

# ALABAMA

States of Tenn. v. EEOC, No. 2:24-cv-84-DPM, 2024 U.S. Dist. LEXIS 106242 (E.D. Ark. June 14 ,2024)  
The substantive abortion laws cited by the States, Ala. Code §§ 26-23H-4(b) & 23H-6(a), only regulate abortion providers.

Yellowhammer Fund v. Marshall, No. 2:23cv450-MHT, 2024 U.S. Dist. LEXIS 82003 (M.D. Ala. May 6, 2024)

The court (1) denied the motion to dismiss the right to travel and First Amendment claims; and (2) granted the motion to dismiss the overbreadth and fair warning claims. Here, the plaintiffs, a non-profit organization that provides reproductive healthcare services, stopped providing abortion-related services in response to the Attorney General's threats to prosecute them for arranging out of state abortions. The court reasoned that the threatened prosecution would violate the plaintiff's clients' right to travel because the right to travel includes the rights to move physically between States and engage in lawful conduct within those States. Moreover, the court expressed that the threatened prosecution offended a key principle of the right to travel, since States may not outlaw or punish the assistance of lawful travel. Second, the court reasoned that the threatened prosecution would violate the plaintiff's First Amendment Rights, since it would create an unconstitutional content-based restriction on speech. Third, the court held that the non-profit failed to support their overbreadth with any factual contentions or legal arguments. Finally, the court held that due process was not denied due to a lack of fair warning, since if the Attorney General's threats were enforced then it would be a prosecution based on an untested legal theory—which does not offend that fair warning requirements.

## **ALA. CONST. art 1 ss 36.06 – Sanctity of Unborn Life**

Declares and supports the sanctity of unborn life and the rights of unborn children, including the right to life. Expresses that a right to abortion or funding for abortion does not exist in the Alabama Constitution.

## **CHAPTER 21 Parental Consent to Performing Abortion upon Minor (§§ 26-21-1 — 26-21-8)**

### § 26-21-1. Legislative intent.

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

(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 safeguards 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 the 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 judges be provided with sufficient evidence and information upon which they may make informed and proper decisions.

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

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

Ala. Code § 26-21-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## § 26-21-2. Definitions.

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

(1) **Minor.** — Any person under the age of 18 years;

(2) **Emancipated minor.** — Any minor who is or has been married or has by court order otherwise been legally freed from the care, custody, and control of her parents;

(3) **Abortion.** — The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver the unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child. The term "abortion" as used herein does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman where the unborn child has a lethal anomaly. For the purposes of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7, a "lethal anomaly" means the child would die at birth, or be stillborn. For purposes of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7, the term "ectopic pregnancy" means any pregnancy resulting from a fertilized egg that was implanted or attached outside the uterus. The term "ectopic pregnancy" also includes a pregnancy resulting from a fertilized egg implanted inside the cornu of the uterus.

(4) **Medical emergency.** — A condition that, absent an abortion performed before the requirements of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7 are met, and based on the applicable standard of care, is likely to result in the death of the pregnant woman or is likely to result in substantial irreversible impairment of a major bodily

function.

Ala. Code § 26-21-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-21-3. Generally.

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

(b) The physician who shall perform the abortion or his or her 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 signatures of the parents, parent, or legal guardian shall be affixed and the information required in this subsection shall be on a form to be provided by, and shall be written in the presence of, the physician who shall perform the abortion or his or her agents. The parents, parent, or legal guardian shall provide to the physician who shall perform the abortion, or his or her agents, evidence of parentage or legal guardianship. For parents or a parent, there shall also be required a certified birth certificate of the minor identifying the minor and the parents or parent. For a legal guardian or adoptive parent, there shall be required a duly certified court order or other official document naming the legal guardian or adoptive parent as such for the minor. If official photographic personal identification has not been issued to any parents, parent, or legal guardian, other official identification shall be acceptable, provided the parents, parent, or legal guardian affirms in writing on the form herein required under oath, with recognition of criminal penalties, that he or she does not possess any photographic identification and that the alternative personal identification provided is his or her identification. The parent, parents or legal guardian signing the consent shall attest with recognition of criminal penalties that he or she is the parent or legal guardian, has not been deprived of primary custody or joint physical custody of the minor by any court of law, and has not given the child up for adoption or otherwise waived parental rights. If the minor does not have a certified birth certificate, an abortion may be performed only if the physician who shall perform the abortion certifies in writing in the minor's medical record that a medical emergency exists or that there is insufficient time to obtain a certified birth certificate, and provided the minor can provide other government issued identification. The parents, parent, or minor shall obtain a certified birth certificate as soon thereafter as possible and provide a certified copy to the physician who performed the abortion or his or her agents, and if it is not received within 90 days, he or she shall report the failure to the State of Alabama Department of Public Health on a form provided by the department. Any certified document, a photocopy of the personal identification, and any other documentation required by this subsection shall be attached to the completed consent form and shall be kept as a part of the minor's patient file for four years. All signatures required by Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7 by the minor, a parent or parents, a legal guardian, physician, or another person shall be attested either by two witnesses, or by a notary public.

(c) If the minor is emancipated, the physician who shall perform the abortion or his or her agents shall obtain a written 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 form shall be signed in the presence of the physician who shall perform the abortion or his or her agents and witnessed by the physician or the 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. Such certified document shall be attached to the written form and kept as a part of the minor's patient file for four years.

(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 behalf, the juvenile court, or 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 section pursuant to the procedure of Section 26-21-4.

(e) A parent, legal guardian, 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 July 1, 2014, the forms required in subsections (b) and (c).

Ala. Code § 26-21-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-21-4. Petition for waiver of consent.

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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 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 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.

(c) The court shall insure that the minor is given assistance in preparing and filing the petition. 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 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. 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.

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

- (1) A statement that the petitioner is pregnant;
- (2) A statement that the petitioner is unmarried, under 18 years of age, and unemancipated;
- (3) A statement that the petitioner wishes to have an abortion without the consent of either parent or legal guardian.
- (4) An allegation of either or both of the following:
  - a. That the petitioner is sufficiently mature and well enough informed to

intelligently decide whether to have an abortion without the consent of either of her parents or legal guardian.

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

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

**(e)** Court proceedings shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case, except as provided herein, shall the court fail to rule within 48 hours of the time the petition is filed, Saturdays, Sundays, and legal holidays excluded. Provided, however, 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. If a juvenile court judge is not available for the hearing provided herein, the clerk of the court in which the petition was filed shall forthwith notify the presiding circuit court judge and the presiding circuit court judge of the circuit shall immediately appoint a district or circuit court judge to hear the petition.

**(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 the court admissible evidence or testimony either in support of or against the petition.

**(g)** The required consent shall be waived if the court finds either:

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

**(i)** 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 on the day of such filing and the district attorney or his or her representative shall participate as an advocate for the state to examine the petitioner and any witnesses, and to present evidence for the purpose of providing the court with a sufficient record upon which to make an informed

decision and to do substantial justice.

(j) In the court's discretion, it may appoint a guardian ad litem for the interests of the unborn child of the petitioner who shall also have the same rights and obligations of participation in the proceeding as given to the district attorney's office. The guardian 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 guardian ad litem shall be compensated as provided in Section 15-12-21.

(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.

(l) Although the court shall not be required or permitted to contact the minor's parent, parents, or legal guardian, in the event that the minor's parent, parents, or legal guardian 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.

(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 (n), a transcript of the proceedings shall be prepared forthwith.

(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 guardian ad litem, or the parent, parents, or legal guardian 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.

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

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

(q) In 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 the court, including, but not limited to, statutory rape.

Ala. Code § 26-21-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-21-5. Medical emergencies; exemption.

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This chapter shall not apply when, in the best clinical judgment of the attending physician on the facts of the case before him, a medical emergency exists that so compromises the health, safety or well-being of the mother as to require an immediate abortion. A physician who does not comply with Sections 26-21-3 and 26-21-4 by reason of this exception shall state in the medical



record of the abortion, the medical indications on which his judgment was based.

Ala. Code § 26-21-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-21-6. Violations of chapter; penalties.

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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.

(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 licensing body may require to insure compliance with this 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.

Ala. Code § 26-21-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-21-6.1. Civil liability.

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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 an informed consent or parental or judicial consent. The civil action may be based on a claim that the action was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or breach of other legal standard of care. The Medical Liability Act of 1987 shall not apply to any civil causes of action brought pursuant to Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7.

Ala. Code § 26-21-6.1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-21-7. Immunity from liability.

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(a) No physician who complies with the parental consent 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, parents, or legal guardian. Notwithstanding the foregoing, a physician who performs an abortion pursuant to a court order obtained under this chapter, shall not disclose any information regarding same to the parent, parents, or legal guardian of the minor unless such disclosure is made pursuant to a court order. In no event shall the physician be under any duty to initiate proceedings in any court to secure a waiver of the parental consent requirement on behalf of any minor who has requested that an abortion be 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.

Ala. Code § 26-21-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-21-8. Confidentiality of records.

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**(a)** Records and information involving court proceedings conducted pursuant to Section 26-21-4 shall be confidential and shall not be disclosed other than to the minor, her attorney and necessary court personnel. Nothing in this subsection shall prohibit the keeping of statistical records and information as long as the anonymity of the minor is in no way compromised.

**(b)** Any person who shall disclose any records or information made confidential pursuant to subsection (a) of this section shall be guilty of a Class C misdemeanor.

**(c)** Provided, however, any person who performs abortions, or his agent, shall furnish to the Bureau of Vital Statistics, on confidential forms furnished by the bureau, the following: (1) the number of abortions performed on each unemancipated and emancipated minor with written



consent; (2) the number of abortions performed on each unemancipated and emancipated minor pursuant to juvenile or other court proceedings pursuant to Section 26-21-3(e); and (3) the number of abortions performed pursuant to Section 26-21-5 on each unemancipated and emancipated minor. Such reporting shall be provided annually as prescribed by the Bureau of Vital Statistics which shall be retained by the bureau for at least seven years. Such information prescribed shall include nonconfidential statistics, including but not limited to: age, race and education level of minor.

Ala. Code § 26-21-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-22-1. Legislative findings and intent.

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(a) The public policy of the State of Alabama is to protect life, born and unborn. This is particularly true concerning unborn life that is capable of living outside the womb. The Legislature of the State of Alabama finds there are abortions being done in Alabama after the time of viability and in violation of its public policy.

(b) The Legislature specifically finds the following:

(1) Medical evidence shows there is a survival rate of babies born between ages 23 weeks to 29 weeks gestational age of 64 percent to 94 percent.

(2) In *Webster v. Reproductive Health Services*, 492 U.S. 499 (1989), the United States Supreme Court determined that viability may occur as early as 23 to 24 weeks gestational age. Also, the United States Supreme Court determined that requiring fetal viability testing at 20 weeks gestational age is constitutional, because there is up to a four week margin of error in determining gestational age.

(3) In the latest year of Alabama statistical reporting, 1994, there were reported to be 182 abortions performed at 20 or more weeks gestational age. There were also 70 abortions performed where no gestational age was stated.

(c) Subject to life and health exceptions to the mother, it is the intent of the Legislature to ban abortions of any unborn child that is capable of living outside the womb. To permit otherwise is a wanton disregard of human life.

Ala. Code § 26-22-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-22-2. Definitions.

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The following words shall have the following meanings:

(1) **Abortion.** — The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child.

(2) **Fertilization.** — The fusion of a human spermatozoon with a human ovum.

(3) **Gestational age.** — The age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

(4) **Hospital.** — An institution licensed pursuant to the provisions of the law of this state.

(5) **Live birth.** — When used with regard to a human being, means that the human being was completely expelled or extracted from his or her mother and after such separation, breathed or showed evidence of any of the following: beating of the heart, pulsation of the umbilical cord, definite movement of voluntary muscles, or any brain-wave activity.

(6) **Medical emergency.** — The condition, which, on the basis of the physician's good-faith clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of her

pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(7) **Pregnant.** — The female reproductive condition of having a developing fetus in the body and commences with fertilization.

(8) **Unborn child and fetus.** — An individual organism of the species homo sapiens from fertilization until live birth.

(9) **Viable and viability.** — The stage of fetal development when, in the judgment of the physician based upon the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

Ala. Code § 26-22-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-22-3. Prohibition — Exceptions — Regulations — Penalties.

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(a) **Prohibition.** — Except as provided in subsection (b), no person shall intentionally, knowingly, or recklessly perform or induce an abortion when the unborn child is viable.

(b) **Exceptions.** —

(1) It shall not be a violation of subsection (a) if an abortion is performed by a physician and that physician reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. No abortion shall be deemed authorized under this paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of a major bodily function.

(2) It shall not be a violation of subsection (a) if the abortion is performed by a physician and that physician reasonably believes, after making a determination of the viability of the unborn child in compliance with Section 26-22-4 relating to the determination of viability, that the unborn child is not viable.

(c) **Abortion regulated.** — Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this subsection, no abortion which is authorized under subsection (b)

(1) shall be performed unless each of the following conditions are met:

(1) The physician performing the abortion certifies in writing that, based upon his or her medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or serious risk of substantial and irreversible impairment of a major bodily function.

(2) The physician's judgment with respect to the necessity for the abortion has been concurred in by one other licensed physician who certifies in writing that, based upon his or her separate personal medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.

(3) The abortion is performed in a hospital.

(4) The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive, unless the physician determines, in his or her good faith medical judgment, that termination of the pregnancy in that manner poses a significantly greater risk either of the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman than would other

available methods.

(5) The physician performing the abortion arranges for the attendance, in the same room in which the abortion is to be completed, of a second physician who shall take control of the child immediately after complete extraction from the mother and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

(d) **Penalty.** — Any person who violates subsection (a) commits a Class A felony. Any person who violates subsection (c) commits a Class C felony.

Ala. Code § 26-22-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-22-4. Testing; viability.

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Except in the case of a medical emergency, prior to performing an abortion upon a woman subsequent to her first 19 weeks of pregnancy, the physician shall determine whether, in his or her good faith medical judgment, the child is viable. When the physician has determined that a child is viable, he or she shall report the basis for his or her determination that the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. When the physician has determined that a child is not viable after the first 19 weeks of pregnancy, he or she shall report the basis for such determination.

Ala. Code § 26-22-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-22-5. Construction.

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Nothing in this chapter shall be construed to recognize a right to abortion or to make legal an abortion that is otherwise unlawful.

Ala. Code § 26-22-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23 Alabama Partial-Birth Abortion Ban Act of 1997** **(§§ 26-23-1 — 26-23-6)**

Summit Med. Assocs., P.C. v. Siegelman, 130 F. Supp. 2d 1307, 2001 U.S. Dist. LEXIS 2241 (M.D. Ala. 2001).

This statute, with the exception of the private civil-enforcement provision, violates the due process clause of the fourteenth amendment to the United States Constitution in that it only allows partial-birth abortion to “save the life of a mother” but makes no exception for the physical or mental health of the pregnant woman, or for any reason other than the life-endangerment of the woman.

§ 26-23-1. Title.

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This chapter may be cited as the “Alabama Partial-Birth Abortion Ban Act of 1997.”

Ala. Code § 26-23-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23-2. Definitions.

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As used in this chapter, the following terms shall have the following meanings:

**(1) Father.** — The biological father of the human fetus.

**(2) Mother.** — The female who is pregnant with a live human fetus which may be subject to a partial-birth abortion under this chapter.

**(3) Partial-birth abortion.** — An abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

**(4) Physician.** — A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state or any other individual legally authorized by the state to perform abortions. This definition shall also include any individual who is not a physician or is not otherwise legally authorized by the state to perform abortions, but who nevertheless performs a partial-birth abortion

Ala. Code § 26-23-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23-3. Physicians; prohibited action.

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Any physician who knowingly performs a partial-birth abortion within this state and thereby kills a human fetus shall be guilty of a Class C felony and upon conviction thereof shall be punished as prescribed by law.

Ala. Code § 26-23-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23-4. Exception; life of mother.

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Section 26-23-3 shall not apply to a partial-birth abortion that is necessary to save the life of a mother.

Ala. Code § 26-23-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23-5. Relief; father and maternal grandparents.

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The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. The relief shall be limited to monetary compensation for all injuries, psychological and physical, occasioned by a violation under this chapter and monetary punitive compensation as allowed by law.

Ala. Code § 26-23-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23-6. Women; prosecution.

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A woman upon whom a partial-birth abortion is performed may not be prosecuted under this chapter for a conspiracy to violate this chapter or for any other offense which is unlawful under this chapter.

Ala. Code § 26-23-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

**CHAPTER 23A The Woman’s Right to Know Act**  
**(§§ 26-23A-1 — 26-23A-13)**

§ 26-23A-1. Short title.

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This chapter shall be known and cited as “The Woman’s Right to Know Act.”  
Ala. Code § 26-23A-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-2. Legislative findings.

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(a) The Legislature of the State of Alabama finds that:

(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on her alternatives.

(2) Most abortions are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities do not have any relationship with the physician who performs the abortion, before or after the procedure. Most women do not return to the facility for post-surgical care. In most instances, the woman’s only actual contact with the physician occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning her decision.

(3) The decision to abort is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences. The medical, emotional, and psychological consequences of an abortion are serious and can be lasting or life threatening.

(b) Based on the findings in subsection (a), it is the purpose of this chapter to ensure that every woman considering an abortion receives complete information on the procedure, risks, and her alternatives and to ensure that every woman who submits to an abortion procedure does so only after giving her voluntary and informed consent to the abortion procedure.

Ala. Code § 26-23A-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-3. Definitions.

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For the purposes of this chapter, the following terms have the following meanings:

(1) **Abortion.** — The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver an unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child.

(2) **Conception.** — The fusion of a human spermatozoon with a human ovum.

(3) **Emancipated minor.** — Any minor who is or has been married or has by court order otherwise been legally freed from the care, custody, and control of her parents.

(4) **Gestational age.** — The time that has elapsed since the first day of the woman’s last menstrual period.

(5) **Medical emergency.** — That condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or in which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

- (6) **Minor.** — Any person under the age of 18 years.
- (7) **Physician.** — Any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy.
- (8) **Pregnant or pregnancy.**— The female reproductive condition of having an unborn child in the mother's (woman's) body.
- (9) **Qualified person.** — An agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.
- (10) **Unborn child.** — The offspring of any human person from conception until birth.
- (11) **Viable.** — That stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.
- (12) **Woman.** — Any female person.

Ala. Code § 26-23A-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-4. Consent procedures.

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Except in the case of a medical emergency, no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) At least 48 hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed and provided the woman in person, or by return receipt certified mail restricted delivery, and if by mail, again in person prior to the abortion, a copy of the printed materials in Section 26-23A-5 which list agencies that offer assistance, adoption agencies, development of the unborn child, methods and risks of abortion and childbirth, father's obligations, and alternatives to abortion. Mailing of the materials in Section 26-23A-5 may be arranged by telephone.

(b) Prior to an abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman in person:

(1) The name of the physician who will perform the abortion in writing or a business card.

(2) The nature of the proposed abortion method and associated risks and alternatives that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(3) The probable gestational age of the unborn child at the time the abortion is to be performed, and the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed. If the unborn child is viable or has reached a gestational age of more than 19 weeks, that:

a. The unborn child may be able to survive outside the womb.

b. The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child, provided such abortion is not otherwise prohibited by law.

c. If the unborn child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

(4) The physician who is to perform the abortion or the referring physician is required to perform an ultrasound on the unborn child before the abortion. The woman has a right to view the ultrasound before an abortion. The woman shall complete a required form to acknowledge that she either saw the ultrasound image of her unborn child or that she was offered the opportunity and rejected it.

(5) She has the right to view the videotape and ultrasound of her unborn child as



described in Section 26-23A-6.

(6) Any need for anti-Rh immune globulin therapy, and if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(7) She cannot be forced or required by anyone to have an abortion. She is free to withhold or withdraw her consent for an abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

(c) The woman shall complete and sign a form that she has received the information of subsections (a) and (b), and does provide her informed consent for an abortion on her unborn child.

(d) Prior to the performance of an abortion, the physician who is to perform the abortion or his or her agent shall receive the signed receipt of the certified mail dated 48 hours before the abortion, if mailed, and the signed forms that she has received the information of subsections (a) and (b) before the abortion, had the opportunity to view the video and the ultrasound of her unborn child, and provided her informed consent for an abortion. The abortion facility shall retain the signed receipt, signed forms, and the ultrasound in the woman's medical file for the time required by law, but not less than four years.

Ala. Code § 26-23A-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-5. Printed materials.

(a) The Department of Public Health shall publish within 180 days after October 14, 2002, and shall update on an annual basis, the following easily comprehensible printed materials:

(1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to provide medical and financial assistance to a woman through pregnancy, prenatal care, upon childbirth, and while her child is dependent. The materials shall include a comprehensive list of the agencies, a description of the services offered, and the telephone numbers and addresses of the agencies.

(2) The printed materials shall include a list of adoption agencies geographically indexed and that the law permits adoptive parents to pay the cost of prenatal care, childbirth and neonatal care.

(3) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term. It shall include color photographs of the developing child at each of the two-week gestational increments, a clear description of the unborn child's development, any relevant information on the possibility of the unborn child's survival, and dimensions of the unborn child. The materials shall be realistic, clear, objective, non-judgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(4) The materials shall contain objective information describing the methods of abortion procedures commonly employed and the medical risks of each, and the medical risks associated with carrying a child to term.

(5) The printed materials shall list the support obligations of the father of a child who is born alive.

(6) The printed materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action at law.

(7) The material shall include the following statement: “There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The State of Alabama strongly urges you to contact those agencies before making a final decision about abortion. The law requires that your physician or his or her agent give you the opportunity to call agencies like these before you undergo an abortion.”

(b) The materials in subsection (a) shall be in a bound booklet, shall contain large clear photographs, and shall be printed in a typeface large enough to be clearly legible.

(c) The materials required under this section and the videotape described in Section 26-23A- shall be available to the general public, from the Department of Public Health upon request, and appropriate number to any person, facility, or hospital. The department may charge a reasonable fee based on the cost of producing the materials and videotape.

Ala. Code § 26-23A-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23A-6. Video viewing and ultrasound equipment.

(a) All facilities where abortions are performed and all facilities of physicians who refer for abortion shall have video viewing equipment. The video that may be shown to those who want to see it shall be identified by title, updated from time to time by the Department of Public Health, and shall be objective, nonjudgmental, and designed to convey accurate scientific and medical information, and shall contain at a minimum, the information required in subdivisions (3), (4), (5), (6), and (7) of subsection (a) of Section 26-23A-5.

(b) All facilities where abortions are performed and all facilities of physicians who refer for abortion shall have ultrasound equipment. An ultrasound shall be performed on each unborn child before an abortion is performed.

(c) The Department of Public Health shall develop a signature form for verifying that she has received the complete information as described in Section 26-23A-4, was offered the opportunity of viewing the video and ultrasound image of her unborn child, and provides her informed consent for an abortion on her unborn child.

(d) Facilities as used in this section shall not include hospitals that do not regularly or routinely perform abortions or are otherwise not defined by any statute or regulation as an abortion or reproductive health center. This shall not, however, relieve any facility or physician to whom this section is applicable from the obligations stated herein.

Ala. Code § 26-23A-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23A-7. Medical license required.

Only a physician may perform an abortion.

Ala. Code § 26-23A-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23A-8. Medical emergency.

(a) Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting his or her judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

**(b)** The Department of Public Health shall develop a signature form for recording the medical conditions associated with a medical emergency abortion. A signed copy of the abortion, and the original copy retained in the woman's medical file for the time required by law, but not less than four years.

Ala. Code § 26-23A-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-9. Criminal penalties.

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**(a)** Any person who intentionally, knowingly, or recklessly violates this chapter is guilty on a first offense of a Class B misdemeanor, on a second offense of a Class A misdemeanor, and on a third or subsequent offense of a Class C felony.

**(b)** After two convictions within a 12-month period of any person or persons at a specific abortion or reproductive health center, the license of such center shall be suspended for a period of 24 months and may be reinstated after that time only on conditions as the Department of Public Health requires to assure compliance with this chapter.

Ala. Code § 26-23A-9 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-10. Civil and administrative action.

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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:

**(a)** Provide a basis for a civil action for compensatory and punitive damages. Any conviction under this chapter shall be admissible in a civil suit as prima facie evidence of a failure to obtain an informed consent or parental or judicial consent. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care.

**(b)** 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. Any conviction of any person for any failure to comply with the requirements of this chapter shall result in the automatic suspension of his or her 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 shall require to insure compliance with this chapter.

**(c)** Provide a basis for recovery for the woman for the wrongful death of the child, whether or not the unborn child was viable at the time the abortion was performed or was born alive.

Ala. Code § 26-23A-10 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23A-11. Sealed record proceedings.

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In every civil or criminal proceeding or action brought under this chapter, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted, shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall issue written orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone,

other than a public official, who brings an action under Section 26-23A-10 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Ala. Code § 26-23A-11 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23A-12. Construction.

Nothing in this chapter shall be construed as creating or recognizing a right to abortion. It is not the intention of this chapter to make lawful an abortion that is currently unlawful nor to deny a woman an abortion that is lawful. Following abortion counseling, the withdrawal of consent to an abortion must be followed with appropriate referrals to ensure adequate care for a child that is to be delivered.

Ala. Code § 26-23A-12 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23A-13. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this chapter or the application thereof to any person or circumstance is found to be invalid or unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective. The Legislature hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared invalid or unconstitutional.

Ala. Code § 26-23A-13 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### **CHAPTER 23B Alabama Pain-Capable Unborn Child Protection Act (§§ 26-23B-1 — 26-23B-9)**

#### § 26-23B-1. Short title.

This chapter shall be known and may be cited as the Alabama Pain-Capable Unborn Child Protection Act.

Ala. Code § 26-23B-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-2. Legislative findings.

The Legislature makes all of the following findings:

- (1) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks.
- (2) By eight weeks after fertilization, the unborn child reacts to touch. After 20 weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.

- (3) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without such anesthesia.
- (4) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.
- (5) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.
- (6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.
- (7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.
- (8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.
- (9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.
- (10) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.
- (11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization.
- (12) It is the purpose of this state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.
- (13) Alabama's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of Alabama's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.
- (14) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of this state that if any

one or more provisions, sections, subsections, sentences, clauses, phrases, or words of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. Moreover, this state declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words, or any of their applications, were to be declared unconstitutional.

Ala. Code § 26-23B-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23B-3. Definitions.

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For purposes of this chapter, the following terms shall have the following meanings:

**(1) Abortion.** — The use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

**(2) Attempt to perform or induce an abortion.** — An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this chapter.

**(3) Fertilization.** — The fusion of a human spermatozoon with a human ovum.

**(4) Medical emergency.** — A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

**(5) Postfertilization age.** — The age of the unborn child as calculated from the fertilization of the human ovum.

**(6) Reasonable medical judgment.** — A medical judgment that would be made by a reasonable prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

**(7) Physician.** — Any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

**(8) Probable postfertilization age of the unborn child.** — What, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.

**(9) Unborn child or fetus.** — An individual organism of the species homo sapiens from fertilization until live birth.

**(10) Woman.** — A female human being whether or not she has reached the age of majority.

Ala. Code § 26-23B-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23B-4. Conditions.

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(a) Except in the case of a medical emergency, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing the abortion has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(b) Failure by any physician to conform to any requirement of this section constitutes unprofessional conduct.

Ala. Code § 26-23B-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-5. Abortion in special cases.

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(a) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the unborn child of the woman is 20 or more weeks unless, in reasonable medical judgment, the woman has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(b) When an abortion upon a woman whose unborn child has been determined to have a probable postfertilization age of 20 or more weeks is not prohibited by this section, in such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions of the woman, than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Ala. Code § 26-23B-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-6. Violations.

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Any person who intentionally, knowingly, or recklessly performs or induces or attempts to perform or induce an abortion in violation of this chapter is guilty of a Class C felony. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

Ala. Code § 26-23B-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-7. Civil causes of action.

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(a) Any woman upon whom an abortion has been performed or induced in violation of this

chapter, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional, knowing, or reckless violation of this chapter for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this chapter may maintain an action against the person who attempted to perform the abortion in intentional, knowing, or reckless violation of this chapter for actual damages.

(b) A cause of action for injunctive relief against any person who has intentionally, knowingly, or recklessly violated this chapter may be maintained by the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this chapter, by a district attorney with appropriate jurisdiction, or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing, or attempting to perform or induce, further abortions in violation of this chapter in this state.

(c) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(d) If judgment is rendered in favor of the defendant and the court finds that the suit by the plaintiff was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

(e) No damages or attorney fees may be assessed against the woman upon whom an abortion was performed or induced or attempted to be performed or induced except as provided in subsection (d).

Ala. Code § 26-23B-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-8. Court ruling for anonymity.

In every civil or criminal proceeding or action brought under this chapter, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone, other than a public official, who brings an action under Section 26-23B-7 shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Ala. Code § 26-23B-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23B-9. Provisions supplemental.

The provisions of this chapter are supplemental to and shall be read in pari materia with Chapter

22, Title 26, Code of Alabama 1975, relating to the abortion of viable unborn children, and the Alabama Partial-Birth Abortion Ban Act of 1997. This chapter shall not be construed to repeal, by implication or otherwise, Section 26-22-3, Section 26-23-3, Code of Alabama 1975, or any otherwise applicable provision of Alabama’s law regulating or restricting abortion. An abortion that complies with this chapter but violates the provisions of Section 26-22-3, Section 26-23-3, Code of Alabama 1975, or any otherwise applicable provision of Alabama’s law shall be deemed unlawful as provided in such provision. An abortion that complies with the provisions of Section 26-22-3, Section 26-23-3, Code of Alabama 1975, or any otherwise applicable provision of Alabama’s law regulating or restricting abortion but violates this chapter shall be deemed unlawful as provided in this chapter.

Ala. Code § 26-23B-9 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### **CHAPTER 23C Federal Abortion Mandate Opt Out Act (§§ 26-23C-1 — 26-23C-4)**

#### § 26-23C-1. Short title.

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This chapter shall be known as the “Federal Abortion Mandate Opt Out Act.”

Ala. Code § 26-23C-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23C-2. Legislative findings.

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(a) The Legislature of the State of Alabama finds all of the following:

- (1) Under the Patient Protection and Affordable Care Act, P.L. 111-148, federal tax dollars, via affordability credits, subsidies provided to individuals between 150-400 percent of the federal poverty level, are routed to exchange participating health insurance plans, including plans that provide coverage for abortions.
- (2) Federal funding of insurance plans that provide abortions is an unprecedented change in federal abortion funding policy. The Hyde Amendment, as passed each year in the Labor Health and Human Services Appropriations bill, and the Federal Employee Health Benefits Program, FEHBP, prohibit federal funds from subsidizing health insurance plans that provide abortions. Under this new law, however, exchange participating health insurance plans that provide abortions can receive federal funds.
- (3) The provision of federal funding for health insurance plans that provide abortion coverage is nothing short of taxpayer funded and government endorsed abortion.
- (4) However, P.L. 111-148 allows a state to “opt out” of permitting health insurance plans that cover abortions to participate in the exchanges within that state and thereby prohibit taxpayer money from subsidizing plans that cover abortions within that state.
- (5) The decision not to fund abortions places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy.
- (6) Moreover, it is permissible for a state to engage in unequal subsidization of abortions and other medical services to encourage alternative activity deemed in the public interest.
- (7) Citizens of the State of Alabama, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions. For example, a January 2010 Quinnipiac poll showed that 7 in 10 Americans were opposed to provisions in federal health care reform that use federal funds to pay for abortions and abortion coverage.
- (8) The Guttmacher Institute, which advocates for unfettered and taxpayer-funded access to

abortion, confirms that, based on Medicaid studies, more women have abortions when it is covered by private or public insurance programs.

(b) Based on the findings in subsection (a), it is the purpose of this chapter to affirmatively opt out of allowing qualified health plans that cover abortions to participate in exchanges within the State of Alabama.

Ala. Code § 26-23C-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23C-3. Alabama opts out.

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(a) No abortion coverage may be provided by a qualified health plan offered through an exchange created pursuant to P.L. 111-148 within the State of Alabama.

(b) This prohibition shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when the pregnancy is the result of an act of rape or incest or any procedure to terminate an ectopic pregnancy.

Ala. Code § 26-23C-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23C-4. Construction with other law.

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(a) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this chapter to make lawful an abortion that is currently unlawful.

Ala. Code § 26-23C-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23D Termination of Ectopic Pregnancy (§ 26-23D-1)**

§ 26-23D-1. Ectopic pregnancy.

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(a) For the purposes of this section, the term ectopic pregnancy means any pregnancy resulting from a fertilized egg that has implanted or attached outside the uterus. The term also includes a pregnancy resulting from a fertilized egg implanted inside the cornu of the uterus.

(b) The term “abortion,” when used in the Code of Alabama 1975, or in the Alabama Administrative Code, shall not be construed to include any procedure to terminate an ectopic pregnancy, unless the statutory provision or rule expressly states that it is intended to apply to a procedure to terminate an ectopic pregnancy.

(c) The requirement of Section 26-23B-4, Code of Alabama 1975, for a physician to make a determination of the probable post-fertilization age of the unborn child prior to an abortion shall apply only to abortion procedures. The requirements of Section 22-9A-13, Code of Alabama 1975, for reporting fetal deaths and pregnancy terminations shall be construed to require a report of the probable post-fertilization age only for abortion procedures.

Ala. Code § 26-23D-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23E Women’s Health and Safety Act**

## (§§ 26-23E-1 — 26-23E-17)

### § 26-23E-1. Short title.

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This chapter shall be known and may be cited as the “Women’s Health and Safety Act.”  
Ala. Code § 26-23E-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23E-2. Legislative findings.

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The Legislature finds all of the following:

- (1) That the percentage of abortion or reproductive health centers that have been subject to adverse licensure action vastly exceeds the percentage of facilities in any other category that have similarly been subject to adverse licensure actions. This alarming level of regulatory non-compliance among abortion and reproductive health centers in Alabama puts abortion patients at unreasonable risk.
- (2) At abortion or reproductive health centers, patients are often treated in a manner inconsistent with a traditional physician/patient relationship.
- (3) Abortion or reproductive health centers are not operated in the same manner as ambulatory surgical treatment centers or physician offices.
- (4) Abortion involves not only a surgical procedure with the usual risks attending surgery, but also involves the taking of human life.
- (5) Abortion is a highly personal and very sensitive procedure which results in stress and concern for the patient that is unique to the decision to have an abortion.
- (6) Abortion is a very profitable procedure most often engaged in by stand-alone clinics without many of the safeguards found in a traditional physician/patient relationship or other medical care setting.
- (7) Because abortion and reproductive health centers do not currently provide the level of personal contact found in many physician/patient relationships and in other medical care settings, it is necessary for the Legislature to mandate the personal presence and participation of the physician in the process.
- (8) Moreover, because abortion or reproductive health centers have often failed to meet acceptable standards of medical care, it is necessary for Legislature to enact reasonable and medically appropriate health and safety standards for all abortion and reproductive health centers, and to provide effective enforcement mechanisms and disincentives for centers that are unable or unwilling to meet these requirements.

Ala. Code § 26-23E-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23E-3. Definitions.

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As used in this chapter, the following terms shall have the following meanings:

- (1) **Abortion.** — The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver the unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child. The term “abortion” as used in this chapter, does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a



lethal anomaly. For the purposes of this chapter, a “lethal anomaly” means that the child would die at birth or be still born. For the purposes of this chapter, the term, “ectopic pregnancy,” means any pregnancy resulting from a fertilized egg that has implanted or attached outside the uterus. The term, “ectopic pregnancy,” also includes a pregnancy resulting from a fertilized egg implanted inside the cornu of the uterus.

**(2) Abortion inducing drug.** — A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with the knowledge that the termination will with reasonable likelihood cause the death of the unborn child. Use of such drugs to induce abortion is also known as “medical abortion.” This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.

**(3) Abortion or reproductive health center.** — A facility defined and regulated as an abortion or reproductive health center by the rules of the Alabama State Board of Health.

**(4) Administer.** — To give or apply a pharmacologic or other therapeutic agent to a patient.

**(5) Dispense.** — To sell, distribute, administer, leave with, give away, dispose of, deliver, or supply a drug or medicine to the ultimate user or the user’s agent.

**(6) Physician.** — A person currently licensed by the Medical Licensure Commission, State of Alabama, to practice medicine or osteopathy pursuant to Section 34-24-50, et seq., Code of Alabama 1975.

**(7) Prescription.** — A physician’s order for the preparation and administration of a drug or device for a patient.

**(8) Registered professional nurse (RN).** — A person currently licensed in the State of Alabama pursuant to Section 34-21-21, Code of Alabama 1975.

Ala. Code § 26-23E-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-4. Physician requirements.

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**(a)** Only a physician may perform an abortion.

**(b)** During and after an abortion procedure performed at an abortion or reproductive health center, a physician must remain on the premises until all patients are discharged. The discharge order must be signed by the physician. Prior to discharge from the facility, the patient shall be provided with the name and telephone number of the physician who will provide care in the event of complications, and the name of the medications given at the abortion clinic.

**(c)** Every physician referenced in this section shall have staff privileges at an acute care hospital within the same standard metropolitan statistical area as the facility is located that permit him or her to perform dilation and curettage, laparotomy procedures, hysterectomy, and any other procedures reasonably necessary to treat abortion-related complications.

Ala. Code § 26-23E-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-5. Nursing requirements.

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At all times during procedures in an abortion or reproductive health center, nursing care shall be under the supervision of a registered professional nurse currently licensed in Alabama. At least one registered professional nurse shall be on duty to provide or supervise all nursing care of



patients in preparation for and during the abortion procedure, during the recovery period, and through the initial discharge by the attending physician. Other nursing service personnel shall remain on duty as required to meet the needs of each patient.

Ala. Code § 26-23E-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-6. Standard of patient care.

All patient care in an abortion or reproductive health center must be rendered in accordance with all applicable federal, state, and local laws, State Board of Health rules, State Board of Medical Examiners rules, and current standards of care, including all professional standards of practice.

Ala. Code § 26-23E-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-7. Abortion-inducing drug to be administered/prescribed by physician only.

Only a physician may give, sell, dispense, administer, or otherwise prescribe an abortion-inducing drug. Because the failure and complications from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug must first examine the pregnant woman in person and document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

Ala. Code § 26-23E-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-8. Standards for abortion or reproductive health center abortion procedures.

Physicians performing abortion procedures in abortion or reproductive health centers shall conform to the rules for office-based surgery of the Alabama State Board of Medical Examiners, shall meet the standards prescribed in the rules for "office-based procedures — moderate sedation/analgesia," and shall meet all other requirements in those rules, including the recommended guidelines for follow-up care, requirements for recovery area, assessment for discharge, reporting requirements, and registration requirements.

Ala. Code § 26-23E-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-9. Standards for abortion or reproductive health center facilities.

An abortion or reproductive health center shall be classified as ambulatory health care occupancy and shall meet all standards in the NFPA 101 Life Safety Code 2000 edition, or such standards in any later edition of the NFPA 101 Life Safety Code that the Board of Health may adopt for facilities classified as ambulatory health care occupancy. Not later than December 28, 2013, each licensed abortion or reproductive health center shall submit to the Department of Public Health architectural drawings and plans and sprinkler system plans and such other materials as may be required to show compliance or prospective compliance with the applicable life safety code. These shall be submitted and reviewed pursuant to the Board of Health Rules for Plan Review, including the payment of plan review fees. Not later than July 1, 2014, each abortion or

reproductive health center shall obtain from the Department of Public Health a certificate of completion which shall certify that the facility meets all ambulatory health care occupancy standards in the applicable NFPA 101 Life Safety Code, as well as all other life safety and building standards required by law or rule. Any facility that fails to submit architectural drawings and plans, sprinkler system plans, and such other materials as may be required to the Department of Public Health within the deadline for such submission shall have its license revoked. Any facility that fails to obtain a certificate of occupancy within the deadline for obtaining such certificate shall have its license revoked.

Ala. Code § 26-23E-9 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-10. Minor child seeking an abortion.

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**(a)** Any minor child under the age of 16 seeking an abortion from an abortion or reproductive health care facility shall be asked by the physician performing the abortion or his or her agent to state the name and age of the individual who is believed to be the father of the unborn child. While the minor child may refuse to provide the father's name and age, she should be encouraged to do so by the physician or agent consistent with the physician's legal obligation to reduce the incidence of child abuse when there is reason to suspect that it has occurred.

**(b)** In addition to any other abuse reporting requirements that may apply to the staff of an abortion or reproductive health center, if the reported age of the father is two or more years greater than the age of the minor child, the facility shall report the names of the pregnant minor child and the father to both local law enforcement and the county department of human resources. If the pregnant minor child is less than 14 years old, the name of the minor child shall be reported to the Department of Human Resources, regardless of whether the father is two or more years older than the minor child. The receipt of reportable information by any member of a facility staff shall trigger the requirement for the facility to report such information. Nothing in this section shall be construed to constructively repeal any other provisions of law requiring parental consent before an abortion procedure is performed.

Ala. Code § 26-23E-10 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-11. Rules for abortion and reproductive health care centers.

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The Board of Health shall publish amended rules for abortion and reproductive health care centers that are consistent with this chapter by December 28, 2013. Such rules shall take effect within the time frame required by the Alabama Administrative Procedure Act.

Ala. Code § 26-23E-11 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-12. Prohibited activity; criminal penalties.

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**(a)** Any person other than a physician who performs or attempts to perform an abortion, including the prescription, dispensing, or administration of abortion-inducing drug, shall be guilty of a Class C felony.

**(b)** Any person who prescribes, dispenses, or administers an abortion-inducing drug without first examining the patient in person shall be guilty of a Class C felony.

(c) The administrator of an abortion or reproductive health center who knowingly and willfully permits the facility to be operated in a manner that violates Sections 26-23E-4, 26-23E-5, 26-23E-6, or 26-23E-7 shall be guilty of a Class C felony.

(d) The administrator of an abortion or reproductive health center who knowingly and willfully violates subsection (b) of Section 26-23E-10 shall be guilty of a Class A misdemeanor.

Ala. Code § 26-23E-12 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-13. Civil liability.

Any person who can demonstrate personal injury, including physical injury, emotional distress, or mental anguish, where such injury has resulted from the failure of an abortion or reproductive health center to conform to the requirements of this chapter, may maintain a civil action for damages against the abortion or reproductive health center and against the administrator of the facility.

Ala. Code § 26-23E-13 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-14. Compliance required; civil penalty.

(a) The failure of any physician, nurse practitioner, physician assistant, registered professional nurse, or licensed practical nurse to conform to the requirements of this chapter or any rule or regulation adopted under provision of this chapter may be grounds for adverse licensure action, up to and including license revocation.

(b) Any abortion or reproductive health center that is found to have provided an abortion, in a manner that violates this chapter or any rule or regulation adopted under the provision of this chapter, may be subject to adverse licensure action, up to and including license revocation.

Ala. Code § 26-23E-14 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-15. Additional civil penalties.

Upon application by the Department of Public Health, a circuit court or any judge thereof shall have jurisdiction for cause shown, to grant a temporary restraining order, a preliminary injunction, a permanent injunction, or any combination of those remedies, restraining and enjoining any person from violating the provisions of this chapter and any rules promulgated thereunder. Any temporary restraining order, preliminary injunction, or permanent injunction shall be issued without bond. This remedy is in addition to any other remedies available to the Department of Public Health.

Ala. Code § 26-23E-15 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23E-16. Construction of chapter.

(a) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this chapter to make lawful an abortion that is currently unlawful.

(c) The provisions of this chapter shall be construed in pari materia with other statutes governing abortions.

(d) Nothing in this chapter shall be construed to modify, supersede, or constructively repeal any provisions of the Alabama Medical Liability Act of 1987, the Alabama Medical Liability Act of

1996, or any amendments thereto.

Ala. Code § 26-23E-16 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23E-17. Legislative intervention.

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The Alabama Legislature, by joint resolution, may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality of this chapter or any portion thereof is challenged.

Ala. Code § 26-23E-17 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)Ala. Code § 26-23E-17 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23F Unborn Infants Dignity of Life Act** **(§§ 26-23F-1 — 26-23F-10)**

§ 26-23F-1. Short title.

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This chapter shall be known and may be cited as the Unborn Infants Dignity of Life Act.

Ala. Code § 26-23F-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-2. Legislative intent.

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(a) The Legislature of the State of Alabama finds and declares that:

- (1) Deceased unborn infants deserve the same respect and dignity as other human beings.
- (2) The laws of this state do not ensure that deceased unborn infants receive proper burials or final disposition.
- (3) Alabama does not specifically prohibit the sale or transfer of bodily remains of deceased unborn infants for compensation.
- (4) The dignity and value of life, especially the lives of children, born or unborn, has been and continues to be a public policy and often sacred concern of the highest order for the people of this state.

(b) Based on the findings in subsection (a), the purposes of this chapter are to:

- (1) Allow parents of deceased unborn infants to provide a dignified final disposition of the bodily remains of these infants.
- (2) Prohibit the sale or other unlawful disposition of the bodily remains of a deceased unborn infant, or the exchange of any compensation or payment for the transfer or distribution of the bodily remains of a deceased unborn infant.

Ala. Code § 26-23F-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-3. Definitions.

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For the purpose of this chapter, the following words and phrases shall have the following meanings:

(1) **Abortion.** The use or prescription of any instrument, medicine, drug, or any other substance

or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver the unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child. The term “abortion” as used in this chapter, does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

**(2) Bodily remains.** The physical remains, corpse, or body parts of a dead unborn infant who has been expelled or extracted from his or her mother.

**(3) Ectopic pregnancy.** Any pregnancy resulting from a fertilized egg that has implanted or attached outside the uterus. The term also includes a pregnancy resulting from a fertilized egg implanting inside the cornu of the uterus.

**(4) Experiment or experimentation.** The use of an unborn infant, living or deceased, or such bodily remains in any trial, test, procedure, or observation carried out with the goal of verifying, refuting, or establishing the validity of a hypothesis, but does not include treatment, medication, diagnostic or remedial tests, surgical procedures, or observations which have the purpose of determining or improving the life or health of the unborn infant or preserving the life or health of the unborn infant or the unborn infant’s mother or pathological study. The terms do not include the use of the bodily remains of an unborn infant pursuant to the Revised Uniform Anatomical Gift Act.

**(5) Final disposition.** The burial, interment, cremation, or other legal disposition of the bodily remains of a deceased unborn infant.

**(6) Lethal anomaly.** A child would die at birth or be still born.

**(7) Pathological study.** The examination of body tissue for diagnostic or forensic purposes, and any related activities necessary to perform such study. The term includes any study or test, genetic or otherwise, to determine the cause of death.

**(8) Pregnant or pregnancy.** A fetal reproductive condition of having an unborn infant or infants in the woman’s uterus.

**(9) Research.** A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge but does not include treatment, medication, diagnostic or remedial tests, surgical procedures, or observations which have the purpose of determining or improving the life or health of the unborn infant or reserving the life or health of the unborn infant or the unborn infant’s mother or pathological study. The term does not include the use of the bodily remains of an unborn infant pursuant to the Revised Uniform Anatomical Gift Act.

**(10) Therapy or therapeutic.** Intended to treat or cure a disease or disorder by remedial agents or methods. The term does not include either of the following:

**(a)** Diagnostic or remedial tests, procedures, or observations which have the purpose of determining or improving the life or health of the unborn infant or preserving the life or health of the unborn infant or the unborn infant’s mother or pathological study.

**(b)** The use of the bodily remains of an unborn infant pursuant to the Revised Uniform Anatomical Gift Act

**(11) Transplant or transplantation.** Organs, tissues, or cells taken from the body for grafting into another individual or transference of an organ, tissues, or cells, alive or dead, between individuals. The term does not include either of the following:

**(a)** Diagnostic or remedial tests, procedures, or observations which have the purpose of determining or improving the life or health of the unborn infant or preserving the life or health of the unborn infant or the unborn infant’s mother or pathological study.

**(b)** The use of the bodily remains of an unborn infant pursuant to the Revised Uniform

Anatomical Gift Act.

**(12) Unborn infant.** A human being in utero at any stage of development regardless of viability. Ala. Code § 26-23F-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-4. Release of bodily remains.

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The mother, father, or authorized representative may request the release of the bodily remains to the mother, father, or authorized representative for dignified final disposition by burial, interment, or cremation. The request may be made by the mother, father, or authorized representative prior to or shortly after the expulsion or extraction of the bodily remains. Any expenses associated with preparation of and disposal of the bodily remains as requested by the mother, father, or authorized representative shall be at his or her own expense. Nothing in this chapter shall prevent donation of bodily remains pursuant to the Revised Uniform Anatomical Gift Act or prevent pathological study when it is required.

Ala. Code § 26-23F-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-5. Compensation for bodily remains; use of remains for research.

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**(a)**

**(1)** No person shall knowingly accept compensation or payment for the sale, transfer, distribution, acceptance, use, or attempted use of the fetal organs, tissue, or bodily remains of a deceased unborn infant for research, therapy, transplantation, or experimentation.

**(2)** No institution, entity, or individual shall knowingly provide any compensation or payment to any other person, organization, or entity for the removal, transfer, storage, processing, preservation, quality control, implantation, transportation, distribution, disposal, or other manner of disposition of the bodily remains of a deceased unborn infant for research, therapy, transplantation, experimentation, or any other prohibited purpose under this chapter.

**(b)** No person shall knowingly aid or abet in any prohibited activity under subsection (a).

**(c)** No person shall use an unborn infant, living or deceased, in research or experimentation. Nothing in this section shall affect the use described herein pursuant to the Revised Uniform Anatomical Gift Act.

**(d)** No person shall perform or offer to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for research, therapy, transplantation, or experimentation.

Ala. Code § 26-23F-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-6. Criminal penalty.

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**(a)** Except as provided in subsection (b), any person who knowingly violates any provision of Section 26-23F-5 shall be guilty of a Class D felony for each violation.

**(b)** Any person who experiments on a living unborn infant or the bodily remains of a deceased unborn infant, experiments upon an unborn infant who is intended to be aborted, or performs or offers to perform an abortion where part or all of the justification or reason for the abortion is that the bodily remains may be used for research or experimentation in violation of Section 26-23F-5 shall be guilty of a Class C felony.



Ala. Code § 26-23F-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-7. Civil penalty.

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(a) In addition to other remedies available under law or common law of this state, violation of any provision of Section 26-23F-5 shall:

(1) Provide a basis for recovery in a civil action for the parent or parents of the infant or the parent, parents, or guardian of the mother, if the mother is a minor, for experimentation upon bodily remains. Any relief awarded shall include:

- a. Money damages for all psychological injuries occasioned by any violation of this chapter.
- b. Statutory damages equal to three times the cost of the mother's delivery or abortion.

(2) Provide a basis for professional disciplinary action by regulatory bodies for the suspension or revocation of any license for physicians, licensed vocational and registered nurses, or other licensed or regulated health care providers.

(b) Any conviction of any health care provider for any failure to comply with the requirements of this chapter shall result in the automatic suspension of his or her license for a period of at least one year and the license shall be reinstated after that time only under such conditions as the appropriate state regulatory body shall require to ensure compliance with this chapter.

Ala. Code § 26-23F-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-8. Construction.

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(a) Nothing in this chapter shall be construed to affect existing federal or state law regarding abortion.

(b) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(c) Nothing in this chapter shall be construed to alter generally accepted medical standards.

Ala. Code § 26-23F-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-9. Effect on medical liability.

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Nothing in this chapter shall modify, amend, repeal, or supersede any provision of Section 6-5-333, Code of Alabama 1975, or the “Alabama Medical Liability Act of 1987” commencing with Section 6-5-540, Code of Alabama 1975, or the Alabama Medical Liability Act of 1996, commencing with Section 6-5-548, Code of Alabama 1975, or any amendment to any of the foregoing, or any judicial interpretation of any of the foregoing.

Further, nothing in this chapter shall be construed to restrict or supersede criminal investigations of violations of the laws of this state.

Ala. Code § 26-23F-9 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23F-10. Applicability to health professionals.

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Sections 26-23F-5, 26-23F-6, and 26-23F-7 shall not apply to a physician, doctor, or other person working with and under the direction of a physician or doctor, who in good faith believes that a deceased unborn infant, bodily remains, fetal remains, or fetal tissue were donated in

accordance with the Revised Uniform Anatomical Gift Act.

Ala. Code § 26-23F-10 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23G Unborn Child Protection from Dismemberment Abortion Act (§§ 26-23G-1 — 26-23G-9)**

### § 26-23G-1. Short title.

This chapter shall be known and may be cited as the Alabama Unborn Child Protection from Dismemberment Abortion Act.

Ala. Code § 26-23G-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23G-2. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

**(1) Abortion.** The same as defined in Section 26-21-2, Code of Alabama 1975.

**(2) Attempt to perform an abortion.**

a. To do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion. Such substantial steps include, but are not limited to, any of the following:

1. Agreeing with an individual to perform an abortion on that individual or on some other individual, whether or not the term abortion is used in the agreement, and whether or not the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy.
2. Scheduling or planning a time to perform an abortion on an individual, whether or not the term abortion is used, and whether or not the performance is contingent on another factor, such as receipt of payment or a determination of pregnancy.

b. This definition may not be construed to require that an abortion procedure actually be initiated for an attempt to occur.

**(3) Dismemberment abortion.** With the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp, or any combination of the foregoing, a portion of the unborn child's body to cut or rip it off. This definition does not include an abortion which uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container. This definition includes an abortion in which a dismemberment abortion is used to cause the death of an unborn child and suction is subsequently used to extract fetal parts after the death of the unborn child.

**(4) Physician.** An individual licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion in the state.

**(5) Purposely.** An individual acts purposely with respect to a material element of an offense when:

a. If the element involves the nature of his or her conduct or a result thereof, it is his or her conscious objective to engage in conduct of that nature or to cause such a result.

b. If the element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

**(6) Serious health risk to the unborn child's mother.** In reasonable medical judgment, the

child's mother has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

**(7) Woman.** A female human being, whether or not she has reached the age of majority.

Ala. Code § 26-23G-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-3. Dismemberment abortion prohibited; hearing; liability.

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**(a)** Notwithstanding any other provision of law, it shall be unlawful for any individual to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

**(b)** An individual accused in any proceeding of unlawful conduct under subsection (a) may seek a hearing before the State Board of Medical Examiners on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The findings of the board are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the individual accused, the court shall delay the beginning of the trial for not more than 30 days to permit the hearing to take place.

**(c)** No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be thereby liable for performing or attempting to perform a dismemberment abortion.

**(d)** This chapter does not prevent abortion for any reason including rape and incest by any other method, unless otherwise prevented by law.

Ala. Code § 26-23G-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-4. Injunctive relief.

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**(a)** A cause of action for injunctive relief against an individual who has performed or attempted to perform a dismemberment abortion in violation of Section 26-23G-3 may be maintained by any of the following:

**(1)** A woman upon whom a dismemberment abortion was performed or attempted to be performed.

**(2)** An individual who is the spouse, parent, or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed.

**(3)** A prosecuting attorney with appropriate jurisdiction.

**(b)** The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 26-23G-3.

Ala. Code § 26-23G-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-5. Civil damages.

---

(a) A cause of action for civil damages against an individual who has performed a dismemberment abortion in violation of Section 26-23G-3 may be maintained by any of the following:

- (1) Any woman upon whom a dismemberment abortion has been performed in violation of Section 26-23G-3.
- (2) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed.
- (3) If the woman had not attained the age of 18 years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(b) No damages may be awarded a plaintiff if the pregnancy resulted from criminal conduct of the plaintiff.

(c) Damages awarded in such an action shall include all of the following:

- (1) Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.
- (2) Statutory damages equal to three times the cost of the dismemberment abortion.

Ala. Code § 26-23G-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-6. Attorney fees.

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(a) If judgment is rendered in favor of the plaintiff in an action described in Section 26-23G-4 or Section 26-23G-5, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(b) If judgment is rendered in favor of the defendant in an action described in Section 26-23G-4 or Section 26-23G-5, and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

(c) No attorney fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (b).

Ala. Code § 26-23G-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-7. Criminal penalty.

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Whoever is found to have violated Section 26-23G-3 shall be fined ten thousand dollars (\$10,000) or imprisoned for not more than two years, or both.

Ala. Code § 26-23G-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-8. Confidentiality of court proceedings.

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In every civil, criminal, or administrative proceeding or action brought under this chapter, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals

from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 26-23G-4 or Section 26-23G-5 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Ala. Code § 26-23G-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23G-9. Construction.

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Nothing in this chapter shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

Ala. Code § 26-23G-9 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

## **CHAPTER 23H Alabama Human Life Protection Act (§§ 26-23H-1 — 26-23H-8)**

§ 26-23H-1. Short title.

This chapter shall be known as The Alabama Human Life Protection Act.

Ala. Code § 26-23H-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23H-2. Legislative findings.

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(a) This state's statute criminalizing abortion, Section 13A-13-7, Code of Alabama 1975, has never been repealed. It has remained unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny, which struck down as unconstitutional a Texas statute criminalizing abortion and which effectively repealed by implication and made unenforceable all other state statutes criminalizing abortion.

(b) On November 6, 2018, electors in this state approved by a majority vote a constitutional amendment to the Constitution of Alabama of 1901 declaring and affirming the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children. The amendment made it clear that the Constitution of Alabama of 1901 does not include a right to an abortion or require the funding of abortions using public funds.

(c) In present state law, Section 13A-6-1, Code of Alabama 1975, defines a person for homicide purposes to include an unborn child in utero at any stage of development, regardless of viability.

(d) In the United States Declaration-of Independence, the principle of natural law that "all men are created equal" was articulated. The self-evident truth found in natural law, that all human beings are equal from creation, was at least one of the bases for the anti-slavery movement, the women's suffrage movement, the Nuremberg war crimes trials, and the American civil rights movement. If those movements had not been able to appeal to the truth of universal human equality, they could not have been successful.

(e) Abortion advocates speak to women's rights, but they ignore the unborn child, while medical science has increasingly recognized the humanity of the unborn child.



(f) Recent medical advances prove a baby's heart starts to beat at around six weeks. At about eight weeks, the heartbeat can be heard through an ultrasound examination. A fetal Doppler can detect a fetal heartbeat as early as 10 weeks.

(g) Ultrasound imaging shows the developing child in utero.

(h) As early as six weeks after fertilization, fetal photography shows the clear development of a human being. The Alabama Department of Public Health publication "Did You Know." demonstrates through actual pictures at two-week intervals throughout the entire pregnancy the clear images of a developing human being.

(i) It is estimated that 6,000,000 Jewish people were murdered in German concentration camps during World War II; 3,000,000 people were executed by Joseph Stalin's regime in Soviet gulags; 2,500,000 people were murdered during the Chinese "Great Leap Forward" in 1958; 1,500,000 to 3,000,000 people were murdered by the Khmer Rouge in Cambodia during the 1970s; and approximately 1,000,000 people were murdered during the Rwandan genocide in 1994. All of these are widely acknowledged to have been crimes against humanity. By comparison, more than 50 million babies have been aborted in the United States since the Roe decision in 1973, more than three times the number who were killed in German death camps, Chinese purges, Stalin's gulags, Cambodian killing fields, and the Rwandan genocide combined.

(j) The cases of Roe v. Wade and its progeny have engendered much civil litigation and legislative attempts to reign in so called abortion rights. Roe v. Wade attempted to define when abortion of an unborn child would be legal. Judges and legal scholars have disagreed and dissented with its finding.

Ala. Code § 26-23H-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

### § 26-23H-3. Definitions.

As used in this chapter, the following terms shall have the following meanings:

(1) **Abortion.** The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

(2) **Ectopic pregnancy.** Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

(3) **Lethal anomaly.** A condition from which an unborn child would die after birth or shortly thereafter or be stillborn.

(4) **Medical emergency.** A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that her pregnancy must be terminated to avoid a serious health risk as defined in this chapter.

(5) **Physician.** A person licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama.

(6) **Serious health risk to the unborn child's mother.** In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. This term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her



to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of it, there is reasonable medical judgment that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this chapter, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

**(7) Unborn child, child or person.** A human being, specifically including an unborn child in utero at any stage of development, regardless of viability.

**(8) Woman.** A female human being, whether or not she has reached the age of majority.

Ala. Code § 26-23H-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23H-4. Unlawful to perform abortion; exceptions.

**(a)** It shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b).

**(b)** An abortion shall be permitted if an attending physician licensed in Alabama determines that an abortion is necessary in order to prevent a serious health risk to the unborn child's mother. Except in the case of a medical emergency as defined herein, the physician's determination shall be confirmed in writing by a second physician licensed in Alabama. The confirmation shall occur within 180 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

Ala. Code § 26-23H-4 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23H-5. Applicability of criminal/civil liability.

No woman upon whom an abortion is performed or attempted to be performed shall be criminally or civilly liable. Furthermore, no physician confirming the serious health risk to the child's mother shall be criminally or civilly liable for those actions.

Ala. Code § 26-23H-5 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23H-6. Felony violation.

**(a)** An abortion performed in violation of this chapter is a Class A felony.

**(b)** An attempted abortion performed in violation of this chapter is a Class C felony.

Ala. Code § 26-23H-6 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23H-7. Medical emergency exception.

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This chapter shall not apply to a physician licensed in Alabama performing a termination of a pregnancy or assisting in performing a termination of a pregnancy due to a medical emergency as defined by this chapter.

Ala. Code § 26-23H-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23H-8. Construction.

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The construction of existing statutes and regulations that regulate or recognize abortion in Alabama that are in conflict with or antagonistic to this chapter shall be repealed as null and void and shall recognize the prohibition of abortion as provided in this chapter. If this chapter is challenged and enjoined pending a final judicial decision, the existing statutes and regulations that regulate or recognize abortion shall remain in effect during that time.

Ala. Code § 26-23H-8 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

**CHAPTER 23I Children Born Alive After Abortion or Attempted Abortion (§§ 26-23I-1 — 26-23I-3)**

§ 26-23I-1. Short title.

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This chapter shall be known and may be cited as Gianna’s Law.

Ala. Code § 26-23I-1 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

§ 26-23I-2. Human child born alive after abortion or attempted abortion; rights; definitions; criminal penalties for violations; etc.

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(a) A living human child born alive after an abortion or attempted abortion in an abortion or reproductive health center is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive at any location in this state.

(b) For purposes of this section the following terms shall have the meanings set forth below:

(1) **Abortion.** The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child’s mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

(2) **Abortion or reproductive health center.** A facility defined and regulated as an abortion or reproductive health center by the rules of the Alabama State Board of Health.

**(3) Born alive.** The complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after separation, breathes or has a heart beat, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

**(4) Ectopic pregnancy.** Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

**(5) Lethal anomaly.** A condition from which an unborn child would die after birth or shortly thereafter or be stillborn.

**(6) Physician.** An individual licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama.

**(7) Serious health risk to the unborn child's mother.** In reasonable medical judgment, a condition of the child's mother which so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. The term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of the condition, there is reasonable likelihood, in the physician's medical judgment, that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this section, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

(c)

**(1)** A child born alive after an abortion or attempted abortion in an abortion or reproductive health center shall be entitled to the same physician patient relationship that is currently available for any other individual in need of medical care at any location in this state. Nothing in this section shall be construed to establish a new or separate standard of care for hospitals or physicians and their patients or otherwise modify, amend, or supersede any provision of the Alabama Medical Liability Act of 1987 or the Alabama Medical Liability Act of 1996, or any amendment or judicial interpretation of either act. Nothing in this section shall be construed to modify or amend Chapter 22.

**(2)** If a child is born alive following an abortion or attempted abortion in an abortion or reproductive health center, the physician who performed the abortion or attempted the abortion in the abortion or reproductive health center shall exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born alive at any other location in this state at the same gestational age. A physician who fails to preserve the life and health of the child in violation of this subdivision shall be guilty of a Class A felony.

(3) The Office of the Attorney General may bring an action to enforce this subsection. Any funds collected from fines pursuant to this chapter shall be deposited in the General Fund.

(d) A woman on whom an abortion is performed or attempted to be performed may not be held liable under this section.

(e) An individual who has knowledge of failure by a physician to comply with this section shall report this knowledge to the Office of the Attorney General. The identity of the individual making the report shall be kept confidential.

(f) All of the provisions of this chapter, including all obligations, duties, and rights created under this chapter, shall only apply to a physician who performs an abortion or attempted abortion in an abortion or reproductive health center.

Ala. Code § 26-23I-2 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)

#### § 26-23I-3. Applicability.

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Nothing in this section shall make legal an abortion that is not otherwise legal.

Ala. Code § 26-23I-3 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Session, but not including corrections and changes made to the 2022 session laws by the Code Commissioner)