The allegations of paragraphs 1 through 47 are incorporated as though fully set forth herein.

49. The Act's provision limiting access to the judicial bypass to only Alabama residents violates out-of-state minors' fundamental right to interstate travel as guaranteed by the Privileges

and Immunities Clause of the United States Constitution by impairing the right of minors living outside of Alabama to travel to Alabama to obtain abortion services.

**COUNT IV**

**(Equal Protection)**

50. The allegations of paragraphs 1 through 49 are incorporated as though fully set forth herein.

51. The Act's provision limiting access to the judicial bypass to only Alabama residents violates out-of-state minors' right to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution by differentially treating minors based on their state of residence and whether they have traveled into Alabama to obtain an abortion, thereby creating classifications that penalize the exercise of the fundamental right to interstate travel.

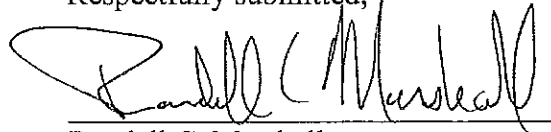
WHEREFORE, Plaintiffs respectfully request that the Court:

1. issue a declaratory judgment that:
  - a. Ala. Code §§ 26-21-4(f), (i), (j), (k), and (l) are unconstitutional;
  - b. Ala. Code § 26-21-4(a) is unconstitutional insofar as it prohibits non-resident minors from seeking a judicial bypass;
  - c. Ala. Code § 26-21-4(c) is unconstitutional insofar as it authorizes a breach of the minor's confidentiality to any of the following: the guardian ad litem for the fetus, "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 witness who has a need to

- know the minor's identity, or any other person determined by the court who needs to know";
- d. Ala. Code § 26-21-4(e) is unconstitutional insofar as it authorizes an extension of the time requirement on the request of any participant in the hearing other than the minor, or by order of the court; and
  - e. Ala. Code § 26-21-4(n) is unconstitutional insofar as it authorizes an appeal by any party other than the minor;
2. issue injunctive relief, without bond, prohibiting enforcement of Ala. Code §§ 26-21-4(f), (i), (j), (k), and (l), and prohibiting enforcement of Ala. Code §§ 26-21-4(a), (c), (e), and (n) to the extent those provisions are unconstitutional as set forth above;
  3. award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
  4. grant such other, further, and different relief as the Court may deem just and proper.

Dated: October 1, 2014

Respectfully submitted,



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*Attorneys for Plaintiffs*

*\*motion for admission pro hac vice pending*



# **Exhibit A**

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~~



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 guardian 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 guardianship. 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 guardian 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 guardian, 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

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~~ 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~~ 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.

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Speaker of the House of Representatives

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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 Sen- ate Amendment