

Public Health Laws of Alabama, 2012

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Title 3. Animals.

Chapter 7A. Rabies, §§ 3-7A-1 through 3-7A-16.

§ 3-7A-1. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings respectively ascribed to them unless the context clearly indicates otherwise:

- (1) Canine corps dogs. Those members of the canine family maintained by governmental agencies for exclusive use in official duties assigned to those agencies. Seeing eye dogs shall be included within the meaning of this definition.
- (2) Cat. All members of the domesticated feline (*Felis catus*) family.
- (3) Dog. All members of the domesticated canine (*Canis familiaris*) family.
- (4) Ferret. All members of the ferret (*Mustela putorius furo*) family.
- (5) Has been exposed. Suspected or confirmed contact of saliva with a break or abrasion of the skin or with any mucous membrane, as determined by the health officer or medical or law enforcement personnel.
- (6) Health officer. The State Health Officer or any county health officer as defined in Section 22-3-2, or his or her designee.
- (7) Immunization against rabies. The injection, in a manner approved by the State Health Officer and the State Veterinarian, of rabies vaccine approved by the State Health Officer and the State Veterinarian. The administration of rabies vaccine to species other than those for which reliable immunization data is available shall be a violation of this chapter.
- (8) Impounding officer. An agent of a county or municipality vested with impounding authority for animals covered under this chapter.
- (9) Owner. Any person having a right of property in a dog, cat, ferret, or other animal, or who keeps or harbors the animal, or who has it in his or her care, or acts as its custodian, or who permits the animal to remain on or about any premises occupied by him or her.
- (10) Person. Individuals, firms, partnerships, and associations.
- (11) Quarantine for rabies observation. Confinement under the direct care, custody, control, and supervision of a licensed veterinarian for a period of 10 days subsequent to the date of the exposure, or as otherwise directed by the appropriate health officer.

(12) Rabies officer. A licensed veterinarian as defined in Section 34-29-61, duly appointed by the county board of health and approved by the State Health Officer and State Veterinarian.

§ 3-7A-2. Dogs, cats, and ferrets to be immunized; sale, etc., of vaccine; vaccination exemptions.

(a) Every owner of a dog, cat, or ferret required to be immunized for rabies as defined in this chapter, shall cause the animal to be immunized by the rabies officer, his or her authorized representative, or any duly licensed veterinarian, when the animal reaches three months of age and subsequently in accordance with the intervals specified in the vaccine's license.

Notwithstanding the above, the State Board of Health may establish by rule vaccine intervals or specific vaccines, or both, to be used in public rabies vaccination clinics, based on considerations such as county specific prevalence of animal rabies or risk of animal rabies and the vaccination rates of dogs, cats, and ferrets in a county. Evidence of immunization shall consist of a printed certificate furnished by the Alabama Department of Public Health, upon which shall be legibly inscribed: A description of the animal; its age, color, sex, breed, and tattoo identification, if any; the name and address of the owner; the lot number and type of vaccine used (modified live virus, inactivated virus); the name of the manufacturer, the amount of vaccine injected, and the date after which the animal is no longer considered vaccinated; and a serially numbered tag bearing the same number and year as that of the certificate. The certificate shall be dated and signed by the person authorized to administer the vaccine. Certificates not complying with the provisions of this section, or certificates issued by those persons unauthorized to administer rabies vaccine, shall not be valid. In lieu of printed certificates, licensed veterinarians may elect to utilize electronically generated and maintained certificates if the certificates contain substantially the same information as required above. A signed paper copy of the certificate prescribed herein shall be delivered to the owner of the animal immunized. A paper copy or electronic copy or evidence thereof shall be maintained by the licensed veterinarian for a period of one year past the expiration date of a certificate. An additional paper copy or electronic copy or listing shall be provided to the local rabies enforcement authority upon request by the authority and in the manner as so requested.

(b) It shall be unlawful and in violation of the provisions of this chapter for any person to import, receive, sell, offer for sale, barter, or exchange animal rabies vaccine, other than antirabies vaccine intended for human use, to anyone except a duly licensed veterinarian.

(c)(1) Notwithstanding the other provisions of this chapter, the State Board of Health by rule may establish procedures and qualifications for an exemption from the requirement for a vaccination for an animal if a rabies vaccination would be injurious to the animal's health.

(2) An animal exempted under subdivision (1) shall be considered unvaccinated by the State Board of Health in the event of the animal's exposure to a confirmed or suspected rabid animal.

§ 3-7A-3. Immunization fee.

At public rabies clinics, the rabies officer may charge an immunization fee established by a committee consisting of the State Health Officer, the State Veterinarian, and the president of the Alabama Veterinary Medical Association, and approved by the State Board of Health prior to the first day of January each year. The committee shall consider all cost factors in administering the vaccine as the economy dictates, including but not limited to the current prices of vaccines.

§ 3-7A-4. Issuance of tag.

Coincident with the issuance of the certificate of immunization, the rabies officer, his authorized representative, or any duly licensed veterinarian, who provided the certificate shall furnish a serially numbered tag bearing the same number and year as that of the certificate, which tag shall at all times be attached to a collar or harness worn by the dog or cat for which the certificate and tag have been issued.

§ 3-7A-5. Replacement of tag and certificate.

In the event a tag or certificate is lost after it has been legally issued, every replacement thereof shall be upon such terms as may be agreed upon with the rabies officer or veterinarian by whom the animal has been immunized. In that instance, a new certificate marked “duplicate” may be issued and distributed according to Section 3-7A-2.

§ 3-7A-6. Penalty for dog or cat without tag or certificate.

The owner of any dog or cat found not wearing the evidence of current immunization as provided herein or for which no certificate of current immunization can be produced, and which is apprehended by an officer or other person charged with the enforcement of this chapter, shall forthwith be subject to a penalty to be imposed by the rabies officer not to exceed an amount equal to twice the state approved charge for immunization, in addition to the fee heretofore prescribed for immunization. When collected, the said penalty shall accrue to the rabies officer or his agent, except in the case of a rabies officer employed full- time on salary, in which case the penalty shall accrue to the employing agency or agencies.

§ 3-7A-7. Maintenance of pound; notice of impoundment.

Each county in the state shall provide a suitable county pound and impounding officer for the impoundment of dogs, cats, and ferrets found running at large in violation of the provisions of this chapter. Every municipality with a population over 5,000 in which the county pound is not located shall maintain a suitable pound or contribute their pro rata share to the staffing and upkeep of the county pound. If the owner of an impounded animal is known, the owner shall be given direct notice of the impoundment.

§ 3-7A-8. Destruction of impounded dogs, cats, and ferrets; when authorized; redemption by owner; adoption of animals.

All dogs, cats, and ferrets which have been impounded in accordance with the provisions of this chapter, after notice is given to the owner as provided in Section 3-7A-7, may be humanely destroyed and disposed of when not redeemed by the owner within seven days. In case the owner of an impounded animal desires to redeem the animal, he or she may do so on the following condition: He or she shall pay for the immunization of the animal and a penalty equal to the minimum fine established in Section 3-7A-6 if a certificate of current immunization cannot be produced, and for the board of the animal for the period for which it was impounded. The amount paid for the board of the animal shall accrue to the credit of the city or county, depending upon the jurisdiction of the pound in which the animal was confined. At his or her discretion, the impounding officer may provide for adoption of any animal not redeemed or claimed or otherwise disposed of, to any person desiring the animal, if the person complies with all the provisions of this chapter.

§ 3-7A-9. Quarantine of dog, cat, or ferret which bites human being; destruction and examination of animal; violations; instructions for quarantine; report of results; exemptions.

(a) Whenever the rabies officer or the health officer receives information that a human being has been bitten or exposed by a dog, cat, or ferret required by this chapter to be immunized against rabies, the officer or his or her authorized agent shall cause the dog, cat, or ferret to be placed in quarantine under the direct supervision of a duly licensed veterinarian for rabies observation as prescribed in Section 3-7A-1. It shall be unlawful for any person having knowledge that a human being has been bitten or exposed by a dog, cat, or ferret to fail to notify one or more of the aforementioned officers. Vaccinated dogs, cats, and ferrets may be authorized to be quarantined in the home of the owner of the animal by the appropriate health officer.

(b) When a dog, cat, or ferret has no owner as determined by the rabies officer or the health officer after reasonable investigation, or if the owner of a dog, cat, or ferret agrees in writing, or if ordered by the health officer, the animal shall be humanely destroyed immediately after the exposure and the head shall be submitted for rabies examination to the state health department laboratory.

(c) The period of quarantine for animals other than domesticated dogs, cats, and ferrets which have bitten or exposed a human being shall be determined by the Alabama Department of Public Health upon consultation with the U.S. Public Health Service. If reliable epidemiologic data is lacking for an animal species regarding duration of rabies virus secretion from the salivary glands, the animals shall be humanely destroyed and the head submitted for rabies examination to the state health department laboratory.

(d) It shall be a violation of this chapter for the owner of such an animal to refuse to comply with the lawful order of the health officer in any particular case. It is unlawful for the owner to sell, give away, transfer to another location, or otherwise dispose of any animal that is known to have bitten or exposed a human being until it is released from quarantine by the rabies officer, duly licensed veterinarian, or by the appropriate health officer.

(e) Instructions for the quarantine of the offending animal shall be delivered in person or by telephone or facsimile to the owner by the health officer or his or her authorized agent. If the instructions cannot be delivered in such a manner, they shall be mailed by regular mail, postage prepaid and addressed to the owner of the animal. The affidavit or testimony of the health officer or his or her authorized agent, who delivers or mails the instructions, shall be prima facie evidence of the receipt of such instructions by the owner of the animal. Any expenses incurred in the quarantine of the offending animal under this section and Section 3-7A-8 shall be borne by the owner.

(f) The veterinarian under whose care the offending animal has been committed for quarantine shall promptly report the results of his or her observation of the animal to the attending physician of the human being bitten or exposed and the appropriate health officer.

(g) Canine corps dogs and seeing eye dogs shall be exempt from the quarantine period if the exposure occurs in the line of duty and evidence of proper immunization against rabies is presented, but shall be examined immediately at the end of 10 days by a licensed veterinarian, who shall report the results of his or her examination to the appropriate health officer as previously authorized.

§ 3-7A-10. Destruction of domesticated species exposed to rabid animal; optional quarantine.

Those domesticated species, for which rabies vaccine is recognized and recommended, upon exposure or potential exposure to a known rabid animal, shall be humanely destroyed or slaughtered immediately. Provided, however, the owner has the option of quarantining the animal or animals based on the recommendations of the Alabama Department of Public Health upon consultation with the U.S. Public Health Service.

§ 3-7A-11. County rabies officer; application; appointment; term; powers and duties; authority of county board of health.

(a) The county board of health shall nominate annually one duly licensed veterinarian from each county within the state for the position of rabies officer. Applications for this position may be received from any duly licensed veterinarian residing within the county, or in the event that no applications are received, from the Alabama Veterinary Medical Association. Applications shall

be provided to the chair of each county board of health during the month of November. The county board of health, not later than January 31 of the appointing year, shall select and appoint a nominee, subject to the approval of the State Health Officer and the State Veterinarian. The appointee's term of office shall expire on December 31 of the year of appointment; provided, however, that he or she shall be eligible for reappointment. The rabies officer may be removed from office, for cause, by the county board of health or the State Health Officer.

(b) Appointments not made within the prescribed time limits specified in this section shall become the joint prerogative of the State Health Officer and the State Veterinarian after due consultation with the appropriate health officer.

(c) For the purpose of providing proper enforcement of this chapter, the county board of health is hereby invested with general supervisory and administrative authority for the implementation of this chapter. It shall be the duty of the rabies officer to immunize for rabies all dogs, cats, and ferrets covered under this chapter and he or she may employ as many licensed veterinarians to serve as deputies to aid him or her as he or she may desire. The rabies officer and his or her deputies in each county are clothed with limited police powers to the extent that they may issue citations for violations of this chapter as an agent of the county board of health, and shall not be subject to the limitations of Section 36-21-50. The sheriff and his or her deputies in each county and the police officers in each incorporated municipality shall be aides, and are hereby instructed to cooperate with the rabies officer in carrying out the provisions of this chapter. The compensation of the rabies officer and his or her deputies shall be limited to the fees collected from enforcement of this chapter.

§ 3-7A-12. Penalty for violations.

Except as provided for in Section 3-7A-6, any person violating or aiding or abetting the violation of any provision of this chapter, or counterfeiting or forging any certificate, or making any misrepresentation in regard to any matter prescribed by this chapter or rule promulgated hereunder or except as otherwise provided, or resisting, obstructing, or impeding any authorized officer in enforcing the provisions of this chapter, or refusing to produce for immunization any animal in his or her possession for which rabies vaccine is recognized and recommended, or for failing to report an animal bite, shall be charged with a Class C misdemeanor, and for the purpose of enforcing this chapter, resort may be had to any court of competent jurisdiction.

§ 3-7A-13. Placement of area under quarantine; additional measures.

(a) The State Health Officer, upon request of authorized local officials, may place certain areas of the state under a rabies quarantine to prevent the spread of rabies. In extreme situations, the State Health Officer may place the area under quarantine without waiting for local request.

(b) Whenever the State Health Officer or local health authorities are convinced that the situation is conducive to the spread of rabies, additional measures may be imposed as are deemed necessary to prevent the spread of rabies among dogs, cats, and other animals.

§ 3-7A-14. Power of municipalities.

Nothing in this chapter shall be held to limit in any manner the power of any municipality to prohibit dogs, cats, or ferrets from running at large, regardless of rabies immunization status as herein provided; nor shall anything in this chapter be construed, in any manner, to limit the power of any municipality to further control and regulate dogs or cats in such municipality.

§ 3-7A-15. Rules.

The State Board of Health is authorized to adopt and promulgate rules for the enforcement of this chapter, which rules shall have the force and effect of law.

§ 3-7A-16. Relation to Volunteer Service Act.

A licensed veterinarian and his or her assistants, whether compensated by fee or otherwise or not compensated, when assisting the county rabies officer at any officially designated rabies vaccination clinic shall be considered a volunteer for the purpose of Section 6-5-336.

Title 9. Conservation and Natural Resources.

Chapter 12. Marine Resources, § 9-12-126.

§ 9-12-126. Inspection of oyster beds; closure order; relay of oysters from closed areas; promulgation of rules; penalty; enforcement.

(a) The State Board of Health is authorized to inspect the waters of the state where oysters are grown and harvested. When the State Health Officer shall determine that the waters surrounding the oyster beds are unsafe for the harvesting of said oysters, the State Health Officer shall issue an order to close the waters around said bed, which order shall be specific as to location of the area to be closed. Orders issued pursuant to this section shall not be considered rules under the Alabama Administrative Procedure Act (Section 41- 22-1 et seq.). After the issuance of such a closure order, no person shall harvest oysters in the said waters during the closure period. The State Health Officer is authorized to permit the Department of Conservation and Natural Resources to relay oysters from closed areas.

(b) The State Board of Health is authorized to adopt and promulgate reasonable rules for the enforcement of this section, which rules shall have the force and effect of law.

(c) Any person who violates any provision of this section or any rule promulgated hereunder or the order of the State Health Officer by harvesting oysters from a closed bed shall be guilty of a Class B misdemeanor.

(d) The Alabama Department of Conservation and Natural Resources shall cooperate with the State Health Officer in the enforcement of closure orders.

Title 11. Counties and Municipal Corporations.

Chapter 47. Powers, Duties, and Liabilities Generally, § 11-47-60 through 11-47-74.

§ 11-47-60. Declaration for abandonment of cemetery and removal of human remains interred therein -- Adoption, etc.

(a) Any cemetery corporation or association, including religious bodies, owning or controlling any cemetery within this state may, with the consent and approval of the governing body of the city or town in which such cemetery is located or with the consent and approval of the governing body of the county if such cemetery is located outside the limits of an incorporated municipality, by resolution of its board of directors or other governing body, when assented to in writing filed with the secretary by at least three fourths of the lot owners and holders of such corporation or

association or ratified and approved by like vote thereof at any regular meeting of the cemetery corporation or association or at a meeting specially called for that purpose, declare for the abandonment in whole or in part of such cemetery as a burial place for the human dead and for the removal of human remains interred therein to another cemetery or cemeteries in this state or for the depositing of such remains in a memorial mausoleum or columbarium as provided in this division.

(b) Any corporation sole or other person owning or controlling any cemetery or the lands on which any grave or cemetery is located in this state may also declare for the abandonment in whole or in part of any such cemetery owned or controlled by such corporation sole or other person and for the removal of human remains interred therein to another cemetery or cemeteries in this state or the depositing of such remains in a memorial mausoleum or columbarium as provided in this division.

§ 11-47-61. Declaration for abandonment of cemetery and removal of human remains interred therein -- Specification as to removal of remains after two months.

Any resolution or declaration for abandonment and removal duly adopted and made under the provisions of Section 11-47-60 shall specify and declare that at any time after the expiration of two months from and after the first publication of the notice of declaration of abandonment and removal required to be published under the provisions of Section 11-47-62 the human remains then remaining in such cemetery or part thereof will be removed by such cemetery corporation, association, corporation, or other person owning or controlling such cemetery.

§ 11-47-62. Declaration for abandonment of cemetery and removal of human remains interred therein -- Publication, posting, and mailing of notice.

(a) Notice of the said declaration of abandonment and of the proposed removal of the human remains from any such cemetery or part thereof shall be given to all persons interested therein by publication in a newspaper of general circulation published in the city or town wherein said cemetery or part thereof is situated or in a newspaper of general circulation published in the county wherein the same is situated if located outside the limits of an incorporated municipality, which publication shall be made once a week for two successive months.

(b) Said notice shall be entitled "Notice of declaration of abandonment of lands for cemetery purposes and of intention to remove the human bodies interred therein," and shall specify a date, not less than two months after the first publication of such notice, when the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands and causing such notice to be published will proceed to remove the human remains then remaining in such cemetery or part thereof.

(c) Copies of said notice so published shall within 10 days after the first publication thereof be posted in at least three conspicuous places in the cemetery or part thereof from which said removals of the human remains interred therein are to be made, and a further copy of said notice

shall be mailed to every person who owns or holds or had the right of burial in any lot or plat in said cemetery or part thereof affected by such resolution or declaration of abandonment and removal whose name appears as such owner or holder upon the records of such cemetery, which such notice so mailed shall be addressed to the last known post office address of said respective lot owner or lot holder as the same appears from the records of said cemetery and, if no such address appears or is known, then the same shall be addressed to such person at the city or town or post office address wherein said cemetery land is situated. Such notice shall be mailed to each known living heir at law of any person whose remains are resting in said cemetery when the address of such heir is known.

§ 11-47-63. Removal and reinterment of remains by corporations, etc., generally; notices.

(a) After the completion of the publication, posting and mailing of the “Notice of declaration of abandonment of lands for cemetery purposes and of intention to remove the human bodies interred therein,” as provided for in Section 11-47-62, and after the expiration of the period of two months specified in said notice as provided in Section 11-47-61, any cemetery corporation, association, corporation sole or other person owning or controlling any such cemetery shall have power to cause the removal of all human remains interred in any such cemetery or part thereof to be abandoned as a cemetery or burial place for the dead and to cause the reinterment in other cemeteries in this state where burials are permitted or to deposit the said remains in a mausoleum or columbarium erected for that purpose without further notice to any person claiming any interest in said cemetery or part thereof or in the remains therein interred; provided, however, that at any time before the date fixed for the removal of such remains by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands, any relative or friend of any person whose remains are interred in such cemetery or part thereof from which it is proposed to make such removals may give such cemetery corporation, association, corporation sole or other person proposing to make such removals written notice that he or she desires to be present when such remains of a friend or relative so giving notice are disinterred or are reinterred or deposited in such mausoleum or columbarium. Such notice shall state the name of the person whose remains are referred to, and, as accurately as possible, shall describe the lot or plat where the remains are buried and the date of burial and shall specify an address at which the notice provided for in subsection (b) of this section may be given. Such notice may be delivered at the office or principal place of business of said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands and proposing to make such removals or may be forwarded thereto by registered or certified mail.

(b) Upon receipt of any such notice before the date fixed for the removal of said remains by the cemetery corporation, association, corporation sole or other person proposing to make such removals, it shall be the duty of said cemetery corporation, association, corporation sole or other person to give written notice to the person giving the notice provided for in subsection (a) of this section of the time when such remains shall be disinterred and of the time when and the place where the same will be reinterred or deposited. Said notice may be given by delivery thereof at the address stated in the notice referred to in subsection (a) of this section or by mailing the same

to the person giving such notice at such address, such delivery or mailing to be made at least 10 days prior to the date specified for the disinterment of such remains.

(c) Whenever such written notice provided for in subsection (a) of this section shall be given by a relative or friend of any person interred in such cemetery lands from which such removals are proposed to be made, said cemetery corporation, association, corporation sole or other person owning or controlling said cemetery lands and proposing to remove the bodies interred therein shall not disinter the remains referred to in said notice until the notice of the time of such disinterment is given such relative or friend as provided in subsection (b) of this section.

§ 11-47-64. Notice to board of health of removal of remains, etc.; removal of remains, etc., subject to rules and regulations of board of health.

(a) Any cemetery corporation, association, corporation sole or other person owning or controlling such cemetery shall, before disinterring, transporting or removing human remains under the provisions of this division, make a written report to the State Board of Health setting forth the name and date of death of each person whose remains are to be removed, if known, the location of the grave and the location of the grave to which such remains are to be removed.

(b) Such disinterment, transportation, or removal of human remains shall be performed subject to such reasonable rules and regulations relative to the manner of disinterring, transporting, or removing such remains as may be adopted by the State Board of Health.

§ 11-47-65. Voluntary removal of remains by relative or friend of person interred or by owner of plat or lot; affidavit of person removing remains.

At any time prior to the removal by said cemetery corporation, association, corporation sole or other person owning or controlling said cemetery lands of the remains of any person buried therein, any relative or friend of said person may voluntarily remove such remains and dispose of the same as he may desire; provided, that the person desiring to cause such removal shall, prior to such removal, deliver to said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery an affidavit duly sworn to before an officer qualified to administer oaths stating the name of the person whose remains it is desired to remove and further stating, so far as is known to the affiant, the date of burial of such remains and the names and places of residence of the heirs at law of such deceased person. In the event that the person desiring to cause such removal is not an heir at law of the person whose remains he desires to remove, such removal shall not be made by him until he shall have delivered to said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery the written consent of a majority of the known heirs at law of such deceased persons who are residents of the State of Alabama. The statements in the said affidavit shall be sufficient evidence of the numbers, names, and residences of such heirs at law for all of the purposes of this section, and the written consent of the majority of such heirs at law named in said affidavit shall be sufficient warrant and authority for the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery to permit the removal of the remains by such

person; provided further, that the purchaser or owner of any burial lot or plat in any such cemetery or part thereof or of the right of burial therein or any one of the joint purchasers or owners of such lot or plat or burial right therein may cause the removal of any or all of the remains interred in such lot or plat without the necessity of filing any affidavit of consent as hereinabove specified, and if the right, title or interest of any grantee of any burial lot or plat in such cemetery or the right of burial therein shall be passed by succession to the heir or heirs at law of such grantee without formal distribution by order of court, such heir or heirs at law may remove the remains of persons interred in any such lot or plat, and the affidavit of any such heir at law setting out the facts of such heirship shall be accepted by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands from which such removals are to be made as sufficient evidence for all the purposes of this section of the fact of the transfer of such title or right of burial to such heir or heirs at law as alleged in said affidavit.

§ 11-47-66. Purchase and sale of lands, etc., for reinterment of remains from abandoned cemeteries; reservation of lands in abandoned cemeteries for erection of memorial mausoleum, etc.

(a) Whenever any such cemetery corporation, association, corporation sole or other person owning or controlling any such cemetery lands from which the bodies interred therein are to be removed in accordance with the provisions of this division shall have purchased or otherwise acquired lands or a mausoleum or columbarium or the possession or use thereof for the purpose of providing a place for the reinterment or depositing of any human remains which may be removed from any such abandoned cemetery or part thereof, such new lands may be surveyed and subdivided into lots and plats and avenues and walks for cemetery purposes, and any such mausoleum or columbarium or any part thereof may be divided into niches, compartments, or receptacles for the receipt of such remains as may be therein deposited. Thereafter such lots or plats, niches, compartments, or receptacles may be sold to persons desiring to make reinterments or to deposit human remains therein and the board of directors or other governing body of any such cemetery corporation or association may receive and accept as part or full consideration for the purchase price of such new lots or plats, niches, compartments, or receptacles and under such terms and conditions as to the value or price thereof as the said directors or other governing body may deem equitable, full or partial releases from the members of such corporation of their respective right in or to the whole or any part of the assets of said corporation or association other than the lot or plat, niche, compartment, or receptacle conveyed to such purchasers respectively. Any retransfer to said cemetery corporation or association of any lot or plat in the cemetery from which the removal of the human remains are to be made shall operate as such a release.

(b) Sufficient lands may be reserved from any such cemetery lands abandoned as a burial place for the dead and from which the human remains have been removed to erect a memorial mausoleum or columbarium for the depositing of the bodies disinterred from such cemetery lands and to provide sufficient grounds around the same and to preserve such historical vaults or

monuments as the board of directors or other governing body of any such cemetery corporation or association may determine to be proper or necessary.

§ 11-47-67. Reinterment of remains generally.

Whenever under the provisions of this division the remains of any person shall have been removed from any cemetery or part thereof abandoned as such burial place under the provisions of the division by the cemetery corporation, association, corporation sole or other person having charge or control of such cemetery lands, such remains shall be transported to and reinterred in any other cemetery in this state where burials are permitted by such cemetery corporation, association, corporation sole or other person having charge or control of such cemetery lands or part thereof or deposited in a mausoleum or columbarium as provided in this section.

The remains of each person so reinterred shall be placed in a separate and suitable receptacle and decently and respectfully interred under such rules and regulations now in force or that may be adopted by such cemetery corporation, association, corporation sole or other person making such removal. If the remains of any such person so removed from said cemetery lands are deposited in a memorial mausoleum or columbarium built for that purpose, each body so removed shall be inclosed in a separate and suitable receptacle or container and shall be so deposited in a decent and respectful manner in accordance with such rules and regulations now existing or that may hereafter be adopted by such cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands.

§ 11-47-68. Erection of markers upon and preparation, filing, etc., of maps, plans, etc., of lands, etc., where remains reinterred.

After the removal and reinterment or deposit in a mausoleum or columbarium of the bodies disinterred from any such abandoned cemetery or part thereof the cemetery corporation, association, corporation sole or other person owning or controlling such abandoned cemetery lands and making such removals shall cause to be erected upon or imbedded in any lot or plat wherein any such body is reinterred a suitable permanent marker identifying such remains and shall prepare a complete map or plat describing and showing the location and subdivision into lots and plats of the cemetery lands where such bodies are reinterred or a plan of any mausoleum or columbarium wherein such bodies may be deposited, and there shall also be attached to any such map or plat or plans a description of the name of each person whose body is so reinterred or deposited, where known, and the lot or plat in the cemetery or the niche or compartment in any mausoleum or columbarium where such body is reinterred or deposited. Such map or plat shall be kept on file in the office of such cemetery corporation, association, corporation sole or other person making such removals and reinterments or depositing bodies in a mausoleum or columbarium and shall at all times be open to inspection by the relatives or friends of those so reinterred or deposited.

§ 11-47-69. Care, etc., of lands, etc., in which remains reinterred.

Whenever any cemetery corporation or association having a board of directors or other governing body shall have caused the removal from any cemetery or part thereof owned by it or under its charge or control the human remains therein interred and said cemetery corporation or association shall have funds in its treasury which are not required for other purposes of said corporation, said corporation shall have power to set aside, invest, use, and apply from such unexpended funds such sum as, in the judgment of the directors of said corporation, shall be necessary or expedient to provide for the perpetual or other care or improvement of any lands or mausoleum or columbarium or part thereof in which said remains may be reinterred or deposited; provided, however, that in lieu of itself investing, using or applying said funds for the purposes in this section specified, said cemetery corporation may transfer said funds to any other corporation under such conditions and regulations as in the judgment of the directors of said cemetery corporation will insure the application thereof to the purposes in this section specified; provided further, that before any such transfer of such funds is made said cemetery corporation or association shall have obtained an order authorizing such transfer from the probate court of the county where the cemetery or part thereof abandoned under the provisions of this division is situated. Such order shall be obtained upon petition of said cemetery corporation and any member of said corporation may support or oppose the granting of the order by affidavit or otherwise. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to transfer such funds has been given by publication in such manner and for such time as the court has directed and that it is for the best interests of the said cemetery corporation that such transfer be made.

§ 11-47-70. Removal, etc., of monuments, headstones, etc., from graves from which remains removed.

(a) Whenever the remains of any person shall have been removed from any cemetery by any relative or friend of such person under the provisions of Section 11-47-65, the person causing such removal shall also be entitled to remove any vault, monument, headstone, coping, or other improvement appurtenant to the grave from which such remains have been removed, and the affidavit or written consent given under the provisions of Section 11-47-65 shall be sufficient warrant and authority for the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery to permit such removal of any vault, monument, headstone, coping, or other improvement appurtenant to such grave.

(b) Whenever the remains of any person buried in any lot or plat shall have been removed and any vault, monument, headstone, coping, or other improvement appurtenant thereto shall remain on said lot or plat for more than 90 days after the removal of the last human remains therefrom, such vault, monument, headstone, coping, or other improvement may be removed and disposed of by the cemetery corporation, association, corporation sole, or other person owning or controlling such cemetery lands and thereafter no person claiming any interest in said lot or plat or any such vault, monument, headstone, coping, or other improvement appurtenant thereto shall

have the right to maintain in any court any action in relation to any such vault, monument, headstone, coping or other improvement so removed or disposed of.

§ 11-47-71. Sale, etc., of lands in abandoned cemeteries by corporations, etc.; confirmation of sales by probate court.

Whenever such a cemetery or part thereof has been abandoned as a cemetery or place of burial for the human dead as provided for in Section 11-47-60 by the cemetery corporation, association, corporation sole, or other person owning or controlling the same, the parts or portions thereof in which no interments had been made and such parts and portions thereof from which all human remains have been removed may be sold by the cemetery corporation, association, corporation sole, or other person owning or controlling such cemetery land or may be mortgaged or otherwise pledged as security for any loan or loans made to such cemetery corporation, association, corporation sole, or other person owning or controlling such cemetery lands. No order of any court shall be required prior to the making of any such sale, mortgage, pledge, or other encumbrance of such lands abandoned for cemetery purposes or from which the human remains have been removed; provided, however, that any sale of such cemetery lands made by any cemetery corporation or association controlled by a board of directors or other governing body shall be fairly conducted and the price paid therefor must be fair and reasonable and all such sales must be confirmed, as to the fairness and reasonableness of the price paid by the probate court of the county in which such lands are situated.

Petitions for confirmation of such sales by cemetery corporations and associations governed by a board of directors or other governing body shall be made to the probate court of the county wherein such lands are situated, and the judge of said court shall fix a day for the hearing and give notice thereof by publication in accordance with the provisions of Section 43-2-445, relating to confirmation of sales of real estate by an executor or administrator.

§ 11-47-72. Filing, etc., of declaration as to removal of all remains from abandoned cemetery.

After the removal of all human remains interred in any part or the whole of the cemetery lands abandoned as a burial place for the human dead as provided in this division, the cemetery corporation, association, corporation sole, or other person owning or controlling such cemetery lands may file for record in the office of the judge of probate of the county in which such lands are situated a written declaration reciting that all human remains have been removed from the part or portion of such lands described in such declaration. Such declaration shall be acknowledged in the manner of the acknowledgment of deeds to real property by the president and secretary or other corresponding officers of such cemetery corporation or association or by the incumbent of any such corporation sole or by the persons owning or controlling such cemetery lands, and thereafter any deed, mortgage, or other conveyance of any part of said lands shall be conclusive evidence in favor of any grantee or mortgagee therein named his successor or assigns of the fact of the complete removal of all human bodies therefrom.

§ 11-47-73. Payment of expenses of abandonment and removal by corporations, etc.; disposition of funds of corporation, etc., remaining thereafter.

Whenever any cemetery corporation or association shall have resolved upon the abandonment of any cemetery or part thereof and the removal of the human remains therefrom under the provisions of this division, such cemetery corporation or association shall have power to employ any moneys in its treasury to defray the expense of such abandonment and removal, including the expense of purchasing or otherwise providing a suitable place for the interment or depositing of such remains in any other cemetery, mausoleum, or columbarium in this state, including the expenses of disinterment, transportation, and reinterment or the depositing of such remains in such mausoleum or columbarium, the expenses of the removal and disposal of such vaults, monuments, headstones, coping, or other improvements which may remain after the human bodies are removed from any such cemetery or part thereof, all necessary expenses incident to the sale or mortgaging of any of said lands, all other expenses necessarily incurred in carrying out such abandonment of such cemetery lands and the removal and reinterment or disposing of the bodies so removed and all other expenses incident to any of the above purposes.

Any moneys remaining in the treasury of such cemetery association or corporation after making the removal and reinterment of the bodies from such cemetery lands shall be retained and used as a fund for the perpetual maintenance and care of the cemetery lands wherein such bodies so removed have been interred or for the maintenance and care of any memorial mausoleum or columbarium in which said human remains have been deposited or such fund may be used for such other purposes as such cemetery corporation or association may lawfully declare.

§ 11-47-74. Removal of remains, etc., from cemeteries owned by churches, etc.

Nothing contained in this division shall authorize or permit or be construed or deemed to authorize or permit the heirs, relatives or friends of any deceased person whose body has been interred in any cemetery owned, governed or controlled by any religious corporation or by any church or religious society or any denomination or by any corporation sole administering temporalities of any religious denomination, society or church or owned, governed or controlled by any person or persons as trustee or trustees for any religious denomination, society or church to disinter, remove, reinter or dispose of any such body except in accordance with the rules, regulations and discipline of such religious denomination, society or church.

Title 13A. Criminal Code.

Chapter 7. Offenses Involving Damage to and Intrusion Upon Property, § 13A-7-29.

§ 13A-7-29. Criminal littering.

"(a) A person commits the crime of criminal littering if he or she engages in any of the following acts:

"(1) Knowingly deposits in any manner litter on any public or private property or in any public or private waters, having no permission to do so. For purposes of this subdivision, any series of items found in the garbage, trash, or other discarded material including, but not limited to, bank statements, utility bills, bank card bills, and other financial documents, clearly bearing the name of a person shall constitute a rebuttable presumption that the person whose name appears thereon knowingly deposited the litter. Advertising, marketing, and campaign materials and literature shall not be sufficient to constitute a rebuttable presumption of criminal littering under this subsection.

"(2) Negligently deposits in any manner glass or other dangerously pointed or edged objects on or adjacent to water to which the public has lawful access for bathing, swimming, or fishing, or on or upon a public highway, or within the right-of-way thereof.

"(3) Discharges sewage, oil products, or litter from a watercraft vessel of more than 25 feet in length into a river, inland lake, or stream within the state or within three miles of the shoreline of the state.

"(4) a. Drops or permits to be dropped or thrown upon any highway any destructive or injurious material and does not immediately remove the same or cause it to be removed; or

"b. Removes a wrecked or damaged vehicle from a highway and does not remove glass or other injurious substance dropped upon the highway from such vehicle.

"(b) "Litter" means rubbish, refuse, waste material, garbage, dead animals or fowl, offal, paper, glass, cans, bottles, trash, scrap metal, debris, or any foreign substance of whatever kind and description, and whether or not it is of value. Any agricultural product in its natural state that is unintentionally deposited on a public highway, road, street, or public right-of-way shall not be deemed litter for purposes of this section or Section 32-5-76. Any other law or ordinance to the contrary notwithstanding, the unintentional depositing of an agricultural product in its natural state on a public highway, road, street, or right-of-way shall not constitute unlawful littering or any similarly prohibited activity.

"(c) It is no defense under subsections (a)(3) and (a)(4) that the actor did not intend, or was unaware of, the act charged.

"(d) Criminal littering is a Class C misdemeanor. The minimum fine for the first conviction shall be two hundred fifty dollars (\$250), and the fine for the second and any subsequent conviction shall be five hundred dollars (\$500) for each conviction.

"(e) The fine from such conviction shall be awarded and distributed by the court to the municipal, and/or county, and/or State General Fund, following a determination by the court of whose law enforcement agencies or departments have been a participant in the arrest or citation resulting in the fine. Such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the arrest, and shall be spent by the governing body on law and litter enforcement purposes only.

"(f) No action for criminal littering based on evidence that creates a rebuttable presumption under subsection (a)(1) shall be brought against a person by or on behalf of a county or municipal governing body unless he or she has been given written notice by a designee of the governing body that items found in an accumulation of garbage, trash, or other discarded materials contain his or her name, and that, under subsection (a)(1), there is a rebuttable presumption that he or she knowingly deposited the litter. The notice shall advise the person that criminal littering is a Class C misdemeanor, and shall provide that, unless the person can present satisfactory information or evidence to rebut the presumption to the designee of the governing body within 15 days from the date of the notice, an action for criminal littering may be filed against him or her in the appropriate court. If the person responds to the notice and presents information or evidence to the designee of the governing body, the designee shall review the information or evidence presented and make a determination as to whether or not an action should be brought against the person for criminal littering. The designee shall provide written notice to the person of its determination, and if the intent is to proceed with an action for criminal littering, the notice shall be sent before any action is filed.

"(g) Upon approval of the county commission, the county license inspector employed under Section 40-12-10 shall have the same authority to issue citations against persons violating this section as county license inspectors have with regard to persons violating revenue laws as provided in Section 40-12-10. In addition, the county solid waste officer, as defined in subsection (b) of Section 22-27-3, shall have the same authority to issue citations against persons violating this section as solid waste officers have with regard to persons violating the Solid Waste Disposal Act pursuant to subsection (b) of Section 22-27-3.

"(h) Nothing herein shall authorize a county license inspector or solid waste officer to take any person into custody pursuant to this section unless the inspector or officer is a law enforcement officer employed by a law enforcement agency as defined in Section 36-21-40." (Amended 2010)

Chapter 12. Offenses Against Public Health and Morals, § 13A-12-3.

§ 13A-12-3. Selling cigarettes to minors.

Any person who sells, barter, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them shall, on conviction, be fined not less than \$10.00 nor more than \$50.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

Title 15. Criminal Procedure.

Chapter 23. Alabama Crime Victims, §§ 15-23-100 through 15-23-104.

§ 15-23-100. Definitions.

As used in this article, the following words shall have the following meanings:

- (1) **ALLEGED VICTIM.** A person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the alleged crime.
- (2) **PARENT OR GUARDIAN OF THE ALLEGED VICTIM.** A parent or legal guardian of an alleged victim who is a minor or incapacitated person.
- (3) **POSITIVE REACTION.** A positive test with a positive confirmatory test result as specified by the Department of Public Health.
- (4) **SEXUALLY TRANSMITTED DISEASE.** Those diseases designated by the State Board of Health as sexually transmitted diseases for the purposes of this article.
- (5) **TRANSMISSION OF BODY FLUIDS.** The transfer of blood, semen, vaginal secretions, or other body fluids identified by the Department of Public Health, from the alleged perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

§ 15-23-101. Motion to order person charged to be tested for sexually transmitted diseases.

When a person has been charged with the crime of rape, sodomy, or sexual misconduct and it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, upon the request of the alleged victim or the parent or guardian of an alleged victim, the district attorney shall file a motion with the court for an order requiring the person charged to submit to a test for any sexually transmitted disease.

§ 15-23-102. Order to submit to testing; designation of attending physician; additional testing; access to results; post-test counseling.

- (a) If the district attorney files a motion under Section 15-23-101, the court shall order the person

charged to submit to testing if the court determines there is probable cause to believe that the person charged committed the crime of rape, sodomy, or sexual misconduct and the transmission of body fluids was involved.

(b) When a test is ordered under Section 15-23-101, the alleged victim of the crime or a parent or guardian of the alleged victim shall designate an attending physician who has agreed in advance to accept the victim as a patient to receive information on behalf of the alleged victim.

(c) If any sexually transmitted disease test results in a negative reaction, the court shall order the person to submit to any follow-up tests at the intervals and in the manner as shall be determined by the State Board of Health.

(d) The result of any test ordered under this section is not a public record and shall be available only to the following:

- (1) The alleged victim.
- (2) The parent or guardian of the alleged victim.
- (3) The attending physician of the alleged victim.
- (4) The person tested.

(e) If any sexually transmitted disease test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling. Counseling and referral for appropriate health care, testing, and support services as directed by the State Health Officer shall be provided to the alleged victim at the request of the alleged victim or the parent or guardian of the alleged victim.

§ 15-23-103. Confidentiality of results.

(a) The results of tests or reports, or information therein, obtained under Section 15-23-102 shall be confidential and shall not be divulged to any person not authorized to receive the information.

(b) A violation of this section is a Class C misdemeanor.

§ 15-23-104. Payment of costs.

This article shall be implemented by the Department of Public Health to the extent state funds are available to pay all costs associated with the requirements of this article. The court may order the person charged to pay for or reimburse the state for the cost of all testing.

Title 16. Education.

Chapter 28. School Attendance, § 16-28-6.

§ 16-28-6. Children exempt from attending public school.

(a) The following children, when issued certificates of exemption by the county superintendent of education, where they reside in territory under the control and supervision of the county board of education, or the city superintendent of schools, where they reside in territory under the control and supervision of a city board of education, shall not be required to attend school, or to be instructed by a private tutor:

(1) Children whose physical or mental condition is such as to prevent or render inadvisable attendance at school or application to study. Before issuing such certificate of exemption, the superintendent shall require a certificate from the county health officer in counties which have a health unit, and from a regularly licensed, practicing physician in counties which do not have a health unit, that such a child is physically or mentally incapacitated for school work.

(2) Children who have completed the course of study of the public schools of the state through high school as now constituted.

(3) Where because of the distance children reside from school and the lack of public transportation such children would be compelled to walk over two miles to attend a public school.

(4) Where the children are legally and regularly employed under the provisions of the law relating to child labor and hold permits to work granted under the terms of said child labor law.

(5) Otherwise qualified children who withdraw from school pursuant to [Section 16-28-3.1](#).

(b) Nothing in this section shall be construed so as to deny any right to any child granted under the provisions of Sections 16-39-1 through 16-39-12.

Chapter 29. Mental and Physical Examinations of School Children, § § 16-29-1 through 16-29-6.

§ 16-29-1. Required; scope; suspension of infected child.

The Department of Education and the State Board of Health shall in conjunction arrange for the examination of each and every child attending the public schools of this state, both male and female, for any physical defects of any kind, embracing mental deficiency; diseases of the ear, eye, nose and throat, mouth and teeth; any deformity or dislocation of the hip joints or spinal disease; phymosis; hookworm disease and any and all other communicable or contagious diseases where either the county board of education or a city board of education or the State Department of Education has cause to believe that such child has a communicable or contagious

disease; and any disease requiring medical or surgical aid in developing the child into a strong and healthy individual. The several county boards of education and county boards of health shall cooperate fully with the State Board of Education and the State Board of Health in the promotion of this work. The county superintendent of education shall arrange with the county health officer a schedule of dates for this examination of the children in the public schools under his supervision, and the city superintendent of schools shall make like schedule for the schools under his supervision.

The county or city board of education, upon receipt of a report from the medical officer, may suspend said child from attendance of any public school if said medical examiner is of the opinion that said communicable or contagious disease or any other disease will endanger the health of the child attending said school.

The ruling of said city or county board is subject to review before the state board and a three-man panel of medical examiners appointed by said board.

Said child may be suspended for so long as said contagious or communicable disease or diseases enumerated above exist, or endanger the pupils attending said school, within the discretion of the examining authorities and boards before mentioned.

§ 16-29-2. When examination made.

Each and every child shall be examined before October 1 in each and every year by the county health officer, and the State Superintendent of Education shall have blanks printed to be furnished by the county superintendent of education to the various school districts. The county health officer of each county shall make such physical examinations of the school children and he shall secure such assistance from the county board of health as is necessary. All examinations held under this chapter shall be without charge to the child or his parents.

§ 16-29-3. Certificate of examination furnished pupil.

Each child shall be furnished with a certificate of examination, which shall be recorded by the teacher in a record kept for that purpose, the certificate to be returned to the parent or guardian of the child.

§ 16-29-4. County health officers furnished with certain equipment.

The State Board of Health shall supply the county health officers with glass slides and tubes, if necessary, for the taking of specimens, for making blood tests and hookworm tests.

§ 16-29-5. Tests.

The State Board of Health shall have all necessary tests made at the state laboratory upon the request of the county health officer.

§ 16-29-6. County board of health to cooperate.

To the end that the objects and purposes of this chapter may be fully carried into effect and the health of the school children of Alabama may be materially improved, the cooperation of the county board of health in various counties of Alabama, in conjunction with the county health officers, is expected without charge to the parent of the child.

Chapter 30. Immunization of School Children, §§16-30-1 through 16-30-5.

§ 16-30-1. Immunization or testing for certain diseases.

The State Health Officer is authorized, subject to the approval of the State Board of Health, to designate diseases against which children must be immunized or for which they must be tested prior to, or, in certain instances after entry into the schools of Alabama.

§ 16-30-2. Responsibilities of parents.

It shall be the responsibility of the parents or guardians of children to have their children immunized or tested as required by Section 16-30-1.

§ 16-30-3. Exceptions to chapter.

The provisions of this chapter shall not apply if:

- (1) In the absence of an epidemic or immediate threat thereof, the parent or guardian of the child shall object thereto in writing on grounds that such immunization or testing conflicts with his religious tenets and practices; or
- (2) Certification by a competent medical authority providing individual exemption from the required immunization or testing is presented the admissions officer of the school.

§ 16-30-4. Presentation of certificate upon initial entrance into school.

The boards of education and the governing authority of each private school shall require each pupil who is otherwise entitled to admittance to kindergarten or first grade, whichever is applicable, or any other entrance into an Alabama public or private school, to present a certification of immunization or testing for the prevention of those communicable diseases designated by the State Health Officer, except as provided in Section 16-30- 3. Provided, however, that any student presently enrolled in a school in this state, not having been immunized upon initial entrance to school, is hereby required to present a certification of immunization as

described in this section upon commencement of the next school year. Section 16-30-1 and this section shall apply only to kindergarten through 12th grade and not to the institutions of higher learning.

§ 16-30-5. Rules and regulations.

The State Health Officer shall promulgate rules and regulations necessary to carry out this chapter.

Title 17. Elections.

Chapter 4. Registration, § 17-4-6.

§ 17-4-6. Information to be provided by state departments or agencies.

(a) To continuously and automatically identify the names of persons to be purged from the voters' list, the appropriate state departments or agencies shall provide to the Secretary of State, as such information is recorded by the departments, the names and identifying information set out below of any person age 18 or older who:

(1) Has died, with date of birth and Social Security number (if such number is known), last known address with county of residence, and date of death, as provided by the Office of Vital Statistics of the State Department of Public Health.

(2) Has been convicted of a felony, with date of birth and Social Security number (if such number is known), last known address with county of residence, and date of conviction, as provided by the Alabama Criminal Justice Information Systems.

(b) The Secretary of State, upon the receipt of the information pursuant to subsection (a), shall disseminate the information to the appropriate board of registrars to facilitate the continuous purgation of the statewide voter registration list.

Title 20. Food, Drugs, and Cosmetics.

Chapter 1. Standards, Labeling, and Adulteration, § 20-1-152.

§ 20-1-150. Marking or imprinting of drug products in finished solid oral dosage forms required.

No drug product in finished solid oral dosage form for which a prescription is required by federal law may be manufactured or commercially distributed within this state unless it has clearly and prominently marked or imprinted on it an individual symbol, number, company name, words,

letters, marking, national drug code, or any combination thereof, identifying the drug product and the manufacturer or distributor of the drug product.

§ 20-1-151. Descriptive material to be furnished upon request.

Manufacturers or distributors shall make available on request to the State Board of Health descriptive material which will identify each current imprint used by the manufacturer or distributor.

§ 20-1-152. Department of Health to promulgate rules.

The Department of Health shall promulgate rules for implementing the provisions of this article.

§ 20-1-153. Exemptions from imprinting requirement.

The State Board of Health may exempt drug products from the requirements of Section 20-1-150 on the grounds that imprinting is not feasible because of size, texture, or other unique characteristics.

§ 20-1-154. Exemptions for drugs compounded by a pharmacist.

The provisions of this article shall not apply to drug products compounded by a pharmacist licensed under Alabama law, in a pharmacy operating under a permit issued by the Alabama Board of Pharmacy.

Chapter 2. Controlled Substances, §§ 20-2-2 to 20-2-58, 20-2-70 to 20-2-93, 20-2-190, 20-2-210 through 20-2-220.

Article 1. General Provisions.

§ 20-2-1. Short title.

This chapter may be cited as the Alabama Uniform Controlled Substances Act.

§ 20-2-2. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) ADMINISTER. The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

a. A practitioner or, in his or her presence, his or her authorized agent.

b. The patient or research subject at the direction and in the presence of the practitioner.

(2) AGENT. An authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) CERTIFYING BOARDS. The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry, and the State Board of Veterinary Medical Examiners.

(4) CONTROLLED SUBSTANCE. A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.

(5) COUNTERFEIT SUBSTANCE. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) DELIVER or DELIVERY. The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(7) DISPENSE. To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) DISPENSER. A practitioner who dispenses.

(9) DISTRIBUTE. To deliver other than by administering or dispensing a controlled substance.

(10) DISTRIBUTOR. A person who distributes.

(11) DRUG.

a. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.

b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals.

c. Substances (other than food) intended to affect the structure or any function of the body of man or animals.

d. Substances intended for use as a component of any article specified in paragraphs a, b, or c of this subdivision. Such term does not include devices or their components, parts, or accessories.

(12) IMMEDIATE PRECURSOR. A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) MANUFACTURE. The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

b. By a practitioner or by his or her authorized agent under his or her supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(14) MARIHUANA. All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) NARCOTIC DRUG. Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) OPIATE. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) OPIUM POPPY. The plant of the species *Papaver somniferum* L., except its seeds.

(18) PERSON. Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) POPPY STRAW. All parts, except the seeds, of the opium poppy, after mowing.

(20) PRACTITIONER.

a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(21) PRODUCTION. The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) STATE. When applied to a part of the United States, such term includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) ULTIMATE USER. A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

§ 20-2-3. Immunity of persons reporting suspected use, etc., of controlled substance by minor child.

All persons employed in any capacity in the public, private, and church elementary and

secondary schools shall be immune from civil liability for communicating information to the parents of a minor child, law enforcement officers, or health care providers concerning the suspected use, possession, sale, distribution of any controlled substance as defined in Chapter 2 of Title 20, by any minor child as defined by law. Notwithstanding the foregoing, this immunity shall not apply if said person communicated such information maliciously and with knowledge that it was false.

Article 2. Standards and Schedules.

§ 20-2-20. Administration of chapter.

(a) The State Board of Health, unless otherwise specified, shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the State Board of Health. In making a determination regarding a substance, the State Board of Health shall consider all of the following:

- (1) The actual or relative potential for abuse.
 - (2) The scientific evidence of its pharmacological effect, if known.
 - (3) The state of current scientific knowledge regarding the substance.
 - (4) The history and current pattern of abuse.
 - (5) The scope, duration, and significance of abuse.
 - (6) The risk to the public health.
 - (7) The potential of the substance to produce psychic or physiological dependence liability.
 - (8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.
- (b) After considering the factors enumerated in subsection (a), the State Board of Health shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.
- (c) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, the State Board of Health shall similarly control the substance under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a substance as a controlled substance or

rescheduling or deleting a substance, unless within that 30-day period, the State Board of Health objects to inclusion, rescheduling, or deletion. In that case, the State Board of Health shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the State Board of Health shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the State Board of Health, control under this chapter is stayed until the State Board of Health publishes its decision.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt, beverages, or tobacco.

(e) The State Board of Health shall exclude any nonnarcotic substance from a schedule if such substance, under the federal Food, Drug and Cosmetic Act, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and the law of this state may be lawfully sold over the counter without a prescription.

§ 20-2-21. Nomenclature of controlled substances in schedules.

The controlled substances listed or to be listed in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29 and 20-2-31 are included by whatever official, common, usual, chemical or trade name designated.

§ 20-2-22. Schedule I -- Standards for compilation.

The State Board of Health shall place a substance in Schedule I if it finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

§ 20-2-23. Schedule I -- Listing of controlled substances.

The controlled substances listed in this section are included in Schedule I:

- (1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Acetylmethadol;	o. Diethylthiambutene;	cc. Morpheridine;
b. Allylprodine;	p. Dimenoxadol;	dd. Noracymethadol;
c. Alphacetylmethadol;	q. Dimepheptanol;	ee. Norlevorphanol;
d. Alphameprodine;	r. Dimethylthiambutene;	ff. Normethadone;
e. Alphamethadol;	s. Dioxaphetyl butyrate;	gg. Norpipanone;
f. Benzethidine;	t. Dipipanone;	hh. Phenadoxone;
g. Betacetylmethadol;	u. Ethylmethylthiambutene;	ii. Phenampromide;
h. Betameprodine;	v. Etonitazene;	jj. Phenomorphan;
i. Betamethadol;	w. Etoxeridine;	kk. Phenoperidine;
j. Betaprodine;	x. Furethidine;	ll. Piritramide;
k. Clonitazene;	y. Hydroxypethidine;	mm. Proheptazine;
l. Dextromoramide;	z. Ketobemidone;	nn. Properidine;
m. Dextrorphan;	aa. Levomoramide;	oo. Racemoramide;
n. Diampromide;	bb. Levophenacylmorphan;	pp. Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine;	l. Methyldesorphine;
b. Acetyldihydrocodeine;	m. Methyldihydromorphine;
c. Benzylmorphine;	n. Morphine methylbromide;
d. Codeine methylbromide;	o. Morphine methylsulfonate;
e. Codeine-N-Oxide;	p. Morphine-N-Oxide;
f. Cyprenorphine;	q. Myrophine;
g. Desomorphine;	r. Nicocodeine;
h. Dihydromorphine;	s. Nicomorphine;
i. Etorphine;	t. Normorphine;
j. Heroin;	u. Pholcodine;
k. Hydromorphenol;	v. Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically

excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

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|--|------------------------------------|
| a. 3,4-methylenedioxy amphetamine; | i. Lysergic acid diethylamide; |
| b. 5-methoxy-3,4-methylenedioxy amphetamine; | j. Marihuana; |
| c. 3,4,5-trimethoxy amphetamine; | k. Mescaline; |
| d. Bufotenine; | l. Peyote; |
| e. Diethyltryptamine; | m. N-ethyl-3-piperidyl benzilate; |
| f. Dimethyltryptamine; | n. N-methyl-3-piperidyl benzilate; |
| g. 4-methyl-2,5-dimethoxy amphetamine; | o. Psilocybin; |
| h. Ibogaine; | p. Psilocyn; |
| | q. Tetrahydrocannabinols. |

§ 20-2-24. Schedule II -- Standards for compilation.

The State Board of Health shall place a substance in Schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

§ 20-2-25. Schedule II -- Listing of controlled substances.

The controlled substances listed in this section are included in Schedule II:

- (1) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:
 - a. Opium and opiate and any salt, compound, derivative or preparation of opium or opiate.
 - b. Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- | | |
|---|---|
| a. Alphaprodine; | m. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid; |
| b. Anileridine; | n. Pethidine; |
| c. Bezitramide; | o. Pethidine -- Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; |
| d. Dihydrocodeine; | p. Pethidine -- Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate; |
| e. Diphenoxylate; | q. Pethidine -- Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; |
| f. Fentanyl; | r. Phenazocine; |
| g. Isomethadone; | s. Piminodine; |
| h. Levomethorphan; | t. Racemethorphan; |
| i. Levorphanol; | u. Racemorphan. |
| j. Metazocine; | |
| k. Methadone; | |
| l. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane; | |

§ 20-2-26. Schedule III -- Standards for compilation.

The State Board of Health shall place a substance in Schedule III if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

§ 20-2-27. Schedule III -- Listing of controlled substances.

- (a) The controlled substances listed in this section are included in Schedule III:

(1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers and salts of its optical isomers;
- b. Phenmetrazine and its salts;
- c. Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers;
- d. Methylphenidate.

(2) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- b. Chlorhexadol;
- c. Glutethimide;
- d. Lysergic acid;
- e. Lysergic acid amide;
- f. Methypylon;
- g. Phencyclidine;
- h. Sulfondiethylmethane;
- i. Sulfonethylmethane;
- j. Sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

- a. Not more than 1.8 grams of codeine or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - b. Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - c. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
 - d. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - e. Not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - f. Not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
 - g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - h. Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (b) The State Board of Health may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subdivisions (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

§ 20-2-28. Schedule IV -- Standards for compilation.

The State Board of Health shall place a substance in Schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

§ 20-2-29. Schedule IV -- Listing of controlled substances.

(a) The controlled substances listed in this section are included in Schedule IV:

(1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

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|---------------------|-------------------------|
| a. Barbitol; | g. Meproamate; |
| b. Chloral betaine; | h. Methylphenobarbital; |
| c. Chloral hydrate; | i. Paraldehyde; |
| d. Ethchlorvynol; | j. Petrichloral; |
| e. Ethinamate; | k. Phenobarbital. |
| f. Methohexital; | |

(b) The State Board of Health may except by rule any compound, mixture or preparation containing any depressant substance listed in subsection (a) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

§ 20-2-30. Schedule V -- Standards for compilation.

The State Board of Health shall place a substance in Schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§ 20-2-31. Schedule V -- Listing of controlled substances.

The controlled substances listed in this section are included in Schedule V:

(1) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;
- b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams;
- c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams;
- d. Not more than 2.5 milligrams of diphenozylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

§ 20-2-32. Revision and republication of schedules.

The State Board of Health shall revise and republish the schedules annually.

Article 3. Regulation of Manufacture and Distribution.

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.

- (a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards.

§ 20-2-51. Registration of persons manufacturing, distributing, or dispensing controlled substances -- General requirements.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

§ 20-2-52. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration.

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;
- (6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and
- (7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule

I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

§ 20-2-53. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay.

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama

Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board.

§ 20-2-54. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure generally.

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(4) Has violated the provisions of Chapter 23 of Title 34; or

(5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug

or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
 2. Hyperkinesis.
 3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
 4. Epilepsy.
 5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
 6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression; or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.
- (b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
- (c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon

application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

§ 20-2-54.1. Rules and regulations.

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

§ 20-2-55. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause.

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.

§ 20-2-56. Maintenance of records and inventories by registrants generally.

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.

§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant.

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law

respecting order forms shall be deemed compliance with this section.

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies.

(a) Except as otherwise provided in this section or as otherwise provided by law, a pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long-term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV, and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined

under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(g) In an emergency situation, a pharmacist may dispense a Schedule II controlled substance for a resident of a long-term care facility, a patient receiving hospice services, or a patient receiving home health care services pursuant to an emergency oral prescription transmitted by the practitioner to the dispensing pharmacy. The quantity dispensed pursuant to an emergency oral prescription shall be limited to the amount adequate to treat the patient during the emergency period not to exceed 72 hours. The practitioner, within seven days of the emergency oral prescription, shall provide the dispensing pharmacy with a written prescription for the quantity prescribed.

Article 4. . Offenses and Penalties.

Article 4. Offenses and Penalties

§ 20-2-70. Prohibited acts A. Repealed.

§ 20-2-71. Prohibited acts B.

(a) It is unlawful for any person:

(1) Who is subject to Article 3 of this chapter to distribute or dispense a controlled substance in violation of Section 20-2-58;

(2) Who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; provided, however, that upon the first conviction of a violator under this provision said violator shall be guilty of a Class A misdemeanor. Subsequent convictions shall subject the violator to the felony penalty provision set forth in subsection (b) of this section.

(4) To refuse an entry into any premises for any inspection authorized by this chapter; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a Class B felony.

§ 20-2-72. Prohibited acts C.

(a) It is unlawful for any person:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Section 20-2-57;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from any application, report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter; or

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a Class B felony, except that any person who violates subdivision (a)(3) of this section is guilty of a Class C felony.

§ 20-2-73. Transferred.

§ 20-2-74. Prescription, administration, etc., of controlled substances by practitioners of veterinary medicine for use of human beings or by practitioners of dentistry for persons not under treatment in regular practice of profession.

(a) It shall be unlawful for any practitioner of dentistry to prescribe, administer or dispense any controlled substance enumerated in Schedules I through V for any person not under his treatment in his regular practice of his profession or for any practitioner of veterinary medicine to

prescribe, administer or dispense any controlled substance enumerated in Schedules I through V for the use of human beings; provided, however, that the provisions of this section shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of substances enumerated in Schedules I through V who is under his professional care such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of maintaining addiction or abuse.

(b) Any person who violates this section shall be guilty of a Class B felony.

§ 20-2-75. "Drug related object" defined; distribution prohibited; affirmative defenses; penalty; contraband subject to forfeiture. Repealed.

§ 20-2-75.1. Transferred.

§ 20-2-76. Penalties for second or subsequent offenses; when offense deemed second or subsequent offense. Repealed

§ 20-2-77. Conviction or acquittal under federal law or state law to bar prosecution for same violation under chapter. Repealed.

§ 20-2-78. Penalties imposed for violations of chapter in addition to other civil or administrative penalties or sanctions.

Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law.

§ 20-2-79. Transferred.

Article 4A. . Trafficking in Illegal Drugs.

§ 20-2-80. Transferred.

§ 20-2-81. Transferred.

Article 5. Enforcement.

§ 20-2-90. State Board of Pharmacy, Department of Public Safety, etc., to enforce chapter; drug inspectors to meet minimum standards.

(a) The State Board of Pharmacy and its drug inspectors shall enforce all provisions of this chapter. The agents and officers of this Department of Public Safety, the drug and narcotic agents and inspectors of the State Board of Health, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and all peace officers of the state and all prosecuting attorneys are also charged with the enforcement of this chapter. The agents and officers of the Department of Public Safety, the drug inspectors of the State Board of Pharmacy, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and the drug and narcotic agents and inspectors of the State Board of Health shall have the powers of peace officers in the performance of their duties to:

- (1) Make arrests without warrant for any offense under this chapter committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.
- (2) Make seizures of property pursuant to this chapter.
- (3) Carry firearms in the performance of their official duties.

(b) In addition to the requirements of subsection (a), drug inspectors of the State Board of Pharmacy shall, beginning October 1, 1993, meet the minimum standards required of peace officers in this state.

§ 20-2-91. Inspection of stocks of controlled substances and prescriptions, orders, etc., required by chapter; disclosure of information as to prescriptions, orders, etc., by enforcement personnel.

(a) Prescriptions, orders and records required by this chapter and stocks of controlled substances enumerated in Schedules I, II, III, IV and V shall be open for inspection only to federal, state, county and municipal officers, the investigators of the board of dental examiners, and the agents and officers of the department of public safety whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(b) No officer having knowledge by virtue of his office of any such prescription, order or record

shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

§ 20-2-92. Injunctions.

(a) The circuit courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or temporary restraining order under this section.

§ 20-2-93. Forfeitures; seizures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;

(3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

- (7) All imitation controlled substances as defined under the laws of this state;
 - (8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;
 - (9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;
- (b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:
- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
 - (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
 - (3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
 - (4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.
- (c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.
- (d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:
- (1) Place the property under seal;
 - (2) Remove the property to a place designated by it;
 - (3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and

(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

Article 9. Precursor Chemicals.

§ 20-2-190

(a) Any person who manufactures, sells, transfers, receives, or possesses a listed precursor chemical violates this article if the person:

- (1) Knowingly fails to comply with the reporting requirements of this article;
- (2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;
- (3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

(b) Notwithstanding the provisions of Section 20-2-188, a person who possesses, sells, transfers, or otherwise furnishes or attempts to solicit another or conspires to possess, sell, transfer, or otherwise furnish a listed precursor chemical or a product containing a precursor chemical or ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers commits an offense if the person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance. An offense under this subsection shall constitute a Class B felony.

(c)(1) It shall be unlawful for any person, business, or entity to knowingly sell any ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers unless sold from a pharmacy licensed by the Alabama Board of Pharmacy. Any ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers sold within a pharmacy must be sold by an individual licensed as a pharmacist, a pharmacy technician licensed by the Alabama Board of Pharmacy, or by an employee of the pharmacy under the direct supervision and control of a licensed pharmacist.

(2) Products whose sole active ingredient is ephedrine or pseudoephedrine in strength of 30 mg. or more per tablet cannot be offered for retail sale loose in bottles, but must be sold only in blister packages.

(3) All packages of tablets containing ephedrine or pseudoephedrine shall be stored by a pharmacy by placing the products behind a counter, within the pharmacy where the public is not permitted.

(4) No person shall deliver, sell, or purchase products sold over-the-counter that contain a combined total of more than 3.6 grams per calendar day or more than 7.5 grams per 30 days, of ephedrine base or pseudoephedrine base. It shall not be a defense under this subdivision if no money was exchanged during a transaction that would otherwise be unlawful under this subdivision.

(5) a. Each pharmacy selling an over-the-counter product in compliance with paragraph b. of this subdivision shall require the purchaser of the product or products to be at least 18 years of age, to provide a valid, unsuspended driver's license or nondriver identification card issued by this state, a valid, unsuspended driver's license or nondriver identification card issued by another state, a United States Uniformed Services Privilege and Identification Card, or a United States or foreign passport, and to sign a record of each transaction. A record of each transaction shall include the magnetic transfer or electronic entry of information data from the identification card into the system, as well as the type of identification card used, including the number, name, date of birth, and current, valid address of the purchaser, the date and time of the sale, the name of the product being sold, as well as the total quantity in grams, of ephedrine or pseudoephedrine being sold. The system required pursuant to this section shall be available to the state and to pharmacies accessing the system without cost. Effective January 1, 2011, provided a system is available to the state without cost to the state or pharmacies for accessing the system, before completing a sale of a product covered by this section, a pharmacy shall submit the required information to the electronic sales tracking system established under subdivision (1) of subsection (i). The seller shall not complete the sale if the system generates a stop sale alert except when the seller follows the procedure described under subsection (i) for overriding the

stop sale alert when the seller has fear of bodily harm. Any seller who fails to comply with this subdivision shall be guilty of a Class A misdemeanor upon a first offense, and a Class C felony on a second or subsequent offense, except that sellers who exercise the override feature described under subdivision (3) of subsection (i) when a stop sale alert is generated shall not be subject to misdemeanor or felony charges. Absent negligence, wantonness, recklessness, or deliberate misconduct, any retailer maintaining the electronic sales tracking system in accordance with this subdivision shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation. Any excessive or suspicious sales of such a product by any wholesaler, manufacturer, or repackager as defined in Section 34-23-1 shall be reported to the Alcohol Beverage Control Board and the Board of Pharmacy. Any person who fails to comply with this subdivision shall be guilty of a Class A misdemeanor upon a first offense, and a Class C felony upon a second or subsequent offense.

b. If a pharmacy selling an over-the-counter product in compliance with subdivision (3) experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with paragraph a. of this subdivision, the pharmacy shall maintain a written log or an alternative electronic recordkeeping mechanism that complies with all identification and documentation requirements of the act adding the amendatory language, until the pharmacy is able to comply with paragraph a. of this subdivision.

(6) This subsection does not apply to products dispensed pursuant to a legitimate prescription.

(7) This subsection shall preempt all local ordinances or regulations governing the sale or purchase of products containing ephedrine or pseudoephedrine.

(8) A pharmacist who is the general owner or operator of an establishment where ephedrine or pseudoephedrine products are available for sale shall not be penalized pursuant to this section for conduct of an employee if the retailer documents that an employee training program was conducted by or approved by the Alabama Drug Abuse Task Force (ADATF), pursuant to subsection (h). As provided in subsection (h), the Alabama Board of Pharmacy shall develop or approve all training programs for those pharmacy employees referenced in subdivision (1) and submit such programs to the ADATF for approval. The ADATF must review any training programs submitted by the Alabama Board of Pharmacy at its next subsequent called or scheduled public meeting and within 7 days, report its decision in writing to the Alabama Board of Pharmacy.

(9) A violation of subdivision (1), (2), (3), or (4) shall constitute a Class A misdemeanor on a first offense and a Class C felony on subsequent offenses. The violations shall be punishable as provided by law.

(d) Any person who resides within any state that requires a prescription for any purchase of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers, or who presents a valid identification as provided in subdivision (5) of subsection (c) from any state that requires a prescription for any purchase of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers, may purchase those products only upon presentation of a valid prescription for the ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers. The electronic system established in the act adding this subsection shall generate a stop sale and block any purchase in violation of this subsection, absent a valid lawful prescription.

(e) Beginning October 1, 2005, any wholesaler, manufacturer, or repackager of drug products as defined in Section 34-23-1, other than a wholesaler, manufacturer, or repackager licensed by the Board of Pharmacy, shall obtain a registration annually from the Alcoholic Beverage Control Board which may promulgate and implement administrative rules for the registrations.

Beginning October 1, 2010, any wholesaler, manufacturer, or repackager shall keep complete records of all sales and transactions involving a listed precursor chemical or a product containing a precursor chemical including the names of all parties involved in the transaction, the name of the products being sold, as well as the total quantity in grams, of the precursor chemical or product involved. Any wholesaler, manufacturer, or repackager selling a listed precursor chemical or product to an individual shall require the purchaser of the product or products to be at least 18 years of age and to provide government-issued photographic identification of himself or herself. The records shall be maintained for at least 36 months and the records shall be available for inspection by any law enforcement officer or inspector of the Board of Pharmacy during normal business hours. Failure to comply with subsections (d) and (e) shall be a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense.

(f) Beginning October 1, 2005, every retailer of ephedrine or pseudoephedrine, or a product containing ephedrine or pseudoephedrine, is required to be registered with the Alcoholic Beverage Control Board to lawfully sell ephedrine or pseudoephedrine products to consumers.

(g) In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine by a wholesaler, manufacturer, repackager, or retailer without a license as required by subsection (e) and (f) is a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense. In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine in violation of this section by a wholesaler, manufacturer,

repackager, or retailer who is licensed as required by subsection (e) or (f) shall result in cancellation of the required registration and forfeiture of the right to sell the products for at least two years or longer as determined by the Alcoholic Beverage Control Board.

(h)(1) The Alabama Drug Abuse Task Force (ADATF) is established and given the authority to do all of the following:

Approve or develop drug awareness, enforcement, education, prevention, and training programs. The programs shall be designed to curb the abuse of all dangerous, illegal, or abused drugs, including but not limited to, methamphetamine precursors, other key, critical, common ingredients used to make methamphetamine, or other illegal or abused drugs in the State of Alabama. These programs may be targeted for, but not limited to, employees of establishments where ephedrine or pseudoephedrine products or other key or critical or common ingredients in the illegal manufacture of methamphetamine or other illegal or dangerous drugs are available for sale. Education, prevention, and training programs also may be targeted to law enforcement, prosecutors, the judiciary, students, or that may further serve to protect, educate, and inform the public. The programs may be administered by the Alcoholic Beverage Control Board in conjunction with its program to restrict access to tobacco products by minors pursuant to Chapter 11, Title 28. The programs may be further administered by any law enforcement drug abuse and violent crime task force, the Alabama Department of Education, a licensed private drug education or prevention entity approved by the ADATF, or any other governmental or quasi-governmental agency or entity partnering with the ADATF to serve the purposes of this article. The Alabama Department of Public Health, ADATF, and the Alabama State Board of Education, shall enter into a memorandum of understanding to develop and implement the training, education, or prevention programs referenced in this section, and are authorized to expend any funds necessary to further the requirements and objective of the ADATF and subsection (h) or any other legitimate drug abuse prevention or law enforcement purpose for the protection of the citizens of this state.

b. Advise the ABC Board, the Alabama Board of Pharmacy, Alabama law enforcement, prosecutorial entities, or other governmental or quasi-governmental agency or entity partnering with the ADATF regarding its responsibilities prescribed in this article.

c. Report to the Legislature by the 10th day of each legislative session, on the state of illegal drug abuse, trends in the use, distribution, and manufacture of illegal or synthetic drugs, and the use and misuse of. The ADATF may only gather such information from legitimately verifiable sources or in a public forum. The report may include recommendations with regard to public policy, potential legislation, allocation of resources, or other recommendations which may aid in

the curbing of drug abuse and drug crime or would best serve the safety and well being of the state. The report may include, but is not limited to, all of the following:

1. Statistical data involving drug abuse, drug crime, or drug related crime.
2. Efforts within the state involving education, prevention, and treatment of drug addiction.
3. Critical needs of law enforcement.
4. Organized crime efforts in the area of drug distribution, trafficking, manufacturing, or related criminal activity.
5. Critical needs for prisons.
6. Prosecution entities and the courts.
7. Other critical threat assessments involving the safety of the State of Alabama.

(2) The task force shall consist of the following members:

- a. The Attorney General, or his or her designee.
- b. The President of the Alabama State Board of Pharmacy, or his or her designee.
- c. A representative appointed by the District Attorney's Association.
- d. A member of a regional county drug task force as appointed by the District Attorney's Association.
- e. The Director of the Department of Public Safety, or his or her designee.
- f. A representative appointed by the Chiefs of Police Association.
- g. A member of a regional county drug task force as appointed by the Chiefs of Police Association.
- h. A representative appointed by the Sheriff's Association.
- i. A representative appointed by the Narcotics Officers Association.
- j. A representative of the Alabama Association of Pharmacists.
- k. The Director to the Alabama Department of Revenue, or his or her designee.
- l. A member or director of the Alabama Sentencing Commission.
- m. The Chair of the Alabama Assistant District Attorneys Association.
- n. The Director of the Alabama Department of Human Resources, or his or her designee.
- o. A representative of the Alabama Retail Association.
- p. A representative of the Alabama Administrative Office of Courts.
- q. The Commissioner of the Alabama Department of Corrections, or his or her designee.
- r. The State Superintendent of Education, or his or her designee.
- s. A representative of the Commission of Environmental Management.
- t. The Director of the Alabama Department of Forensic Sciences, or his or her designee.
- u. The State Health Officer, or his or her designee.
- v. The Director of the Alabama Department of Homeland Security, or his or her designee.

- w. A representative of the mental illness and substance abuse services of the Alabama Department of Mental Health.
 - x. The Director of the Office of Prosecution Services, or his or her designee.
 - y. A representative of the Alabama Criminal Justice Information Center.
 - z. A representative of the Board of Dental Examiners.
 - aa. A representative of the Alcoholic Beverage Control Board.
- (3) The membership shall select a chair on a bi-annual basis.
- (4) The membership of the task force shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.
- (5) The chair of the task force shall be responsible for the conduct of the meetings and any correspondence or reports derived therefrom.
- (6) The chair of the task force shall call an organizational meeting of the task force within 60 days of July 1, 2010, and the task force shall report its meeting schedule and procedural rules to the Clerk of the House of Representatives and the Secretary of the Senate within 10 days of the meeting. The task force shall instruct the Alabama Criminal Justice Information Center regarding the creation of a drug abuse information system, as well as a drug offender tracking system pursuant to Section 20-2-190.2, to further the mission of the task force and assist law enforcement in the prevention of illegal drug activity. This system shall include, but not be limited to, data regarding illegal drug manufacture, trafficking, distribution, and usage trends across the state. This information shall be made available and be in a form and method which will enable the task force to have an accurate and detailed understanding of the nature of drug abuse and the geographical impact of the various abused drugs in Alabama.
- (7) The task force may expend any funds from any source, including, but not limited to, donations, grants, and appropriations of public funds received for purposes of this subsection.
- (8) No function or duties of the Drug Abuse Task Force shall be the responsibility or under the purview of the Governor of Alabama.
- (9) The task force shall not be obligated to fund the development of programs described in subdivision (1) unless the Legislature appropriates funding to the task force for this purpose.
- (10) a. A subcommittee shall be created within the task force to study the availability of ephedrine and ephedrine products. Members of the subcommittee shall include:
- 1. The Attorney General.
 - 2. A member of the Legislature appointed by the Speaker of the House of Representatives.

3. A member of the Legislature appointed by the President Pro Tempore of the Senate.
 4. A District Attorney, or his or her designee, appointed by the Alabama District Attorneys Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
 5. A sheriff appointed by the Alabama Sheriff's Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
 6. A chief of police appointed by the Alabama Chiefs of Police Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
 7. The Director of the Alabama Department of Forensic Sciences, or his or her designee.
 8. The Chairman of the Alabama Drug Abuse Task Force.
- b. On the tenth day of the next regular session of the Legislature, the subcommittee of the task force shall report to the ADATF and the Legislature a full and detailed assessment of all efforts to limit or ultimately eliminate the availability of ephedrine or ephedrine products to persons with the intent to use them for manufacturing methamphetamine.
- c. The subcommittee of the task force shall evaluate and report the effectiveness of the electronic drug offender tracking system created in Section 20-2-190.2, as well as statutory provisions to track or block any illegal or inappropriate sales of ephedrine products. This evaluation and report shall include consideration of criminal statutes regarding the trafficking and manufacture of methamphetamine, industry efforts to prevent improper usage of ephedrine products, as well as other pertinent laws. Where possible, the task force shall also endeavor to project future capabilities to sustain or improve efforts to limit illegal access to ephedrine products for purposes of manufacturing methamphetamine.
- d. The subcommittee of the task force, in its effort to provide a complete and accurate report, may utilize, but is not limited to, the use of the following resources:
1. Reports from any governmental or quasi-governmental entity.
 2. Statistical data or reports from Alabama Criminal Justice Information Center, National Precursor Log Exchange, Alabama Fusion Center, Drug Enforcement Administration, or any entity that has membership on the task force.
 3. Other appropriate law enforcement, drug treatment, drug prevention, or medical entities that gather verifiable data regarding drug usage, abuse, or any drug crime or drug related crime.

4. Relevant public hearings by the ADATF.

5. Anecdotal information from named and legitimately verifiable sources.

6. All data or information must be sourced and verifiable.

d. 1. Any report of the ADATF subcommittee to any governmental entity shall first be submitted to the Alabama Department of Public Health. The department shall evaluate the report. In its review, the department shall evaluate the quality and authenticity of the underlying sourced data. The department shall also determine if the data contained within the report is verifiable and if the ADATF or subcommittee of the task force followed generally accepted scientific or statistical methods in the compilation of the report.

2. In making its determination, the department may consider, but is not limited to, evaluating any method, process, research, calculations, design, control, analysis, hypothesis, or program utilized in the report.

3. In the event that the department determines that the proper methods were not followed, it shall notify the task force or subcommittee of the task force of any deficiencies in the report and allow the task force or subcommittee to revise the report to correct the deficiencies. Otherwise, the report shall contain a notation of the findings of any deficiencies by the department.

(i)(1) The Alabama Criminal Justice Information Center shall implement a real-time electronic sales tracking system to monitor the over-the-counter, nonprescription sale of products in this state containing any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers, provided that such system is available to the state without cost to the state or retailers for accessing the system. The electronic sales tracking system shall have the technological capability to receive ephedrine and pseudoephedrine sales data from retail establishments submitted pursuant to this subsection. The electronic sales tracking system shall be capable of bridging with existing and future operational systems used by retail at no cost to such retail establishment. The Alabama Criminal Justice Information Center may enter into a public-private partnership, through a memorandum of understanding or similar arrangement, to make the system available to retailers and law enforcement in the state.

(2) The information contained in this electronic sales tracking system shall be available to:

a. Any law enforcement agency or entity as authorized by the Alabama Criminal Justice Information Center;

b. Pursuant to a subpoena.

(3) This database established pursuant to this subsection shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in subdivision (4) of subsection (c). The system shall contain an override function for use by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized shall be logged by the system.

(j)(1) Upon conviction for any violation of Section 13A-12-260 or 20-2-190, or any violation of a controlled substance or illegal drug crime under Title 13A or Title 20 and in addition to restitution and other costs that may be ordered pursuant to Section 15-18-67, the primary investigative law enforcement or prosecutorial entity shall be entitled, upon request of the district attorney and an order of the court, to recover restitution from any defendant for any legitimate cost incurred in the course of the investigation or prosecution.

(2) Restitution may include, but shall not be limited to, any cost incurred by the primary investigative law enforcement entity of any hazardous material or environmental cleanup of substances related to the manufacture of a controlled substance.

(3) Any real property owner that demonstrates to the court that he or she had no knowledge of, or had no reason to have knowledge of, any illegal manufacturing of controlled substances on his or her property by a defendant convicted of a violation of Section 13A-12-260 or 20-2-190, or any violation of a controlled substance or illegal drug crime under Title 13A or Title 20, through the district attorney, may request a court order requiring the defendant to pay to the real property owner all reasonable costs, if any, associated with any legitimate environmental cleanup or remediation or repair of the real property where the defendant had committed a controlled substance crime.

Article 10. Controlled Substances Prescription Database.

§ 20-2-210. Legislative findings.

The Alabama Legislature hereby finds that the diversion, abuse, and misuse of prescription medications classified as controlled substances under the Alabama Uniform Controlled Substances Act constitutes a serious threat to the health and welfare of the citizens of the State of Alabama. The Legislature further finds that establishment of a controlled substances prescription database to monitor the prescribing and dispensing of controlled substances will materially assist state regulators and practitioners authorized to prescribe and dispense controlled substances in the prevention of diversion, abuse, and misuse of controlled substances prescription medication through the provision of education and information, early intervention, and prevention of

diversion, and investigation and enforcement of existing laws governing the use of controlled substances.

§ 20-2-211. Definitions.

For the purposes of this article, the following terms shall have the respective meanings ascribed by this section:

- (1) CERTIFYING BOARDS. Those boards designated in subdivision (3) of Section 20-2-2.
- (2) CONTROLLED SUBSTANCE. Any drug or medication defined as a controlled substance within the meaning of subdivision (4) of Section 20-2-2.
- (3) DEPARTMENT. The Alabama Department of Public Health.
- (4) LICENSING BOARD OR COMMISSION. The board, commission, or other entity that is authorized to issue a professional license to a pharmacist or an authorized practitioner.
- (5) PHARMACY. A retail establishment, as defined in subdivision (18) of Section 34-23-1, licensed by the Alabama State Board of Pharmacy.
- (6) PRACTITIONER or AUTHORIZED PRACTITIONER. A medical, dental, podiatric, optometric, or veterinary medical practitioner licensed to practice in this state and authorized to prescribe, dispense, or furnish controlled substances under the Alabama Uniform Controlled Substances Act.
- (7) STATE HEALTH OFFICER. The executive officer of the Alabama Department of Public Health as designated in Section 22-2-8.

§ 20-2-212. Controlled substances prescription database program; powers and duties of department; trust fund.

The department is hereby authorized to establish, create, and maintain a controlled substances prescription database program. In order to carry out its responsibilities under this article, the department is hereby granted the following powers and authority:

- (1) To adopt regulations, in accordance with the Alabama Administrative Procedure Act, governing the establishment and operation of a controlled substances prescription database program.
- (2) To receive and to expend for the purposes stated in this article funds in the form of grants, donations, federal matching funds, interagency transfers, and appropriated funds designated for the development, implementation, operation, and maintenance of the controlled substances prescription database. The funds received pursuant to this subdivision shall be deposited in a new fund that is hereby established as a separate special revolving trust fund in the State Treasury to be known as the Alabama State Controlled Substance Database Trust Fund. No monies shall be withdrawn or expended from the fund for any purpose unless the monies have been appropriated by the Legislature and allocated pursuant to this article. Any monies appropriated shall be

budgeted and allocated pursuant to the Budget Management Act in accordance with Article 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41, and only in the amounts provided by the Legislature in the general appropriations act or other appropriations act.

(3) To enter into one or more contracts with the State Board of Pharmacy for the performance of designated operational functions for the controlled substances prescription database, including, but not limited to, the receipt, collection, input, and transmission of controlled substances prescription data and such other operational functions as the department may elect.

(4) To create a controlled substances prescription database advisory committee. The mission of the advisory committee is to consult with and advise the State Health Officer on matters related to the establishment, maintenance, and operation of the database, access to the database information, how access is to be regulated, and security of information contained in the database. The committee shall consist of one representative designated by each of the following organizations:

- a. The Medical Association of the State of Alabama.
- b. The Alabama Dental Association.
- c. The Alabama Pharmacy Association.
- d. The Alabama Veterinary Medicine Association.
- e. The State Health Officer, or his or her designee.
- f. The Alabama Hospital Association.
- g. The Executive Director of the Alabama State Board of Pharmacy.
- h. The Executive Director of the Board of Medical Examiners.
- i. The Alabama Optometric Association.
- j. One representative from each of the certifying boards established under the Alabama Uniform Controlled Substances Act.
- k. The Alabama Independent Drug Store Association.
- l. The Alabama Podiatry Association.

(5) If a member of the Controlled Substances Prescription Database Advisory Committee is unable to attend a meeting, the organization which appointed that member may designate one of its employees or agents as a proxy. A proxy may participate in all deliberations of the committee and vote on all questions considered by the advisory committee. Designations of a proxy must be in writing, must specify by name the individual who will serve as proxy, and must specify the date of the meeting at which the proxy is authorized to serve. There must be a separate written proxy designation for each meeting at which a proxy will serve.

(6) The membership of the committee shall be inclusive and reflect the racial, gender, geographic, urban/rural and economic diversity of the state. The committee shall annually report to the Legislature by the second legislative day of each regular session the extent to which the committee has complied with the diversity provisions provided for in this subdivision.

§ 20-2-213. Reporting requirements.

(a) Each of the entities designated in subsection (b) shall report to the department, or to an entity designated by the department, controlled substances prescription information as designated by

regulation pertaining to all Class II, Class III, Class IV, and Class V controlled substances in such manner as may be prescribed by the department by regulation.

(b) The following entities or practitioners are subject to the reporting requirements of subsection (a):

(1) Licensed pharmacies, not including pharmacies of general and specialized hospitals, nursing homes, and any other health care facilities which provide inpatient care, so long as the controlled substance is administered and used by a patient on the premises of the facility.

(2) Mail order pharmacies or pharmacy benefit programs filling prescriptions for or dispensing controlled substances to residents of this state.

(3) Licensed physicians, dentists, podiatrists, optometrists, or veterinarians who dispense Class II, Class III, Class IV, and Class V controlled substances directly to patients, or in the case of veterinarians, for administration to animals, but excluding sample medications. For the purposes of this article, sample medications are defined as those drugs labeled as a sample, not for resale under the laws and regulations of the Federal Food and Drug Administration. Controlled substances administered to patients by injection, topical application, suppository administration, or oral administration during the course of treatment are excluded from the reporting requirement.

(c) The manner of reporting controlled substance prescription information shall be in such manner and format as designated in the regulations of the department.

(d) The following data elements shall be used in transmitting controlled substance prescription information:

(1) Name or other identifying designation of the prescribing practitioner.

(2) Date prescription was filled or medications dispensed.

(3) Name of person and full address for whom the prescription was written or to whom the medications were dispensed.

(4) National Drug Code (NDC) of controlled substance dispensed.

(5) Quantity of controlled substance dispensed.

(6) Name or other identifying designation of dispensing pharmacy or practitioner.

(7) Other data elements consistent with standards established by the American Society for Automation in Pharmacy as may be designated by regulations adopted by the department.

(e) In addition to any other applicable law or regulation, the failure of a licensed pharmacy or pharmacist or a licensed practitioner to comply with the requirements of this section shall constitute grounds for disciplinary action against the license of the pharmacy, pharmacist, or licensed practitioner by the appropriate licensing board or commission, and the imposition of such penalties as the licensing board or commission may prescribe. The department shall report to the appropriate licensing board, agency, or commission the failure of a licensed pharmacist or a licensed practitioner to comply with the reporting requirements of this section. Any report made by the department to a licensing board, agency, or commission shall be deemed a formal

complaint and shall be investigated and appropriate action taken thereon.

§ 20-2-214. Limited access to database permitted for certain persons or entities.

The following persons or entities shall be permitted access to the information in the controlled substances database, subject to the limitations indicated below:

- (1) Authorized representatives of the certifying boards, provided, however, that access shall be limited to inquiries concerning the licensees of the certifying board.
- (2) A licensed practitioner approved by the department who has authority to prescribe, dispense, or administer controlled substances, provided, however, that such access shall be limited to information concerning an assistant to physician with a Qualified Alabama Controlled Substances Registration Certificate over whom the practitioner exercises physician supervision and a current or prospective patient of the practitioner. Practitioners shall have no requirement or obligation to access or check the information in the controlled substances database prior to prescribing, dispensing, or administering medications or as part of their professional practice.
- (3) A licensed assistant to physician approved by the department who is authorized to prescribe, administer, or dispense pursuant to a Qualified Alabama Controlled Substances Registration Certificate; provided, however, that such access shall be limited to information concerning a current or prospective patient of the assistant to physician.
- (4) A licensed pharmacist approved by the department, provided, however, that such access is limited to information related to the patient or prescribing practitioner designated on a controlled substance prescription that a pharmacist has been asked to fill. Pharmacists shall have no requirement or obligation to access or check the information in the controlled substances database prior to dispensing or administering medications or as part of their professional practices.
- (5) State and local law enforcement authorities as authorized under Section 20-2-91, and federal law enforcement authorities authorized to access prescription information upon application to the department accompanied by an affidavit stating probable cause for the use of the requested information.
- (6) Employees of the department and consultants engaged by the department for operational and review purposes.
- (7) The prescription drug monitoring program of any of the other states or territories of the United States, if recognized by the Alliance for Prescription Drug Monitoring Programs under procedures developed by the United States Department of Justice or the Integrated Justice

Information Systems Institute or successor entity subject to or consistent with limitations for access prescribed by this chapter for the Alabama Prescription Drug Monitoring Program.

§ 20-2-215. Confidentiality of database.

(a) The controlled substances database and all information contained therein and any records maintained by the department or by any entity contracting with the department which is submitted to, maintained, or stored as a part of the controlled substances prescription database is hereby declared privileged and confidential, is not a public record, is not subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances.

(b) Nothing in this section shall apply to records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by this article and all information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because such information contained in those records was reported to the controlled substances prescription database in accordance with the provisions of this article.

§ 20-2-216. Unauthorized disclosure of information; unauthorized access, alteration, or destruction of information.

Any person who intentionally makes an unauthorized disclosure of information contained in the controlled substances prescription database shall be guilty of a Class A misdemeanor. Any person or entity who intentionally obtains unauthorized access to or who alters or destroys information contained in the controlled substances prescription database shall be guilty of a Class C felony.

§ 20-2-217. Surcharge on controlled substance registration certificate for maintenance, etc., of database.

There is hereby assessed a surcharge in the amount of ten dollars (\$10) per year on the controlled substance registration certificate of each licensed medical, dental, podiatric, optometric, and veterinary medicine practitioner authorized to prescribe or dispense controlled substances and on the Qualified Alabama Controlled Substances Registration Certificate of each licensed assistant to physician. This surcharge shall be effective for every practitioner certificate and every Qualified Alabama Controlled Substances Registration Certificate issued or renewed on or after August 1, 2004, shall be in addition to any other fees collected by the certifying boards, and shall be collected by each of the certifying boards and remitted to the department at such times and in such manner as designated in the regulations of the department. The proceeds of the surcharge assessed herein shall be used exclusively for the development, implementation, operation, and maintenance of the controlled substances prescription database.

§ 20-2-218. Reimbursement of certain costs incurred in compliance with article.

The department is authorized to grant funds to participating pharmacies for the purpose of reimbursing reasonable costs for dedicated equipment and software incurred by pharmacies in complying with the reporting requirements of this article. Such grants shall be funded by gifts, grants, donations, or other funds appropriated for the operation of the controlled substances prescription database. The department is authorized to determine standards and specifications for any equipment and software purchased by the authority of this section.

§ 20-2-219. Financing of development, operation, etc., of database.

The controlled substances prescription database shall become operational within 12 months after the State Health Officer certifies to the certifying boards in writing that the department has sufficient funds to finance the development, implementation, and operation of the database.

§ 20-2-220. Liability for reporting.

Any person or entity required to report information concerning controlled substance prescriptions to the department, or to its designated agent, pursuant to the requirements of this article shall not be liable to any person for any claim of damages as a result of the act of reporting the information and no lawsuit may be predicated thereon.

Chapter 3. Donation of Drugs to Charitable Clinics. §§ 20-3-1 to 20-3-3

§ 20-3-1. Short Title.

This chapter shall be known and cited as the “John G. Page, Jr., Act.”

§ 20-3-2. Definitions.

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

- (1) **ASSISTED LIVING FACILITY.** An institution or facility licensed as an assisted living facility under regulations of the State Board of Health.
- (2) **CHARITABLE CLINIC.** The term includes an established free medical clinic as defined in subdivision (1) of Section 6-5-662 and any community health center provided for under the federal Public Health Service Law.
- (3) **CHARITABLE PATIENT.** For purposes of this chapter, the term shall not include patients who are eligible to receive drugs under the Alabama Medicaid Program or under any other prescription drug program funded in whole or in part by the state.
- (4) **DRUGS.** All medicinal substances and preparations recognized by the United States

Pharmacopoeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and internal use in the cure, diagnosis, mitigation, treatment, or prevention of disease and all substances and preparations other than food intended to affect the structure or any function of the body.

(5) **HOSPICE CARE PROGRAM.** A hospice care program licensed as a hospice care program under regulations of the State Board of Health.

(6) **HOSPITAL.** An institution licensed as a hospital under regulations of the State Board of Health.

(7) **LEGEND DRUG.** Any drug, medicine, chemical, or poison bearing on the label the words, “caution, federal law prohibits dispensing without prescription,” or similar wording indicating that such drug, medicine, chemical, or poison may be sold or dispensed only upon the prescription of a licensed medical practitioner.

(8) **NURSING FACILITY.** An institution licensed as a nursing facility or intermediate care facility under regulations of the State Board of Health.

(9) **SPECIALTY CARE ASSISTED LIVING FACILITY.** An institution or facility licensed as a specialty care assisted living facility under regulations of the State Board of Health.

§ 20-3-3. Transfer of legend drugs to charitable clinic.

(a)(1) Legend drugs, except controlled substances, dispensed to a patient in a hospital, nursing facility, assisted living facility, or specialty care assisted living facility may be donated and transferred pursuant to this section to a charitable clinic to be used by charitable patients free of charge when all of the following conditions are met:

- a. The drugs are no longer needed by the original patient.
- b. The drugs have been maintained in accordance with United States Pharmacopoeia and National Formulary storage requirements.
- c. The drugs were dispensed by unit dose or an individually sealed dose.
- d. The drugs have not expired.

(2) Legend drugs, except controlled substances, dispensed to a patient cared for by a hospice care program may be donated and transferred pursuant to this section to a charitable clinic to be used by charitable patients free of charge when all of the following conditions are met:

- a. The drugs are no longer needed by the original patient.

b. The drugs were dispensed by unit dose or bulk packaging.

c. The drugs have not expired.

(b) The physician or licensed health care professional of the charitable clinic shall be responsible for determining the suitability of the product for reuse. No product where integrity may not be assured shall be used by the physician at the charitable clinic. A legend drug shall be assigned the expiration date stated on the package.

(c) Pursuant to a voluntary agreement between a nursing home, hospital, specialty care assisted living facility, or hospice care program and a charitable clinic, legend drugs may be transferred pursuant to this chapter from the nursing home, hospital, assisted living facility, or specialty care assisted living facility or from the residence of a hospice patient to the charitable clinic if the following procedures are satisfied:

(1) The legend drugs shall be physically transferred to a person authorized in writing to pick up the drugs for the charitable clinic.

(2) The file of a patient at the nursing home, hospital, assisted living facility, or specialty care assisted living facility or the file of a patient cared for by a hospice care program shall document his or her consent, or in the case of the death of a patient the patient's family's consent, for the donation.

(3) The patient's name, prescription number, and any other identifying marks shall be obliterated from the drug container prior to removal from the nursing home, hospital, assisted living facility, or specialty care assisted living facility or the residence of a hospice patient.

(4) The name, strength, and expiration date of the legend drug shall remain on the medication package label.

(5) An inventory list of the legend drugs shall accompany the drugs being transferred, which list, at a minimum, shall contain for each drug the medication name, strength, expiration date, and quantity.

(6) Within one week after an inventoried list of legend drugs is made available, the drugs shall be picked up by a charitable clinic or the drugs shall be destroyed.

(d) A licensed nursing home, hospital, specialty care assisted living facility, assisted living facility, or hospice care program, or an owner, operator, employee, or agent of a licensee, shall not be liable for civil damages or for any criminal liability as a result of any acts or omissions in transferring any drugs pursuant to this section unless the act or omission was the result of willful misconduct.

(e) No pharmaceutical manufacturer shall be liable for any claim or injury arising due to a transfer of any legend drug pursuant to this chapter, including, but not limited to, liability for failure to transfer or communicate product or consumer information or the expiration date regarding the transferred drug.

(f) The State Board of Health may make rules and regulations to carry out the provisions and purposes of this section.

(g) All legend drugs distributed under the authority of this chapter shall be dispensed to a patient, resident, or other user only on the order of a licensed physician or other legally authorized licensed medical practitioner.

Title 21. Handicapped Persons.

Chapter 3. Crippled and Disabled Children, §§ 21-3-1 through 21-3-8.

§ 21-3-1. Administration of chapter; acceptance and expenditure of donations, etc.; agreements with public and private clinics and agencies.

This chapter, together with funds made available through that section or those sections of the federal Social Security Act which relates to crippled children shall be administered by the State Board of Education through the Division of Rehabilitation and Crippled Children Service and shall be used in the further development of the state's program of physical restoration of crippled children or children having any congenital or acquired malformations or disabilities. The State Board of Education is hereby authorized to accept donations, gifts and bequests and to expend the same on approval of the State Superintendent of Education, the executive officer of the board, for purposes approved under regulations of the State Board of Education. In order to carry out the purposes of this chapter, the State Board of Education is further authorized, through the Division of Rehabilitation and Crippled Children Service, to enter into agreements with public and private clinics and agencies.

§ 21-3-2. Use of funds appropriated for physical restoration of crippled children.

Any and all funds appropriated for physical restoration of crippled children may be used for the purpose of enabling the State Board of Education to comply with the federal Social Security Act and to continue to extend and improve the services for locating crippled children or children having any congenital or acquired malformations or disabilities and for providing medical, surgical, plastic, orthopedic or other corrective services, care and treatment, and facilities for diagnosis, hospitalization and aftercare for children suffering from disabilities from congenital or acquired malformations or from conditions which lead to disabilities, including eye defects, epilepsy, hearing defects, speech defects or other congenital or acquired malformations that may be corrected.

§ 21-3-3. Disbursement of funds.

All state and federal funds made available for carrying out the provisions of this chapter shall be paid by the Treasurer on warrants drawn therefor by the Comptroller, on requisition of the Superintendent of Education.

§ 21-3-4. Compilation of lists of children having malformations.

The county health officer shall make a list of all children in the county who have any congenital or acquired malformations. In order to make this list, he shall avail himself of any information on birth certificates concerning congenital or acquired malformation, any information relative to crippled children in the biennial school census, any information he can procure from practicing physicians, the Department of Human Resources, the Department of Education or any other source.

§ 21-3-5. Physical examination of children having malformations or disabilities -- Required.

When the county health officer receives information that a child has a congenital or acquired malformation or disability, he shall immediately require a physical examination of such child, encouraging arrangements for such examination by a practicing pediatrician, orthopedist or physician of the choice of the parents if the parents are financially able to bear the expense of such examination. If the parents are not able to pay for such examination, the county health officer shall make the examination, or arrange to have it made at a "well-baby clinic" or some other qualified clinic.

§ 21-3-6. Physical examination of children having malformations or disabilities -- Report of findings.

If the examination required by Section 21-3-5 is made at a clinic or by a physician, pediatrician or orthopedist, the physician making the examination shall report the findings of the examination on forms prescribed and furnished by the State Board of Health through the county health department. Such forms shall be filled out in triplicate. One copy shall be retained by the physician, one shall be furnished the county health department and one shall be furnished the State Board of Health. If the examination is made by the county health officer, the report shall be prepared in duplicate and one copy retained in the county health department and the other sent to the State Board of Health.

§ 21-3-7. Physical examination of children having malformations or disabilities -- Information to be given parents.

Any person examining a child as required by Section 21-3-5 is charged with the duty of giving to the parents any information available relative to remedial treatment or any operations needed, and, whenever it is possible to do so, should inform the parents as to the time such treatments or

operation will be most beneficial, when further examinations should be made and should instruct the parents as to any special care or treatment the child should have.

§ 21-3-8. Forms for reporting malformations and disabilities; disposition of reports.

(a) The State Board of Health shall prescribe and furnish to the county departments the necessary forms for reporting congenital and acquired malformations and disabilities of children, which shall provide space for reporting the nature of all congenital or acquired malformations, including infections or diseases or injuries which produce blindness or other malformations or disabilities and space for reporting blindness, cataracts, congenital glaucoma, strabismus, corneal ulcers, sympathetic ophthalmia, ophthalmia neonatorum and other infections, deafness, harelip, cleft palate, clubfoot, flat feet, heart defects, congenital dislocation of the hip, curved bones, wry neck, fracture, rickets, bone and joint conditions from rheumatic fever, bone and joint conditions from meningitis, persistent thymus, scoliosis or other spinal conditions, supernumerary fingers and toes, webbed fingers and toes and the like, tuberculosis of bones and joints, arthritis, osteochondritis, osteomyelitis, bone tumors, spinal bifida, other congenital bone and cartilage defects, other pressure deformities, intestinal obstructions, congenital or acquired hernia, undescended testicles, hemangioma, hypospadias, sebaceous cyst, esophageal strictures or defects, spastic paraplegia, obstetrical paralysis or other birth injuries, infantile paralysis, muscular atrophy, muscular dystrophy, epiphyseolysis, burns, epilepsy and all other congenital or acquired defects or disabilities.

(b) The State Board of Health shall keep a permanent file for the reports on congenital and acquired malformations and disabilities of children and shall upon request furnish copies thereof to clinics, institutions, services, organizations and practicing physicians who are interested in the treatment of any child having a congenital or acquired malformation or disability.

Title 22. Health, Mental Health and Environmental Control.

Chapter 1. General Provisions, §§ 22-1-1 through 22-1-9, 22-1-13.

§ 22-1-1. "State Health Department" defined.

For the purposes of this title, the phrase "State Health Department" shall mean the State Board of Health or the State Committee of Public Health, when acting for the State Board of Health.

§ 22-1-2. Conflicts between municipal and general health laws.

In the event that any of the provisions of Title 11 of this Code relating to municipal corporations shall be in conflict with any of the provisions of the general health and quarantine laws of the state, the provisions of such general health and quarantine laws shall prevail.

§ 22-1-3. Control of public health work under county and state boards of health.

No local board of health or other executive body for the exercise of public health functions other than the county board of health shall be established or exist in any county or municipality. No municipality shall have a municipal health officer or other like officer. No board, body or organization or any official or person, acting or claiming to be under any federal authority or acting without claim of federal or state authority shall engage in any public health work except under the supervision and control of the State Board of Health.

§ 22-1-4. Appointment of subordinate officers and employees; control of expenditures.

In the administration of the public health and quarantine laws of the state, the appointment of all subordinate officers and employees shall be made by the health officer or officers in authority, subject, however, to the approval of the State Board of Health or of a county board of health, in accordance with their respective jurisdictions. All expenditures, except such as are provided for by specific appropriations, shall be under the control of the Governor, the judge of probate and county commission or of the municipal authorities, in the same manner as such expenditures are made under state, county or municipal authority.

§ 22-1-5. Salaries of public health dentists.

The State Health Officer shall, under the direction of the State Board of Health and with the approval of the State Personnel Board, fix the salaries of dentists holding graduate degrees or certificates in public health, or who are diplomates of a specialty board established by the American Dental Association, in any amount which does not exceed an amount that is \$1,000.00 less than the salary of the State Health Officer.

§ 22-1-6. Public dispensaries treating communicable diseases.

No public dispensary where communicable diseases are treated or diagnosed shall be conducted or maintained otherwise than in accordance with the regulations provided by the State Board of Health.

§ 22-1-7. Procedure when county health officer, etc., resisted.

If, in the attempt to perform any duty enjoined by any public health law of the State of Alabama or rule or regulation of the State Board of Health, the health or quarantine officer of a county, or his duly authorized representative, shall be forcibly resisted or threatened with forceful resistance, such health officer shall, after conference with the county board of health, if found necessary, make affidavit before any judge of a circuit court, district court, municipal court or the judge of probate of the municipality or county where such resistance occurs or is threatened, whereupon the officer before whom said affidavit has been made shall forthwith issue his

warrant directed to the sheriff or to any bonded constable of said county, commanding said sheriff or constable to remove or abate, under the direction of said health officer, said insanitary condition, or source of infection or offensive or indecent material or thing or to remove said afflicted person; and it shall be the duty of said sheriff or constable, to whom said warrant shall be delivered, to promptly execute the same. In executing every such warrant, the said sheriff or constable shall have the right to enter by force into any such lot, piece of ground, house or vessel or upon such pond, lake or stream.

§ 22-1-8. Penalty for violation of health or quarantine law.

Any person who violates any of the health or quarantine laws, except those for which a special penalty is prescribed, shall be guilty of a misdemeanor.

§ 22-1-9. Certain county and local laws unaffected by title.

Nothing in this title shall be so construed as to amend or repeal any state quarantine law or any local public health or quarantine law applying to a county. Nothing contained in this title shall be construed to repeal any local law regulating nuisances to the public health.

§ 22-1-10. Making of false statement or representation of material fact in claim or application for payments or medical benefits from medical services administration generally; charge, trial and punishment of multiple offenses. Repealed by Acts 1980, No. 80-539, p. 837, § 7, effective May 19, 1980.

§ 22-1-11. Making false statement or representation of material fact in claim or application for payments on medical benefits from Medicaid Agency generally; kickbacks, bribes, etc.; exceptions; multiple offenses.

(a) Any person who, with intent to defraud or deceive, makes, or causes to be made or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for any payment, regardless of amount, from the Medicaid Agency, knowing the same to be false; or with intent to defraud or deceive, makes, or causes to be made, or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for medical benefits from the Medicaid Agency, knowing the same to be false; shall be guilty of a felony and upon conviction thereof shall be fined not more than ten thousand dollars (\$10,000) or imprisoned for not less than one nor more than five years, or both. The offense set out herein shall not be complete until the claim or application is received by the Medicaid Agency or the contractor with the Medicaid Agency or its successor.

(b) Any person who solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by the Medicaid Agency or its agents, or

(2) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part by the Medicaid Agency, or its agents shall be guilty of a felony and upon conviction thereof, shall be fined not more than ten thousand dollars (\$10,000) or imprisoned for not less than one nor more than five years, or both.

(c) Any person who offers or pays any remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or in kind to any person to induce a person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by the Medicaid Agency or its agents, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part by the Medicaid Agency, or its agents, shall be guilty of a felony and upon conviction thereof shall be fined not more than ten thousand dollars (\$10,000) or imprisoned for not less than one nor more than five years, or both.

(d) Subsections (b) and (c) of this section shall not apply to a discount or other reduction in price obtained by a provider of services or other entity under Medicaid if the reduction in price is properly disclosed and appropriately reflected in costs claimed or charges made by the provider or entity to the Medicaid Agency or its agents, or any amount paid by an employer to an employee who has a bona fide employment relationship with employer for employment in the provision of covered items or services.

(e) Any two or more offenses in violation of this section may be charged in the same indictment in separate counts for each offense and the offense shall be tried together, with separate sentences being imposed for each offense for which the defendant is found guilty.

§ 22-1-12. Cardiac arrest survival.

(a) The Department of Public Health shall establish a comprehensive cardiac arrest survival plan for the training, credentialing, and certification of primary cardiac care providers in the use of semiautomatic external defibrillators based on national guidelines for life-saving interventions of persons suffering sudden, non-traumatic cardiac arrest promulgated by the National Institutes of Health and the National Heart, Lung, and Blood Institute.

(b) All funds from the appropriation in Act 99-372 of the 1999 Regular Session shall be used to assist in the purchase or acquisition of semiautomatic external defibrillators and training for emergency medical care providers. To be eligible for assistance, emergency medical care providers shall meet standards established by the department.

(c) A Cardiac Arrest Survival Commission consisting of the State Health Officer, the State Emergency Medical Director, three members appointed by the Senate President Pro Tempore, three members appointed by the Speaker of the House, two members appointed by the Governor, and one member appointed by the Alabama Chapter of the American Heart Association shall make all awards of assistance by majority vote. The State Health Officer shall serve as chair of the commission. Assistance may be in the form of equipment awarded outright or purchased with matching funds from the provider. The commission shall establish by majority vote the methodology for making awards to eligible providers.

§ 22-1-13. Breastfeeding children in public or private locations.

A mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.

Chapter 2. State Board of Health and Ancillary Committees and Officers, § § 22-2-1 through 22-2-14.

§ 22-2-1. State Board of Health -- How constituted.

The Medical Association of the State of Alabama, as constituted under the laws now in force or which hereafter may be in force, is the State Board of Health.

§ 22-2-2. State Board of Health -- Authority and jurisdiction.

The State Board of Health shall have authority and jurisdiction:

- (1) To exercise general control over the enforcement of the laws relating to public health.
- (2) To investigate the causes, modes or propagation and means of prevention of diseases.
- (3) To investigate the influence of localities and employment on the health of the people.
- (4) To inspect all schools, hospitals, asylums, jails, theatres, opera houses, courthouses, churches, public halls, prisons, stockades where convicts are kept, markets, dairies, milk depots, slaughter pens or houses, railroad depots, railroad cars, street railroad cars, lines of railroads and street railroads (including the territory contiguous to said lines), industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences and other places of like character, and whenever insanitary conditions in any of these places, institutions or establishments or conditions prejudicial to health, or likely to become so, are found, proper steps shall be taken by the proper authorities to have such conditions corrected or abated.

(5) To examine the source of supply, tanks, reservoirs, pumping stations and avenues of conveyance of drinking water, and whenever these waters are found polluted or conditions are discovered likely to bring about their pollution, proper steps shall be taken by proper authorities to improve or correct conditions.

(6) To adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the state, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents and employees as in the case of health laws, and a quorum, as provided for by the constitution of the Medical Association of the State of Alabama, shall be competent to act.

(7) To exercise supervision and control over county boards of health and over county health officers and county quarantine officers in the enforcement of the public health laws of the state in their respective counties, and whenever any such county board of health, county health officer or county quarantine officer shall fail or refuse to discharge its or his duties, said duties may be discharged by the State Board of Health until proper arrangements are made to insure their discharge by said county board of health or said county health officer or said county quarantine officer, as the case may be.

(8) To act as an advisory board to the state in all medical matters and matters of sanitation and public health.

§ 22-2-3. State Board of Health -- Annual report to Governor.

The State Board of Health shall submit to the Governor an annual report of its transactions, in which report recommendations as to needed health legislation may be embodied.

§ 22-2-4. State Committee of Public Health -- How constituted.

There is hereby created a State Committee of Public Health which shall be composed of 12 members of the board of censors of the Medical Association of the State of Alabama and the chairman of the four councils which are created in Section 22-2-9. The medical doctor members of the committee shall be selected by the State Board of Health, one from each of the United States Congressional Districts and the remainder from the state at large. A majority of the State Committee of Public Health shall elect a chairman and vice-chairman to serve one term of four years. Upon incapacitation or resignation of the chairman, the vice-chairman shall succeed to the chairmanship of the committee. Each member of the State Committee of Public Health shall have one vote, except the chairman who shall vote only in case of a tie. The State Health Officer shall be ex officio secretary to the committee, though not a member thereof, and he shall have no vote.

The members of the committee shall receive per diem at a rate of \$100.00 per day or any portion thereof that such committee members shall be in attendance at an official meeting or function of

the committee. In addition, each committee member shall receive reimbursement for subsistence and travel in accordance with state law for each day actively engaged in the duties of their office.

§ 22-2-5. State Committee of Public Health -- Prerogatives, powers, and duties.

Whenever the words "State Board of Health" are used in this title, or in any chapter or subsection thereof, said words shall mean the "State Committee of Public Health," as created in Section 22-2-4, except when the State Board of Health is in actual session assembled. The State Committee of Public Health, as constituted by this chapter, shall have and possess all the prerogatives and powers and duties heretofore prescribed by law for the State Board of Health and shall act for said board. The State Board of Health may by a three-fifths vote alter or amend any action of the State Committee of Public Health, but only when said board is in session assembled.

§ 22-2-6. When state committee to act for state board; meetings of state committee.

When the State Board of Health is not in session, the State Committee of Public Health shall act for said board and have and discharge all the prerogatives and duties of said board, including the adoption and promulgation of rules and regulations. Meetings of the State Committee of Public Health shall be held monthly. A majority of the members shall constitute a quorum. Special meetings of the committee may be called by the chairman upon 10 days prior written notice to the members thereof.

§ 22-2-7. Annual report to Legislature by state committee; requests by same for information.

The State Committee of Public Health and the State Board of Health shall be accountable to the Legislature of Alabama and shall make an annual report to the Legislature. The Legislature, or any committee thereof, may, from time to time, request certain information from the State Board of Health and the State Committee of Public Health, and both groups are hereby directed to lend their full cooperation in response to these requests.

§ 22-2-8. State Health Officer.

The State Committee of Public Health shall elect an executive officer who shall be a physician licensed in the State of Alabama to be known as the State Health Officer and shall fix his term of office and salary. The qualifications of this individual shall be determined by the State Committee of Public Health. Before entering upon the duties of his office, the State Health Officer shall execute to the State of Alabama a bond, to be approved by the Governor, in the amount of \$5,000.00, for the faithful performance of his duties. The State Health Officer so elected shall, under the direction of the State Committee of Public Health and with the approval of the State Personnel Board, fix the salaries of the medical employees of the State Committee of Public Health. When the State Committee of Public Health is not in session, the State Health Officer, as executive officer of the Department of Public Health, shall act for said committee and

shall have and discharge all the prerogatives and duties of said committee. He shall report his actions to the committee at its next meeting after such action is taken, and such action of the State Health Officer shall then be subject to confirmation or modification by the committee. The State Health Officer shall exercise general supervision over county boards of health and county health officers and promptly report to said county boards of health any delinquencies of official duty on the part of said county health officers which may come to his knowledge, keep himself informed in regard to all diseases which may be in danger of invading the state and, as far as authorized by law, take prompt measures to prevent such invasions and keep the Governor and the Legislature informed as to the health conditions prevailing in the state, especially as to outbreaks of any of the diseases enumerated in Chapter 11 of this title, and submit to the Governor and Legislature such recommendations as he deems proper to control such outbreaks.

§ 22-2-9. Council on Dental Health, Council on Animal and Environmental Health, Council on Prevention of Disease and Medical Care and Council on Health Costs, Administration and Organization -- Creation; duties; composition; appointment and terms of members.

(a) There are hereby created four councils to be known as:

- (1) The Council on Dental Health;
- (2) The Council on Animal and Environmental Health;
- (3) The Council on the Prevention of Disease and Medical Care; and
- (4) The Council on Health Costs, Administration and Organization.

(b) It shall be the duty of the councils to provide public health information, evaluation of data, research, advice and recommendations to the State Committee of Public Health and perform such other functions as may be appropriate and as requested by the State Committee of Public Health.

(c) The Council on Dental Health shall be composed of five members licensed to practice dentistry in this state and appointed by the Alabama Dental Association. The initial appointment shall be one member for one year, one member for two years, one member for three years, one member for four years and one member for five years.

(d) The Council on Animal and Environmental Health shall be composed of five members as follows:

- (1) Three doctors of veterinary medicine appointed by the Alabama Veterinary Medical Association;
- (2) One physician appointed by the Medical Association of the State of Alabama; and
- (3) One licensed professional engineer, trained and experienced in the environmental disciplines, appointed by the American Consulting Engineers Council of Alabama.

Of the five members of the Council on Animal and Environmental Health, the initial appointments by the Alabama Veterinary Medical Association shall be one for one year, one for

three years and one for five years; the initial appointment by the Medical Association of the State of Alabama shall be one for two years and the initial appointment by the American Consulting Engineers Council of Alabama shall be one for four years.

(e) The Council on the Prevention of Disease and Medical Care shall be composed of five members as follows:

- (1) Two medical doctors appointed by the Medical Association of the State of Alabama;
- (2) One nutritionist appointed by the Alabama Dietetic Association;
- (3) One licensed engineer trained and experienced in public health and sanitation appointed by the American Consulting Engineers Council of Alabama; and
- (4) One nurse appointed by the Alabama State Nurses Association.

Of the five members of the Council on the Prevention of Disease and Medical Care, the initial appointments by the Medical Association of the State of Alabama shall be one for one year and one for five years; the initial appointment by the Alabama Dietetic Association shall be one for two years; the initial appointment by the American Consulting Engineers Council of Alabama shall be one for three years and the initial appointment by the Alabama State Nurses Association shall be for four years.

(f) The Council on Health Costs, Administration and Organization shall be composed of six members as follows:

- (1) One medical doctor appointed by the Medical Association of the State of Alabama;
- (2) One doctor of dentistry appointed by the Alabama Dental Association;
- (3) Two representatives of the public who are residents of the State of Alabama appointed by the Governor;
- (4) One pharmacist appointed by the Alabama Pharmaceutical Association; and
- (5) One hospital administrator appointed by the Alabama Hospital Association.

Of the six members of the Council on Health Costs, Administration and Organization, the initial appointment by the Medical Association of the State of Alabama shall be for one year; the initial appointment by the Alabama Dental Association shall be for two years; the initial appointment of representatives of the public by the Governor shall be for three years; the initial appointment by the Alabama Pharmaceutical Association shall be for four years and the initial appointment by the Alabama Hospital Association shall be for five years.

§ 22-2-10. Council on Dental Health, Council on Animal and Environmental Health, Council on Prevention of Disease and Medical Care and Council on Health Costs, Administration and Organization -- Chairs; vacancies; meetings; quorum; compensation.

Each such council shall select from among its members, by majority vote, a chairman; and the chairman of each such council, by virtue of his selection as chairman, shall be a member of the State Committee of Public Health with full voting privileges, rights and responsibilities of

membership. As each term expires on each council, the designated association or person responsible for the original appointment shall fill the vacancy for a five-year term. Appointees who serve less than five-year terms shall be eligible for reappointment for only one five-year term. A council member who ceases to be a member of the appointing authority or who no longer is a resident of the State of Alabama shall automatically cease to be a member of the council and his unexpired term shall be filled by the original appointing authority. No person shall be eligible for appointment to the State Committee of Public Health or to a council created in Section 22-2-9 who, at the time of his appointment, is 65 years of age. A schedule of meetings for each council shall be established by each council on a quarterly basis, or more frequently, as may be deemed necessary. A majority of the members of each council shall constitute a quorum. The chairman of each council shall serve for a term of two years and may be reelected as chairman for not more than one successive term or for a total of four years as chairman. Members of the four councils as outlined in this section shall serve without compensation, but members may be reimbursed for expenses incurred in connection with attendance at council meetings or authorized business of the council pursuant to Article 2 of Chapter 7 of Title 36.

§ 22-2-11. Compensation of State Health Department personnel.

Subject to the provisions of the Merit System, where applicable, the compensation of all employees, agents or subordinate personnel of the State Health Department shall be determined by the State Health Officer with the approval of the State Board of Health.

§ 22-2-12. How salaries, costs, and expenses to be paid.

Except as otherwise provided by law, salaries of all employees and the costs of all supplies and other expenses necessary to make operative the provisions of this Code and other statutes administered or enforced by the State Health Department shall be paid by the State Health Department out of the general appropriation made by the Legislature for public health work.

§ 22-2-13. Recovery of expenses by health officer, sheriff, or bond constable.

When an expense has been incurred by any health officer, sheriff or bonded constable in the execution of the duties required by the provisions of this Code or other statute relating to public health, said health officer, sheriff or bonded constable, as the case may be, shall have the right of action against the person responsible for the said expense for the recovery of the same; but no more than is fair and reasonable shall be recovered, as the court or jury shall determine.

§ 22-2-14. Penalty for violation of State Board of Health rules or regulations.

Any person who knowingly violates or fails or refuses to obey or comply with any rule or regulation adopted and promulgated by the State Board of Health of this state shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25.00 nor more than \$500.00 and, if the violation or failure or refusal to obey or comply with such rule or regulation is a

continuing one, each day's violation, or failure or refusal shall constitute a separate offense and shall be punished accordingly.

Chapter 2A. Joint Drug Purchase Program for Certain State Agencies § § 22-2A-1 through 22-2A-7.

§ 22-2A-1. Legislative findings.

The Legislature of Alabama finds that the high cost of pharmaceuticals is a matter of much concern to this state, especially as the cost and utilization of drug therapy continues to rise. Insofar as this rise represents a trend towards drug therapy in lieu of more invasive and expensive procedures, it represents a positive change. At the same time, increasing drug costs can effectively prevent large numbers of patients from accessing vital medication. The solution to this problem should be market-based. This legislation attempts such a solution by (1) consolidating the state's buying power in the pharmaceutical market, and (2) authorizing the State Health Officer to negotiate rebates and discounts from pharmaceutical manufacturers. The result should be better prices for agencies and departments of the State of Alabama and better access to life-saving drugs for clients, by law, they are mandated to serve.

§ 22-2A-2. Definitions.

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

- (1) **MULTI-STATE POOLING INITIATIVE.** A group of two or more states working together to reduce the cost of pharmaceuticals purchased or paid for by those states.
- (2) **PHARMACEUTICAL or DRUG.** Any medicinal substance, preparation, or device recognized by the United States Pharmacopoeia and National Formulary, or any revision thereof, and any substance and preparation intended for external and internal use in the cure, diagnosis, mitigation, treatment, or prevention of disease in humans, and any substance and preparation other than food intended to affect the structure or any function of the human body.
- (3) **PHARMACEUTICAL PROGRAM.** A program administered by the Department of Mental Health and Mental Retardation, Department of Corrections, Department of Public Health, Department of Youth Services, or the Department of Rehabilitation Services, pursuant to which pharmaceuticals are purchased for use by clients.
- (4) **STATE AGENCY.** The Department of Mental Health and Mental Retardation, Department of Corrections, Department of Public Health, Department of Youth Services, and the Department of Rehabilitation Services.
- (5) **SUPPLIER.** A wholesaler or manufacturer of pharmaceuticals.

§ 22-2A-3. Program and procedures; exceptions; competitive bidding.

- (a) The State Health Officer may develop, maintain, and implement a program and procedures to

do the following: (1) Aggregate or negotiate the purchase of pharmaceuticals for pharmaceutical programs for state agencies, as defined herein, or joining a multi-state pooling initiative, or both, and (2) maximize savings, rebates, and discounts from suppliers on pharmaceutical purchases under any pharmaceutical program enumerated in this chapter. The State Board of Health shall promulgate rules and regulations for the purpose of implementing this chapter with the approval of the chief executive officers of the departments and agencies administering a pharmaceutical program.

(b) Subdivision (1) of subsection (a) shall not apply to state insurance plans that provide reimbursement for the purchase of pharmaceuticals to public employees.

(c) All purchase contracts for pharmaceuticals for pharmaceutical programs for state agencies shall be subject to the applicable state competitive bid requirements and procedures.

§ 22-2A-4. Applicability of chapter.

Notwithstanding any other provision of law to the contrary, pharmaceutical programs as defined herein shall obtain drugs through the program established pursuant to this chapter, unless a particular pharmaceutical program can purchase its pharmaceuticals at a special rate, which is lower than the savings and rebates that could be realized under this chapter, through an agreement or federal or state government public health program or a contract currently in place for the purchasing of pharmaceuticals by a pharmaceutical program in this state. In the event a contract is currently in place for the purchasing of pharmaceuticals by a pharmaceutical program in this state, the contract shall not be abrogated and shall remain in place until the occurrence of the earlier of the expiration date or the earliest termination date, as applicable.

§ 22-2A-5. Access to medications by certain clients.

Negotiations pursuant to subdivision (1) of subsection (a) of Section 22-2A-3 shall not restrict access to medications required by clients served by the Department of Mental Health and Mental Retardation.

§ 22-2A-6. Medicaid Agency exempt.

The Medicaid Agency shall be exempt from this chapter.

§ 22-2A-7. Disposition of funds.

All rebates and savings specifically realized shall be deposited in the General Fund of the state.

Chapter 3. Local Health Authorities, § 22-3-1 through 22-3-12.

§ 22-3-1. County boards of health -- How constituted.

The boards of censors of county medical societies in affiliation with the Medical Association of the State of Alabama and organized in accordance with the provisions of its constitution, as it now or may hereafter exist, are constituted county boards of health of their respective counties, including all incorporated municipalities therein, but shall be under the general supervision and control of the State Board of Health. Whenever the name "county committee of public health" or other name or expression referring to the county committee of public health, as such, occurs in the Code of Alabama or any other statute law of the State of Alabama, or in the constitution of the Medical Association of the State of Alabama or in the constitution of the medical society of a county in the State of Alabama, said name or expression shall include and mean the county board of health provided for in this section. The presiding officer of each county commission shall be a member of the county board of health in his county.

§ 22-3-2. County boards of health -- Duties generally.

It shall be the duty of the county boards of health in their respective counties and subject to the supervision and control of the State Board of Health:

- (1) To supervise the enforcement of the health laws of the state, including all ordinances or rules and regulations of municipalities or of county boards of health or of the State Board of Health, and to supervise the enforcement of the law for the collection of vital and mortuary statistics and to adopt and promulgate, if necessary, rules and regulations for administering the health laws of the state and the rules and regulations of the State Board of Health, which rules and regulations of the county boards of health shall have the force and effect of law and shall be executed and enforced by the same bodies, officials, agents and employees as in the case of health laws;
- (2) To investigate, through county health officers or quarantine officers, cases or outbreaks of any of the diseases enumerated or referred to in Section 22-11-1 and to enforce such measures for the prevention or extermination of said diseases as are authorized by law;
- (3) To investigate, through county health officers or quarantine officers, all nuisances to public health and, through said officers, to take proper steps for the abatement of such nuisances;
- (4) To exercise, through county health officers or quarantine officers, special supervision over the sanitary conditions of schools, hospitals, asylums, jails, theatres, opera houses, courthouses, churches, public halls, prisons, markets, dairies, milk depots, slaughter pens or houses, railroad depots, railroad cars, dining cars, street railroad cars, lines of railroads and street railroads (including the territory contiguous to said lines), airports, industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences and the sources of supply, tanks, reservoirs, pumping stations and avenues of conveyance of drinking water and other institutions and places of like character and, whenever insanitary conditions are found, to use all legal means to have the same abated;
- (5) To elect a county health officer, subject to the approval of the State Committee of Public Health, who shall devote all of his time to the duties of his office and to fix his term of office at not less than three years in such counties of the state as shall, through their proper authorities, make appropriations for full-time public health service. No county health officer elect shall assume office until his election shall have been approved by the State Committee of Public

Health, and if such committee refuses to approve his election, another county health officer shall be forthwith elected. The jurisdiction of such officer shall extend to all parts of the county, including all incorporated municipalities; and should the health officer so elected neglect or fail faithfully to perform any of the duties which are lawfully prescribed for him or if he fails or refuses to observe or conform to the rules, regulations or policies of the State Board of Health, the State Health Officer shall remove said county health officer from office. When any county health officer shall be so removed, he shall have the right to appeal to the State Committee of Public Health, and when such appeal has been taken, said committee shall investigate fully the causes for which he was removed from office. If six members of said committee vote to affirm the action of said State Health Officer, then his action shall be affirmed; otherwise, it shall be reversed; and

(6) Whenever two or more counties, acting through their respective county commissions, shall agree to appropriate proportionately from the funds of their respective counties a sufficient sum to provide a district health department, then the county boards of health of these respective counties shall meet in joint session and elect a full-time health officer and fix his term of office at not less than three years. The full-time health officer shall devote all of his time to the duties of his office in the district for which he is elected. No full-time health officer elected under the authority of this subdivision shall assume office until his election shall have been approved by the State Committee of Public Health, and if such committee refuses to approve his election, another district health officer shall forthwith be elected. The jurisdiction of such officer shall extend to all parts of each county in the district, including all incorporated municipalities in the several counties composing such district, and he shall be subject to removal as provided in subdivision (5) of this section. The salary of district health officers shall be fixed in the same manner as those of county health officers. Wherever the term "county health officer" occurs in this chapter, it shall be construed as applying likewise to district health officers.

§ 22-3-3. County boards of health -- Authority to receive, hold, etc., money, real estate, etc.

In addition to all other authority now granted them by law, county boards of health are hereby authorized to solicit, receive and hold gifts, devises and bequests of money, real estate and other things of value to be used in the support, development and carrying on of their work.

§ 22-3-4. County health officers -- Powers.

The county health officer, elected as provided in Section 22-3-2, shall devote all of his time to official work and shall, under no circumstances, engage in private practice. He shall, under the direction of the State Health Officer and the county board of health, have sole direction of all sanitary and public health work within the county, including incorporated municipalities, and shall employ for his assistants, subject to the provisions of the appropriate merit system, such number of physicians, nurses, clerks, inspectors and other employees as are found necessary to accomplish the work. The county health officer may remove from office any assistant or employee, subject to the rules of the appropriate merit system.

§ 22-3-5. County health officers -- Duties generally.

It shall be the duty of the county health officer:

(1) To exercise, subject to the advice of the county board of health in accordance with the health laws of the state, general supervision over the sanitary interests of the county; and, should he discover any cause of disease or the existence of any condition detrimental to the health of the people, he shall, so far as authorized by law, compel the removal or abatement of the same; and, should no authority for removal or abatement exist, he shall report the fact to the county board of health, adding such recommendations as to special action as he may deem proper;

(2) To make personal and thorough investigation of the first case or early cases of any diseases suspected of being or known to be any one of those enumerated in Chapter 11 of this title that may come to his knowledge or be reported to him; and, should he decide such case or cases to be one of those enumerated in said chapter and in imminent danger of spreading, he shall, in accordance with the law, institute immediate measures to prevent the spread of such disease and shall forthwith report the facts to the chairman of the county board of health and to the State Health Officer. He shall cause to be kept accurate records regarding the incidence, cause, source and results of all such outbreaks. Said records are to be kept on file in the office of the county health departments of the several counties in which such outbreaks occur or in the State Health Department when necessary. Said records, when certified to by the county health officer or his successor in office under oath, shall be accepted as evidence of the facts set forth in the record by the courts;

(3) To visit all jails, whether county or municipal, and to make careful investigation as respects the drinking water, food, clothing and bedding supplied to prisoners and as to the ventilation, air space, heating and bathing facilities, drainage, etc., of these institutions; and, when any of said supplies are found to be inadequate in quantity or deficient in quality or any of said conditions insanitary, the county health officer shall make in writing a report thereof to the judge of probate and the county commission or the proper municipal authorities, as the case may be; whereupon, said judge of probate and county commission, or the proper municipal authorities, as the case may be, shall carry out whatever recommendations are made by the county health officer, and said health officer shall forward duplicates of his reports to the State Health Officer. In the event of failure of compliance with said recommendations, it shall be the duty of the proper state authorities to take appropriate action.

He shall visit, as the need dictates, all places where the public gathers and the county courthouse and any other public building belonging to the county; should he find insanitary conditions existing, he shall report the same to the county commission, and the county commission shall remedy the insanitary conditions in accordance with the recommendations of the county health officer;

(4) To transmit to the State Board of Health by the tenth day of each month all original birth, stillbirth and death certificates and reports received by him from registrars, hospitals and other institutions for the preceding month; also any delayed certificates received by him during the month and such other weekly and monthly reports as may be required;

- (5) To make to the county board of health and county commission a periodic report of activities and accomplishments;
- (6) To appear before the grand jury as required by that body and to report all violations of the health laws of the state;
- (7) In case of a contemplated absence from the county by the county health officer or in case of his disability from any cause of a character so as to interfere with the discharge of his official duties, he shall notify the chairman of the county board of health and the State Health Officer of such condition; and he shall, in writing, name a member of the county medical society who is acceptable to the county board of health to act for him during his absence or disability; but his absence or disability shall not be for longer than 30 days, unless he first obtains the approval of the State Health Officer;
- (8) To be present at all meetings of the county board of health for the purpose of keeping that body fully informed as to health conditions prevailing in the county; and to likewise keep the county commission informed on such matters as said commission may deem proper;
- (9) To attend all conferences of county health officers which may be called by the State Health Officer;
- (10) To discharge such other health functions as are or may be required of him by law;
- (11) To occupy an office to be provided by the county commission, and the county commission shall appropriate from the revenue of the county such sums as are found necessary to furnish and equip the office of the county health officer with all necessary supplies and furnish all necessary staff, transportation and other expenses of the county health officer and shall appropriate, from the revenues of the county, money for the prosecution of public health work which has been recommended by the county health officer and endorsed by the county board of health and approved by said county commission;
- (12) To make all necessary visits required to identify hazards to public health and to ensure that appropriate control measures are being enforced;
- (13) To inspect the schools of the county at least once annually, with the view of seeing that they are supplied with pure drinking water and surrounded by sanitary conditions in all respects, especially to investigate whether or not said schools are equipped with adequate disposal facilities; further, to promote health education within the school system with the concurrence of the appropriate educational authorities;
- (14) To teach the proprietors of restaurants, dairies, grocery houses, hotels, lunch stands, etc., the importance of protecting all food products from dust and insects of every kind and to require the proper protection of food products by glass cases, screens or other devices approved by the county board of health, and to impress upon the people of the county the importance of similar protection in their own homes;
- (15) To teach the people of the county by lectures, newspaper articles and demonstrations the causes, modes of propagation and of prevention of diseases, with special reference to the spread of disease by flies, mosquitoes, rats, fleas, ticks and other vermin; also, the importance of protecting their houses against these purveyors of disease;
- (16) To teach the people of the county how to maintain sanitary conditions in and around their homes, especially how to supply themselves with pure drinking water and pure milk, and also how to provide adequate sewage disposal systems;

(17) To attend meetings of the county commission, from time to time or whenever so requested, for the purpose of giving said commission all desired information as respects the public health interests of the county; and

(18) To prepare and file for permanent record with the county commission an annual statement of receipts and disbursements of his unit; said statement may be reasonably condensed but shall be sworn to, shall be open to public inspection at all times and shall reveal the salary and/or other compensation of the county health officer and all other persons paid from funds of the unit, each listed separately. The statement shall set out the amounts received by the unit from each source of its revenue and shall be filed within not more than 90 days following the close of the unit's fiscal year.

§ 22-3-6. County health officers -- Salary.

The salary of the county health officer shall be fixed by the appropriate merit system, and shall be payable from funds available to the county for this purpose; provided, that in those counties in which a budget has been provided and agreed upon by the state, county or other contributing agencies, it may be paid out of said budget, by or under the direction of the State Board of Health, as other claims are paid out of said budget.

§ 22-3-7. County health officers -- Bond.

The health officer of a county shall enter into bond, with sufficient sureties, payable to the State Health Officer and the judge of probate of the county, in the amount of \$10,000.00, with condition for the faithful performance of all such duties as are or may be required of him by law.

§ 22-3-8. County quarantine officers.

There shall be in each county having no health officer a county quarantine officer, who shall be a licensed physician and who shall be appointed by the State Committee of Public Health on the recommendation of the county board of health, whose tenure of office shall expire on the election of a county health officer; provided, that in no event shall his term of office extend more than three years from the date of his appointment; and provided further, that the State Committee of Public Health shall have power to remove a quarantine officer at any time, in its judgment, the public good requires such removal. The salary of the county quarantine officer shall be fixed, at not exceeding \$125.00 per month, by the county commission and shall be paid in monthly installments from funds available to the county for this purpose. The county quarantine officer shall, under the supervision and control of the State Health Officer and county board of health, perform all the duties in connection with the isolation, quarantine and control of cases of infectious and contagious diseases that are required of full-time county health officers.

§ 22-3-9. Appointment of sanitary officers.

In counties in which there are no health officers, and in counties in which, although there are

health officers, adequate provision has not, in the opinion of the State Board of Health, been made for the proper notification, investigation and control of notifiable diseases and in localities in which the local health authorities fail to carry out the provision of the health laws of the state and the rules and regulations of the State Board of Health, the State Board of Health may appoint properly qualified sanitary officers to act as local health officers and to prevent the spread of disease in, and from, such localities and to enforce said laws, rules and regulations.

§ 22-3-10. Tax to establish and maintain county health officer and health department.

The county commission of each county shall in its discretion be authorized to levy annually a special county tax, being a part of the general county tax of one half of one per centum per annum, in an amount sufficient to establish and maintain a full-time county health officer and county health department and for the prosecution of public health work within the county. The proceeds of said tax, when levied and collected, shall be placed in a separate fund and shall be used for no other purpose except that for which said tax is levied and collected. Such tax, and the proceeds thereof, may be anticipated by temporary loan certificates, and, when anticipated, all of such proceeds shall be deposited in the special county health fund or shall be deposited to the credit of the State Health Officer for the exclusive use of the maintenance of a full-time county health officer and full-time county health department within the county. This section is not exclusive, but is cumulative and remedial, and it shall not be construed to interfere with counties now operating or desiring to operate under mandatory laws relating to full-time health service.

§ 22-3-11. Appropriations by municipalities for public health work.

Each incorporated municipality having a population of 5,000 or more, according to the last federal census, in counties which have provided for a health officer shall provide a sufficient sum of money properly to safeguard the public health and promote sanitation within the corporate limits of the municipality, and all municipalities may make appropriations especially for public health work.

§ 22-3-12. Payment of health department claims, etc., out of county or municipal budgets.

In all counties or municipalities which have provided, or which have aided in providing, a budget out of which the claims, demands and expenses of the health department shall be paid, then such claims and demands of the health department shall not be a claim against the county or municipal treasury, but shall be paid out of the budget or funds, provided the county or municipality has paid into the budget its aliquot, or required part, of such budget.

Chapter 4A. Family Practice Rural Health Board, §§ 22-4A-1 through 22-4A-7.

§ 22-4A-1. Legislative findings and declarations.

The Legislature of Alabama hereby finds and declares that physicians engaged in family practice

are in critical short supply in Alabama, and further, that the distribution of such numbers that are available has created many areas of shortage, especially in the underserved rural areas of Alabama. The Legislature hereby declares that it regards the furtherance of a greater supply of family physicians to be of great importance and further declares the establishment of programs pursuant to this chapter to be desirable, necessary, and an economical method of increasing the number of family physicians needed to provide medical services to the people of Alabama, especially in underserved rural areas.

§ 22-4A-2. Family Practice Rural Health Board created; members; chairman and officers; per diem and mileage.

(a) There is hereby created an 11 member "Family Practice Rural Health Board," with each member serving a six year term unless otherwise specified. The board shall consist of the following membership:

- (1) Two members representing the medically underserved rural areas to be appointed by the Governor.
- (2) One member from each of the seven U.S. Congressional Districts to be appointed by the Alabama Academy of Family Physicians.
- (3) One member to be appointed from the membership of the House of Representatives by the Speaker and whose term shall end with his legislative term at which time a replacement will be appointed.
- (4) One member to be appointed from the membership of the State Senate by the Lieutenant Governor and whose term shall end with his legislative term at which time a replacement will be appointed.

(b) The board shall meet within 90 days following May 3, 1990, and elect from its membership, a chairman and other officers deemed necessary by the board. The director or his designee, of each of the family practice residency programs receiving funds through the provisions of this chapter, shall serve as ex officio, non-voting member of the board. Members shall receive no compensation for their services, but may be paid such per diem and mileage as provided for state employees.

§ 22-4A-3. Determination and prioritization of medically underserved areas.

The board may assist in determining and prioritizing the medically underserved areas where there exist unmet needs for family physicians.

§ 22-4A-4. Accreditation of residency program prerequisite to allocation of funds.

The board shall not allocate any funds pursuant to this chapter to any family practice residency program unless it is accredited by the American Academy of Family Physicians or the American College of Osteopathic Family Physicians, or both, and meets the standards and guidelines

established by the Accreditation Council for Graduate Medical Education or the post-doctoral training approved by the American Osteopathic Association, or both. Accreditation for the purpose of this chapter includes provisional accreditation where necessary to initially establish a new residency program.

§ 22-4A-5. Allocation and distribution of funds; purposes.

The board shall allocate the funds appropriated through the Public Health Department for Family Practice Rural Health Programs. The Health Department shall distribute the funds as allocated by the board except for sufficient amounts necessary to cover the per diem, mileage and printing cost associated with the board's activities. The board shall make allocations from the available revenue for existing Family Practice Residency Programs or any like program which may be hereafter created, provided such a program meets the criteria specified in Section 22-4A-4. The board is further authorized to allocate funds and make grants for the recruitment of physicians with such specialties necessary to meet the requirements of this chapter; to track students in physician residency specialty training programs; for the recruitment of physicians to locate in medically underserved areas; to fund health fairs for the recruitment of physicians or other medical personnel for underserved areas; to fund and provide for medical preceptorship programs; to fund and provide for out of state rotations for residency training; and to fund essential studies, assessments or matters within the authority of the board.

§ 22-4A-6. Identification of unmet needs and resources; annual report.

The board shall assist in identifying any unmet needs relating to the medically underserved rural areas of the state and any available resources that could be applied toward those needs. The board shall submit an annual report to the Governor, Lieutenant Governor, Speaker of the House, chairman of each of the health committees and the State Health Officer of the disbursement of all funds, accomplishments toward meeting the unmet needs in the rural areas and the goals for the next fiscal year.

§ 22-4A-7. No authority over other programs.

Nothing in this chapter is intended or shall be construed as granting the board any governing or administrative authority over any programs administered by any university medical school in this state or any other program established pursuant to state law.

Chapter 4B. Nursing Degree Loans and Incentives, §§ 22-4B-1 through 22-4B-7.

§ 22-4B-1. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings respectively ascribed to them:

- (1) BOARD or BOARD OF HEALTH. The Alabama State Board of Health.
- (2) DEPARTMENT. The Alabama Department of Public Health.
- (3) RURAL AREA or UNDERSERVED AREA. Any county in the State of Alabama in which a city or municipality is located which has a single hospital serving such city or municipality where the average daily census for such hospital is 25 or less, or a county meeting such other definition of "rural area" or "underserved area" as the board may adopt.
- (4) NURSING DEGREE. A degree granted by an appropriately accredited institution of higher learning following at least a two year full-time course of study and entitling the recipient to be examined for certification as a registered professional nurse by the Alabama State Board of Nursing.

§ 22-4B-2. Legislative intent.

The Legislature of Alabama finds that there exists a critical shortage of registered nurses who are willing and able to provide health care to citizens in rural areas of Alabama. Such shortage is particularly acute in rural areas, and has a negative impact on the availability of care to low income and indigent citizens of Alabama who reside in rural areas. The Legislature further finds that there are many dedicated employees of the Alabama Department of Public Health who are disqualified from training as registered nurses solely by reason of their inability to finance the cost of attending school to obtain the requisite degree. Such employees are also prevented or retarded in career advancement because of a lack of education. It is the intent of the Legislature in adopting this chapter to address the nursing shortage in county health departments and in federally-funded community health centers in rural areas and to provide opportunities for career advancement for employees of the health department. Such a program will benefit both the State of Alabama and private sector employers by increasing the pool of nursing school graduates available to provide health care in Alabama.

§ 22-4B-3. Loans for nursing degree -- Eligibility -- Contract -- Cancellation of loan -- Recovery of unpaid balance.

(a) Within the limits of the funds appropriated for or otherwise available to the loan program, the board shall be authorized to grant to each applicant deemed by the board to be qualified, a loan for the purposes of acquiring a nursing degree as defined in Section 22-4B-1, upon such terms and conditions as may be imposed by the board and as provided for in this section.

(b) In order to be eligible, a loan applicant must:

- (1) Be a citizen and a bona fide resident of the State of Alabama;
- (2) At the time of application, have been an employee of the department for at least three years in a position not requiring a nursing degree;
- (3) Be accepted by and attend an accredited school of nursing approved and designated by the board; and

(4) Agree to work as a nurse for the department or for a federally-funded community health center in an underserved or rural area of Alabama for not less than two years for each year of education financed by the board after obtaining certification as a registered professional nurse. The rural county health department or community health center in which the employee must work after graduation shall be designated by the board either in advance of enrollment or after graduation of the employee.

(c) Before being granted a loan, each applicant shall enter into a written obligation to the board, which shall be deemed legally binding on the applicant, setting forth the conditions upon which the loan shall be granted to the applicant. The obligation shall include all terms and conditions specified in this chapter. The obligation shall be signed by the State Health Officer, or his designee, and by the applicant.

(d) The board shall have the authority to cancel any loan for good cause shown.

(e) The board is vested with full power and authority to sue in its own name any recipient for any balance due the state under the terms of this chapter. Any funds recovered by the board pursuant to such legal actions shall be deposited to the credit of the board and are hereby appropriated to the Board of Health to carry out the provisions of this chapter.

§ 22-4B-4. Maximum loan amount -- Repayment by working for department or federally-funded community health center -- Balance due and payable upon demand for failure to remain employed or for withdrawal from school.

Any recipient who is granted a loan by the board shall be granted a loan in an amount authorized by the board, not to exceed \$20,000.00, plus the employee's salary, if paid by the board while the employee attends school. This maximum loan amount may be adjusted upward by the board not more than once every two years. When the number of qualified applicants for loans exceeds the availability of funds, loans shall be granted by the board based upon an assessment of needs by rural or underserved areas for registered nurses, and based upon an assessment by the board of the merits of each individual application. Any loan made and granted to a recipient shall be made based upon the following conditions of repayment:

(1) The loan recipient shall repay the loan by working for the department or for a federally-funded community health center designated by the board after licensure as a registered professional nurse for a period of two full years for each year of full-time course of study financed by the board. Repayment shall be as follows: under a formula to be determined by the board, a proportionate share of the principal of the loan and of all interest accrued shall be forgiven and shall be deemed paid in full after completion of each full year of such service in the department or community health center in a rural area designated by the board.

(2) If the recipient does not remain employed by the department or a designated community health center for the full commitment period after licensure as a nurse, the remaining unpaid principal of the loan shall become due and payable on demand, with interest accruing at the rate

of 12 percent per year from the date the loan obligation was signed by the recipient. In addition, there shall be included in any loan obligation a provision for liquidated damages in an amount equal to \$2,000.00 per year for each year remaining to be served under the obligation. Recipients who resign or who are discharged for cause shall be deemed to not remain employed by the department. The board is authorized to rescind any obligation, or to suspend payment thereon, if it is owed by a recipient who becomes unable to perform employment duties due to a reduction in force, or who becomes disabled due to death, illness, injury, or infirmity.

(3) If the recipient fails or withdraws from school at any time before completing nursing training, or if the board cancels the loan for good cause, the principal of the loan shall become due and payable on demand with interest accruing at the rate of twelve per cent per annum from the date the recipient signed the obligation to repay the loan.

§ 22-4B-5. Loans and salaries to department employees authorized.

The Board of Health is hereby authorized to expend available funds to offer loans and pay salaries to employees attending nursing school under such loan program as provided in this chapter.

§ 22-4B-6. Paid educational leave -- Duties in the health department -- Attendance reports.

At the option of the board, recipients attending nursing school may be granted paid educational leave during times of such attendance. Employees attending school full-time shall be assigned duties in the health department on weekdays, except state holidays, when school is not in session, or shall be charged with annual leave or sick leave, as appropriate. Employees attending school part-time shall perform duties in the health department except when scheduled for class. Educational institutions approved by the board for participation in the program shall be required, as a condition of such approval, to submit monthly attendance reports to the department for all loan recipients. Employees granted paid educational leave shall be charged for annual leave for each school day or portion thereof when not in attendance. Repeated unexcused absences shall be sufficient cause for the board to cancel the loan agreement. Employees receiving salaries while attending school shall be required to repay as principal the total amount loaned for tuition, books, and other expenses, plus the total amount of their salaries paid while in attendance at school, in the event repayment is required under the provisions of Section 22-4B-4.

§ 22-4B-7. Disbursal of loan funds -- Educational institution reimbursed.

Loan funds shall not be disbursed directly to loan recipients. The board shall enter into agreements with all participating approved educational institutions whereby such institution shall be periodically reimbursed for tuition, books, fees, uniforms, and other associated costs incurred by loan recipients.

Chapter 6. Medicaid Program, § 22-6-1.

§ 22-6-1. Appropriations.

All revenue, income and receipts for operation of the Medicaid (Title 19) Program received by the State Health Department shall be appropriated for expenditure of that program.

Chapter 7. Fees for Home Health Services, § 22-7-1 through 22-7-6.

§ 22-7-1. Authority to charge and collect fees or charges. Amended

The State Board of Health is hereby authorized to charge and collect a reasonable fee or charge for services rendered by salaried employees of the state or county board of health or state or county health department in home health service programs administered by those agencies.

§ 22-7-2. Schedule of fees; what fees to include.

The State Board of Health shall fix a reasonable schedule of fees to be charged and collected from, or on behalf of, persons receiving home health services, and the amount of such fees shall include charges for personal services of the said employee and the expense attendant upon such services, such as the expense of necessary drugs, medicines, supplies and equipment.

§ 22-7-3. Waiver of payment.

The State Board of Health, on recommendation of the county health officer, may waive all, or any part of, the payment of said fees upon a finding satisfactory to said board that the person obligated to pay is medically indigent.

§ 22-7-4. Payment of collected fees into Home Health Service Fund.

Such fees when collected shall be paid into a special fund in the State Treasury to be called the Home Health Service Fund.

§ 22-7-5. Appropriation, allocation and expenditure of receipts.

All of the receipts of said Home Health Service Fund are hereby appropriated annually to the State Board of Health to be allocated and expended by said board in each of those counties respectively from which said receipts were collected and for the purpose of administering and operating a program of home health services.

§ 22-7-6. Rules and regulations.

The State Board of Health is authorized to promulgate reasonable rules and regulations prescribing the home health services which may be performed and other rules necessary or proper for the operation of this chapter.

Chapter 8. Consent for Health Services, §§ 22-8-1 through 22-8-9.

§ 22-8-1. Persons physically or mentally unable to consent.

No consent shall be required in order for a licensed physician, psychiatrist or psychologist to render any legally authorized medical or mental health services to a person when said person is either physically unable to consent or mentally unable to consent and who, but for said mental or physical disability, would be able to consent and who has no known relatives or legal guardian; provided, that two or more licensed physicians, psychiatrists or psychologists, after having consultation, must indicate, in writing, that such medical services are necessary, in their judgment, and any attempt to secure consent from any court or to further endeavor to locate unknown relatives would result in delay of treatment which would increase the risk to the person's life or health.

§ 22-8-2. When consent of missing husband or wife not required.

When a person, minor or adult, has not lived with his or her husband or wife for a period of one year or longer and when the location of said person's husband or wife is not known by the person whose husband or wife is missing, then such person, minor or adult, may give his or her consent to any legally authorized medical, dental, health or mental health services, and the consent of the missing husband or wife shall not be required.

§ 22-8-3. When physician may proceed without consent of parent.

Any legally authorized medical, dental, health or mental health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the physician's judgment, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor's life, health or mental health.

§ 22-8-4. When minor may give consent generally.

Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced or is pregnant may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.

§ 22-8-5. Consent of minor for self and child.

Any minor who is married, or having been married is divorced or has borne a child may give effective consent to any legally authorized medical, dental, health or mental health services for himself or his child or for herself or her child.

§ 22-8-6. Consent of any minor as to pregnancy, venereal disease, drug dependency, alcohol toxicity and reportable diseases.

Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease, and the consent of no other person shall be deemed necessary.

§ 22-8-7. Effect of minor's consent; liability of physicians, etc.; waiver of rights or causes of action.

(a) The consent of a minor who professes to be, but is not, a minor whose consent alone is effective to medical, dental, health or mental health services shall be deemed effective without the consent of the minor's parent or legal guardian if the physician or other person relied in good faith upon the presentations of the minor.

(b) Any physician or other person who has relied in good faith upon the representations of any persons under any of the provisions of this chapter or who acts in good faith under any of the provisions of this chapter shall not be liable for not having consent.

(c) No provision of this chapter shall be interpreted to empower any minor, mental incompetent or any other person who is not otherwise by law entitled to enter into a binding agreement to, expressly or impliedly, waive any right or cause of action arising by virtue of any treatment or procedure described in this chapter.

§ 22-8-8. Consents authorized deemed cumulative.

Consents authorized by this chapter are cumulative to all other existing legal consents, and this chapter is not to be construed as revoking any existing legal consents to any authorized legal, dental, mental health or health service.

§ 22-8-9. Consent of minor to donation of bone marrow; consent by parent or legal guardian.

Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced or is pregnant, may give effective consent to the donation of his or her bone marrow for the purpose of bone marrow transplantation. A parent or legal guardian may consent to such bone marrow donation on behalf of any other minor.

Chapter 8A. Termination of Life-Support Procedures, §§ 22-8A-1 through 22-8A-14.

§ 22-8A-1. Short title.

This chapter shall be known and may be cited as the "Natural Death Act."

§ 22-8A-2. Legislative intent.

The Legislature finds that competent adult persons have the right to control the decisions relating to the rendering of their own medical care, including, without limitation, the decision to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness.

In order that the rights of individuals may be respected even after they are no longer able to participate actively in decisions about themselves, the Legislature hereby declares that the laws of this state shall recognize the right of a competent adult person to make a written declaration instructing his or her physician to provide, withhold, or withdraw life-sustaining treatment and artificially provided nutrition and hydration or designate by lawful written form a health care proxy to make decisions on behalf of the adult person concerning the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration in instances of terminal conditions and permanent unconsciousness. The Legislature further desires to provide for the appointment of surrogate decision-makers in instances where the individual has not made such a designation.

§ 22-8A-3. Definitions.

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) ADULT. Any person 19 years of age or over.
- (2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION. A medical treatment consisting of the administration of food and water through a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily. Artificially provided nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

- (3) **ADVANCE DIRECTIVE FOR HEALTH CARE.** A writing executed in accordance with Section 22-8A-4 which may include a living will, the appointment of a health care proxy, or both such living will and appointment of a health care proxy.
- (4) **ATTENDING PHYSICIAN.** The physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
- (5) **COMPETENT ADULT.** An adult who is alert, capable of understanding a lay description of medical procedures and able to appreciate the consequences of providing, withholding, or withdrawing medical procedures.
- (6) **HEALTH CARE PROVIDER.** A person who is licensed, certified, registered, or otherwise authorized by the law of this state to administer or provide health care in the ordinary course of business or in the practice of a profession.
- (7) **HEALTH CARE PROXY.** Any person designated to act on behalf of an individual pursuant to Section 22-8A-4.
- (8) **LIFE-SUSTAINING TREATMENT.** Any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to the patient, would serve only to prolong the dying process where the patient has a terminal illness or injury, or would serve only to maintain the patient in a condition of permanent unconsciousness. These procedures shall include, but are not limited to, assisted ventilation, cardiopulmonary resuscitation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs and antibiotics. Life-sustaining treatment shall not include the administration of medication or the performance of any medical treatment where, in the opinion of the attending physician, the medication or treatment is necessary to provide comfort or to alleviate pain.
- (9) **LIVING WILL.** A witnessed document in writing, voluntarily executed by the declarant, that gives directions and may appoint a health care proxy, in accordance with the requirements of Section 22-8A-4.
- (10) **PERMANENT UNCONSCIOUSNESS.** A condition that, to a reasonable degree of medical certainty:
- Will last permanently, without improvement; and
 - In which cognitive thought, sensation, purposeful action, social interaction, and awareness of self and environment are absent; and
 - Which condition has existed for a period of time sufficient, in accordance with applicable professional standards, to make such a diagnosis; and
 - Which condition is confirmed by a physician who is qualified and experienced in making such a diagnosis.
- (11) **PERSON.** An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (12) **PHYSICIAN.** A person licensed to practice medicine and osteopathy in the State of Alabama.
- (13) **SURROGATE.** Any person appointed to act on behalf of an individual pursuant to Section 22-8A-11.
- (14) **TERMINALLY ILL OR INJURED PATIENT.** A patient whose death is imminent or whose condition, to a reasonable degree of medical certainty, is hopeless unless he or she is artificially

supported through the use of life-sustaining procedures and which condition is confirmed by a physician who is qualified and experienced in making such a diagnosis.

§ 22-8A-4. Advance Directive for Health Care; living will and health care proxy.

(a) Any competent adult may execute a living will directing the providing, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition and hydration. Artificially provided nutrition and hydration shall not be withdrawn or withheld pursuant to the living will unless specifically authorized therein.

(b) A competent adult may execute at any time a living will that includes a written health care proxy designation appointing another competent adult to make decisions regarding the providing, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition and hydration. Artificially provided nutrition and hydration shall not be withdrawn or withheld pursuant to the proxy designation unless specifically authorized therein. A proxy designation made pursuant to this section shall be accepted in writing by the individual being appointed. The acceptance shall be evidenced in writing and attached to the proxy designation. The proxy designation may be a separate document or part of a living will.

(1) The designation of an attorney-in-fact, made pursuant to Section 26-1-2, as amended from time to time, who is specifically authorized to make decisions regarding the providing, withholding, or withdrawing of life-sustaining treatment or artificially provided nutrition and hydration in instances involving terminal illness or injury and permanent unconsciousness, constitutes for purposes of this chapter a proxy designating another individual to act for the declarant pursuant to this subsection, provided, however, that the authority granted to an attorney-in-fact to make such decisions shall be the same as the authority granted in this chapter to a health care proxy. The appointment shall be limited to the specific directions enumerated in the appointment.

(2) Any powers granted to a health care proxy in an advance directive for health care executed pursuant to this subsection that permit a health care proxy to make general health care decisions not related to the provision, withdrawal, or withholding of life-sustaining treatment or artificially provided nutrition and hydration shall be limited to those powers permitted under the Alabama Durable Power of Attorney Act, Section 26-1-2, as the same shall be amended from time to time.

(3) Unless otherwise provided in the proxy designation or in an order of divorce, dissolution, or annulment of marriage or legal separation, the divorce, dissolution, or annulment of marriage of the declarant revokes the designation of the declarant's former spouse as health care proxy.

(4) Under no circumstances shall the patient's health care provider or a nonrelative employee of the patient's health care provider make decisions in the capacity of a health care proxy.

(c) Any advance directive for health care made pursuant to this chapter shall be:

(1) In writing;

(2) Signed by the person making the advance directive for health care, or by another person in the declarant's presence and by the declarant's expressed direction;

(3) Dated; and

(4) Signed in the presence of two or more witnesses at least 19 years of age, neither of whom shall be the person who signed the advance directive for health care on behalf of and at the direction of the person making the advance directive for health care, appointed as the health care proxy therein, related to the declarant by blood, adoption, or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care.

(d) An advance directive for health care shall become effective when: (1) The attending physician determines that the declarant is no longer able to understand, appreciate, and direct his or her medical treatment; and (2) two physicians, one of whom shall be the attending physician, and one of whom shall be qualified and experienced in making such diagnosis, have personally examined the declarant and have diagnosed and documented in the medical record that the declarant has either a terminal illness or injury or is in a state of permanent unconsciousness.

(e) The advance directive for health care of a declarant who is known by the attending physician to be pregnant shall have no effect during the course of the declarant's pregnancy.

(f) It shall be the responsibility of the declarant to provide a copy of the advance directive for health care to his or her attending physician and other health care providers rendering treatment to the declarant. The health care provider shall make the advance directive for health care, or a copy of the advance directive for health care, a part of the declarant's medical records.

(g) In the event a declarant has executed both a living will and a proxy designation, the decisions by the health care proxy duly designated under this chapter regarding the providing, withholding, or withdrawal of life-sustaining treatment or artificially provided nutrition or hydration, shall take precedence over a living will of a declarant, unless the declarant's living will or proxy designation indicates otherwise.

(h) The advance directive for health care shall be substantially in the following form, but in addition may include other specific directions. Should any specific directions be held to be invalid, the invalidity shall not affect other directions of the advance directive for health care which can be given effect without the invalid direction, and to this end the directions in the advance directive for health care are severable.

Public Health Laws of Alabama, 2012

ADVANCE DIRECTIVE FOR HEALTH CARE

(Living Will and Health Care Proxy)

This form may be used in the State of Alabama to make your wishes known about what medical treatment or other care you would or would not want if you become too sick to speak for yourself. You are not required to have an advance directive. If you do have an advance directive, be sure that your doctor, family, and friends know you have one and know where it is located.

Section 1. Living Will

I, _____, being of sound mind and at least 19 years old, would like to make the following wishes known. I direct that my family, my doctors and health care workers, and all others follow the directions I am writing down. I know that at any time I can change my mind about these directions by tearing up this form and writing a new one. I can also do away with these directions by tearing them up and by telling someone at least 19 years of age of my wishes and asking him or her to write them down.

I understand that these directions will only be used if I am not able to speak for myself.

IF I BECOME TERMINALLY ILL OR INJURED:

Terminally ill or injured is when my doctor and another doctor decide that I have a condition that cannot be cured and that I will likely die in the near future from this condition.

Life sustaining treatment--Life sustaining treatment includes drugs, machines, or medical procedures that would keep me alive but would not cure me. I know that even if I choose not to have life sustaining treatment, I will still get medicines and treatments that ease my pain and keep me comfortable.

Place your initials by either "yes" or "no":

I want to have life sustaining treatment if I am terminally ill or injured. _____ Yes
_____ No

Artificially provided food and hydration (Food and water through a tube or an IV)--I understand that if I am terminally ill or injured I may need to be given food and water through a tube or an IV to keep me alive if I can no longer chew or swallow on my own or with someone helping me.

Place your initials by either "yes" or "no":

Public Health Laws of Alabama, 2012

I want to have food and water provided through a tube or an IV if I am terminally ill or injured.

_____ Yes _____ No

IF I BECOME PERMANENTLY UNCONSCIOUS:

Permanent unconsciousness is when my doctor and another doctor agree that within a reasonable degree of medical certainty I can no longer think, feel anything, knowingly move, or be aware of being alive. They believe this condition will last indefinitely without hope for improvement and have watched me long enough to make that decision. I understand that at least one of these doctors must be qualified to make such a diagnosis.

Life sustaining treatment--Life sustaining treatment includes drugs, machines, or other medical procedures that would keep me alive but would not cure me. I know that even if I choose not to have life sustaining treatment, I will still get medicines and treatments that ease my pain and keep me comfortable.

Place your initials by either "yes" or "no":

I want to have life-sustaining treatment if I am permanently unconscious. _____ Yes

_____ No

Artificially provided food and hydration (Food and water through a tube or an IV)--I understand that if I become permanently unconscious, I may need to be given food and water through a tube or an IV to keep me alive if I can no longer chew or swallow on my own or with someone helping me.

Place your initials by either "yes" or "no":

I want to have food and water provided through a tube or an IV if I am permanently unconscious.

_____ Yes _____ No

OTHER DIRECTIONS:

Please list any other things you want done or not done.

In addition to the directions I have listed on this form, I also want the following: _____

If you do not have other directions, place your initials here: _____ No, I do not have any other directions.

Public Health Laws of Alabama, 2012

Section 2. If I need someone to speak for me.

This form can be used in the State of Alabama to name a person you would like to make medical or other decisions for you if you become too sick to speak for yourself. This person is called a health care proxy. You do not have to name a health care proxy. The directions in this form will be followed even if you do not name a health care proxy.

Place your initials by only one answer:

_____ I do not want to name a health care proxy. (If you check this answer, go to Section 3)

_____ I do want the person listed below to be my health care proxy. I have talked with this person about my wishes.

First choice for proxy: _____

Relationship to me: _____

Address: _____

City: _____ State: _____ Zip: _____

Day-time phone number: _____ Night-time phone number: _____

If this person is not able, not willing, or not available to be my health care proxy, this is my next choice:

Second choice for proxy: _____

Relationship to me: _____

Address: _____

City: _____ State: _____ Zip: _____

Day-time phone number: _____ Night-time phone number: _____

Instructions for Proxy

Place your initials by either "yes" or "no":

Public Health Laws of Alabama, 2012

I want my health care proxy to make decisions about whether to give me food and water through a tube or an IV. _____ Yes _____ No

Place your initials by only one of the following:

_____ I want my health care proxy to follow only the directions as listed on this form.

_____ I want my health care proxy to follow my directions as listed on this form and to make any decisions about things I have not covered in the form.

_____ I want my health care proxy to make the final decision, even though it could mean doing something different from what I have listed on this form.

Section 3. The things listed on this form are what I want.

I understand the following:

If my doctor or hospital does not want to follow the directions I have listed, they must see that I get to a doctor or hospital who will follow my directions.

If I am pregnant, or if I become pregnant, the choices I have made on this form will not be followed until after the birth of the baby.

If the time comes for me to stop receiving life sustaining treatment or food and water through a tube or an IV, I direct that my doctor talk about the good and bad points of doing this, along with my wishes, with my health care proxy, if I have one, and with the following people:

Section 4. My signature

Your name: _____

The month, day, and year of your birth: _____

Your signature: _____

Date signed: _____

Section 5. Witnesses (need two witnesses to sign)

I am witnessing this form because I believe this person to be of sound mind. I did not sign the person's signature, and I am not the health care proxy. I am not related to the person by blood,

adoption, or marriage and not entitled to any part of his or her estate. I am at least 19 years of age and am not directly responsible for paying for his or her medical care.

Name of first witness: _____

Signature: _____

Date: _____

Name of second witness: _____

Signature: _____

Date: _____

Section 6. Signature of Proxy

I, _____, am willing to serve as the health care proxy.

Signature: _____ Date: _____

Signature of Second Choice for Proxy:

I, _____, am willing to serve as the health care proxy if the first choice cannot serve.

Signature: _____ Date: _____

§ 22-8A-5. Revocation of advance directive for health care.

(a) An advance directive for health care may be revoked at any time by the declarant by any of the following methods:

- (1) By being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intention to cancel;
- (2) By a written revocation of the advance directive for health care signed and dated by the declarant or person acting at the direction of the declarant; or
- (3) By a verbal expression of the intent to revoke the advance directive for health care in the presence of a witness 19 years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective upon receipt by the attending physician or health care provider of the above mentioned writing. The attending physician or health care provider shall record in the patient's medical record the time, date and place of when he or she received notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

§ 22-8A-6. Proxy to comply with instructions, intent of patient.

An individual designated to make decisions regarding the providing, withholding, or withdrawing of life-sustaining treatment or artificially provided nutrition and hydration for another pursuant to Section 22-8A-4(b) shall make those decisions according to the specific instructions or directions given to him or her in the designation or other document or by the individual making the designation. In the absence of specific directions or guidance, the designated proxy shall make those decisions that conform as closely as possible to what the patient would have done or intended under the circumstances, taking into account the patient's personal, philosophical, religious and moral beliefs, and ethical values relative to the decisions. Where possible, the designated proxy shall determine how the patient would have weighed the burdens and benefits of initiating or continuing life-sustaining treatment or artificially provided nutrition and hydration against the burdens and benefits to the patient of that treatment.

§ 22-8A-7. Competency of declarant; liability of participating physician, facility, etc.

(a) A competent adult may make decisions regarding life-sustaining treatment and artificially provided nutrition and hydration so long as that individual is able to do so. The desires of an individual shall at all times supersede the effect of an advance directive for health care.

(b) If the individual is not competent at the time of the decision to provide, withhold, or withdraw life-sustaining treatment or artificially provided nutrition and hydration, a living will executed in accordance with Section 22-8A-4(a) or a proxy designation executed in accordance with Section 22-8A-4(b) is presumed to be valid. For the purpose of this chapter, a health care provider may presume in the absence of actual notice to the contrary that an individual who executed an advance directive for health care was competent when it was executed. The fact of an individual's having executed an advance directive for health care shall not be considered as an indication of a declarant's mental incompetency. Advanced age of itself shall not be a bar to a determination of competency.

(c) No physician, licensed health care professional, medical care facility, other health care provider, or any employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the providing, withholding, or withdrawing of life-sustaining treatment or artificially provided nutrition and hydration from a patient pursuant to a living will or designated proxy made in accordance with this chapter or pursuant to the directions of a duly designated surrogate appointed in accordance with this chapter, in the absence of actual knowledge of the revocation thereof, shall, as a result thereof, be subject to criminal or civil

liability, or be found to have committed an act of unprofessional conduct.

§ 22-8A-8. Refusal of health care provider to comply; penalties.

(a) A health care provider who refuses to comply with a living will or the directions of a duly designated proxy or a duly appointed surrogate pursuant to this chapter shall promptly so advise the declarant and any individual designated to act for the declarant, shall not be liable for such refusal, but shall permit the patient to be transferred to another health care provider. Such health care provider shall reasonably cooperate to assist the declarant, or any individual designated to act for the declarant, in the timely transfer of the declarant to another health care provider that will follow the directions of the living will, health care proxy, or surrogate. During the time for the transfer, all life-sustaining treatments, including artificially provided nutrition and hydration, shall be properly maintained.

(b) No nurse, physician, or other health care provider may be required by law or contract in any circumstances to participate in the withholding or withdrawal of life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment.

(c) Any person who willfully conceals, cancels, defaces, obliterates or damages the advance directive for health care of another without the declarant's consent or who falsifies or forges a revocation of the advance directive for health care of another shall be guilty of a Class A misdemeanor.

(d) Any person who falsifies or forges the advance directive for health care of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive for health care, with the intent to cause a withholding or withdrawal of life-sustaining treatment or artificially provided nutrition and hydration contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining treatment or artificially provided nutrition and hydration to be withheld or withdrawn and death to be hastened, shall be guilty of a Class C felony.

§ 22-8A-9. Withholding or withdrawal of treatment, etc., not suicide; execution of advance directive not to affect sale, etc., of life or health insurance nor be condition for receipt of treatment, etc.; provisions of chapter cumulative.

(a) The withholding or withdrawal of life-sustaining treatment or artificially provided nutrition and hydration from a patient in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide and shall not constitute assisting suicide.

(b) The making of an advance directive for health care pursuant to this chapter shall not affect in any manner the sale, procurement, or issuance of any policy of life or health insurance, nor shall it be deemed to modify the terms of an existing policy of life or health insurance. No policy of

life or health insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment or artificially provided nutrition and hydration from an insured patient, notwithstanding any term of the policy to the contrary.

(c) No physician or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability or life or health insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, or mutual nonprofit hospital or hospital service corporation shall require any person to execute an advance directive for health care as a condition for being insured for, or receiving, health care services.

(d) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have, under case law, common law, or statutory law, to effect the withholding or withdrawal of life-sustaining treatment or artificially provided nutrition and hydration in any lawful manner. In such respect the provisions of this chapter are cumulative.

(e) Nothing in this chapter shall impair or supersede the jurisdiction of the circuit court in the county where a patient is undergoing treatment to determine whether life-sustaining treatment or artificially provided nutrition and hydration should be withheld or withdrawn in circumstances not governed by this chapter or to determine if the requirements of this chapter have been met.

(f) This chapter shall create no presumption concerning the intention of an individual who has not executed an advance directive for health care to consent to the use or withholding of life-sustaining treatment or artificially provided nutrition and hydration.

§ 22-8A-10. Provisions of chapter not an approval of mercy killing, etc.

Nothing in this chapter shall be construed to condone, authorize or approve mercy killing or physician assisted suicide or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this chapter.

§ 22-8A-11. Surrogate; requirements; attending physician consulted, intent of patient followed; persons who may serve as surrogate; priority; validity of decisions; liability; form; declaratory and injunctive relief; penalties.

(a) If no advance directive for health care has been made, or if no duly appointed health care proxy is reasonably available, or if a valid advance directive for health care fails to address a particular circumstance, subject to the provisions of subsection (c) hereof, a surrogate, in consultation with the attending physician, may, subject to the provisions of Section 22-8A-6, determine whether to provide, withdraw, or withhold life-sustaining treatment or artificially provided nutrition and hydration if all of the following conditions are met:

(1) The attending physician determines, to a reasonable degree of medical certainty, that:

a. The individual is no longer able to understand, appreciate, and direct his or her medical treatment, and

b. The individual has no hope of regaining such ability.

(2) Two physicians, one of whom is the attending physician and one of whom shall be qualified and experienced in making such diagnosis, have personally examined the individual and have diagnosed and certified in the medical record that the individual has a terminal illness or injury or has a condition of permanent unconsciousness.

(3) The attending physician or other health care provider and the surrogate have no actual knowledge of the existence of a valid advance directive for health care that would give guidance to the provider in treating the individual's condition.

(4) The treating physician determines, to a reasonable degree of medical certainty, that withholding or withdrawing the life-sustaining treatment or artificially provided nutrition and hydration will not result in undue pain or discomfort for the patient.

(b) The surrogate shall be a competent adult.

(c) The surrogate shall consult with the attending physician and make decisions permitted herein that conform as closely as possible to what the patient would have done or intended under the circumstances, taking into account any evidence of the patient's religious, spiritual, personal, philosophical, and moral beliefs and ethics, to the extent these are known to the surrogate. Where possible, the surrogate shall consider how the patient would have weighed the burdens and benefits of initiating or continuing life-sustaining treatment or artificially provided nutrition and hydration against the burdens and benefits to the patient of that treatment; except, that any decision by a surrogate regarding the withdrawal or withholding of artificially provided nutrition and hydration from a person who is permanently unconscious shall only be made upon clear and convincing evidence of the patient's desires. The decision to provide, withdraw, or withhold life-sustaining treatment or artificially provided nutrition and hydration by the surrogate shall be made in good faith and without consideration of the financial benefit or burden which will accrue to the surrogate or the health care provider as a result of the decision.

(d) Any of the following persons, in order of priority stated, when persons in prior classes are not available or willing to serve, may serve as a surrogate pursuant to the provisions of this section:

(1) A judicially appointed guardian, provided the appointment specifically authorizes the guardian to make decisions regarding the withholding of life-sustaining treatment or artificially provided nutrition and hydration. Nothing in this section shall be construed to require a judicial appointment before a decision can be made under this chapter. In addition, this section shall not be construed to require a judicially appointed guardian who has not been specifically authorized by a court to make decisions regarding the providing, withholding, or withdrawing of life-sustaining treatment or artificially provided nutrition and hydration to make those decisions or to seek court approval to make those decisions;

(2) The patient's spouse, unless legally separated or a party to a divorce proceeding;

(3) An adult child of the patient;

- (4) One of the patient's parents;
 - (5) An adult sibling of the patient;
 - (6) Any one of the patient's surviving adult relatives who are of the next closest degree of kinship to the patient; or
 - (7) If the patient has no relatives known to the attending physician or to an administrator of the facility where the patient is being treated, and none can be found after a reasonable inquiry, a committee composed of the patient's primary treating physician and the ethics committee of the facility where the patient is undergoing treatment or receiving care, acting unanimously; or if there is no ethics committee, by unanimous consent of a committee appointed by the chief of medical staff or chief executive officer of the facility and consisting of at least the following: (i) the primary treating physician; (ii) the chief of medical staff or his or her designee; (iii) the patient's clergyman, if known and available, or a member of the clergy who is associated with, but not employed by or an independent contractor of the facility, or a social worker associated with but neither employed by nor an independent contractor of the facility. In the event a surrogate decision is being made by an ethics committee or appointed committee of the facility where the patient is undergoing treatment or receiving care, the facility shall notify the Alabama Department of Human Resources for the purpose of allowing the department to participate in the review of the matter pursuant to its responsibilities under the Adult Protective Services Act, Chapter 9 of Title 38.
- (e) The surrogate shall certify and attest under oath that he or she has contacted one or more of the person or persons who is or are in a class equal to or higher than the surrogate and that each class has either consented or expressed no objections to him or her acting as surrogate or to the decision made by the surrogate. The certification shall be included in the medical record.
- (f) A surrogate's decision shall nevertheless be valid if:
- (1) He or she is unable to contact an individual whose consent or non-objection would otherwise be required because the individual's whereabouts are unknown, because the individual is in a remote location and cannot be contacted in sufficient time to participate in a decision to provide, withhold, or withdraw the treatment, or because the individual has been adjudged incompetent and remains under that disability; and
 - (2) The surrogate certifies and attests to that fact. In that case, the individual shall not be included in determining whether the individual's class has consented or expressed no objection as required pursuant to subsection (e).
- (g) A health care provider who provides, withholds, or withdraws life-sustaining treatment or artificially provided nutrition and hydration from a patient upon the instructions of a surrogate who has certified and attested that he or she has qualified as a surrogate as required by this section shall not be subject to civil or criminal liability or be found to have committed an act of unprofessional conduct for providing, withdrawing, or withholding the life-sustaining treatment or artificially provided nutrition and hydration, nor shall the health care provider be deemed to be under a duty to investigate the truthfulness of the information certified and attested to by the

surrogate.

(h) A surrogate acting pursuant to this section shall not be subject to civil or criminal liability or found to have committed an act of unprofessional conduct for decisions made in good faith to provide, withhold, withdraw, continue, or institute life-sustaining treatment, or artificially provided nutrition and hydration, unless the surrogate falsely or fraudulently certifies or attests to information required by this section.

(i) The Alabama State Board of Health shall prescribe by rule a form, which, when completed by a surrogate and duly notarized, shall constitute the certification of the surrogate as required by this chapter.

(j) If any relative, health care provider who is involved directly in the care of the patient, or other individual who is involved directly in providing care to the patient desires to dispute the authority or the decision of a surrogate to determine whether to provide, withhold, or withdraw medical treatment from a patient, he or she may file an action for declaratory and injunctive relief in the circuit court for the county where the patient is under treatment. A health care provider who is confronted by more than one individual who claims authority to act as surrogate for a patient may file an action for declaratory relief in the circuit court for the county where the patient is under treatment.

(k) An individual who knowingly certifies and attests to any information which is:

(1) Required by this chapter;

(2) Material to his or her authorization to act as a surrogate; and

(3) False, shall be guilty of a Class C felony. This shall be in addition to, and not in lieu of, penalties for other offenses of which the surrogate may be guilty by reason of this conduct.

§ 22-8A-12. Validity of advance health care directive executed in another state.

An advance health care directive executed in another state in compliance with the law of that state or of this state is valid for purposes of this chapter, but this section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

§ 22-8A-13. Effect of prior declarations.

Any declaration made prior to August 1, 2001, shall be given effect as provided in this chapter provided that:

(a) Such declaration was legally effective when written; and

(b) Artificially provided nutrition and hydration shall not be withdrawn pursuant to the declaration unless specifically authorized therein.

§ 22-8A-14. Filing and recording of living will; fee; inspection; duty of declarant to provide copy to health care providers.

(a) A person may file and have recorded a living will in the office of the judge of probate in the county where the person resides. For the purpose of this section, the term "living will" means an advanced directive for health care as provided for in this chapter, or a similar document.

(b) The fee for recording a living will shall be five dollars (\$5), which shall be deposited in the county general fund. In addition, any other recording fees required by general or local law shall also be collected and shall be distributed as provided by that law.

(c)(1) A living will recorded pursuant to this section shall not be open for general public inspection, but shall be available for inspection and copying at the request of emergency medical personnel, hospital personnel, treating physicians, members of the immediate family, a person with a power of attorney or other legally authorized person, or a person authorized in writing by the maker of the living will. A judge of probate may charge the standard fee for copies provided pursuant to this subsection.

(2) A judge of probate shall not be liable for any inspection or copying of a living will recorded pursuant to this section. The recording of a living will as provided in this section shall have no bearing on the validity of the living will.

(d) This section does not amend or repeal the provisions of subsection (f) of Section 22-8A-4. It is the responsibility of the maker of a living will to provide a copy of the living will, advance directive for health care, or any similar document to his or her attending physician or other health care providers as provided therein. A physician, hospital, or other health care provider is not required by this section to search the records of the office of any judge of probate to determine the existence or nonexistence of a living will pertaining to individuals seeking medical care.

Chapter 9A. Vital Statistics, §§ 22-9A-1 through 22-9A-28.

§ 22-9A-1. Definitions.

For the purposes of this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

(1) **DEAD BODY.** A human body or parts of the human body from the condition of which it reasonably may be concluded that death occurred.

(2) **FETAL DEATH.** Death prior to the complete expulsion or extraction from the mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is indicated by the fact that after the expulsion or

extraction the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(3) **FILE.** The presentation of a vital record provided for in this chapter for registration by the Office of Vital Statistics.

(4) **FINAL DISPOSITION.** The burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(5) **INDUCED TERMINATION OF PREGNANCY.** The purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and which does not result in a live birth. This definition excludes management of prolonged retention of products of conception following fetal death.

(6) **INSTITUTION.** Any establishment, public or private, which provides inpatient or outpatient medical, surgical, or diagnostic care or treatment, mental treatment, or nursing, custodial, or domiciliary care.

(7) **LIVE BIRTH.** The complete expulsion or extraction from the mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, 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. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(8) **PHYSICIAN.** A person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this state.

(9) **REGISTRATION.** The acceptance by the Office of Vital Statistics and the incorporation of vital records as provided for in this chapter into its official records.

(10) **SYSTEM OF VITAL STATISTICS.** The registration, collection, preservation, amendment, and certification of vital records; the collection of other reports required by this chapter; and activities related thereto, including, but not limited to, the tabulation, analysis, publication, and dissemination of vital statistics.

(11) **VITAL RECORD.** Certificates of birth, death, marriage, divorce, and related data.

(12) **VITAL STATISTICS.** The data derived from certificates and reports of birth, death, fetal death, induced terminations of pregnancy, marriage, divorce, and related reports.

§ 22-9A-2. Office of Vital Statistics and statewide system of vital statistics.

The State Board of Health shall have charge of an Office of Vital Statistics. The Office of Vital Statistics shall install, maintain, and operate the only system of vital statistics and the only system of health statistics throughout this state. The Office of Vital Statistics shall be provided with sufficient staff, suitable offices, and other resources for the proper administration of the system of vital statistics and for the preservation and adequate security of its official records. The State Board of Health, hereinafter referred to as "the board," may adopt, amend, and repeal rules for the purpose of carrying out this chapter.

§ 22-9A-3. Appointment of State Registrar of Vital Statistics; duties of State Registrar.

(a) The board shall appoint the State Registrar of Vital Statistics, hereinafter referred to as "State Registrar," in accordance with procedures and practices of the State Personnel Board.

(b) The State Registrar shall perform each of the following functions:

(1) Administer and enforce this chapter and the rules issued hereunder, and issue instructions for the efficient administration of the system of vital statistics.

(2) Direct and supervise the system of vital statistics and the Office of Vital Statistics and be custodian of its records.

(3) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the system of vital statistics.

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics.

(5) With the approval of the board, prescribe, furnish, and distribute forms as are required by this chapter and the rules issued hereunder, or prescribe other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.

(6) Prepare and publish reports of vital statistics of this state and other reports as may be required by the board.

(7) Provide to local health departments copies of or data derived from certificates and reports required under this chapter, as he or she shall determine are necessary for local health department planning and program activities. The State Registrar shall establish a schedule with each local health department for transmittal of the copies or data. The copies or data shall remain the property of the Office of Vital Statistics, and the uses which may be made of the copies or data shall be governed by the State Registrar.

(c) The State Registrar may delegate functions and duties vested in him or her to employees of the Office of Vital Statistics and to employees of any office established or designated under Section 22-9A-4.

§ 22-9A-4. Registration districts.

The board may designate vital records registration districts within the state. The board may from time to time, as conditions justify, consolidate or subdivide the districts to facilitate registration. Each county in the state shall be a registration district unless and until changed by the board.

§ 22-9A-5. Local registrars and deputy registrars of vital statistics.

(a) In each registration district, as defined in Section 22-9A-4 or as designated by the board, a local registrar and deputy registrars shall be appointed by the State Registrar upon the recommendation of the county health officer or his or her designee. All local registrars and

deputy registrars shall be employees of the county health department. The local registrars and deputy registrars shall be subject to the control of the State Registrar when they are performing functions relating to the system of vital statistics.

(b) Any local registrar or deputy registrar of vital statistics who fails or neglects to discharge efficiently the duties of his or her office, as set forth in this chapter, or by the rules of the board, shall be removed as local or deputy registrar by the State Registrar, and penalties may be imposed as are provided.

(c) The local registrars and their deputies shall comply with all instructions of the State Registrar and monitor compliance of others with this chapter and with the rules of the board.

§ 22-9A-6. Content of certificates and reports.

(a) The board shall by rule determine the items or information to be contained on certificates of birth, death, marriage, and divorce and on reports of fetal death and induced termination of pregnancy. Each certificate, report, and other document required by this chapter shall be in a format prescribed by the State Registrar.

(b) Information required in certificates or reports authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the State Registrar.

§ 22-9A-7. Registration of births.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within five days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b)(1) When a birth occurs in an institution or en route to the institution, the person in charge of the institution or his or her designated representative shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (a) or as directed by the State Registrar within the required five days. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution or his or her designee shall complete and sign the certificate.

(2) In all cases where a birth occurs in an institution, the person in charge of the institution shall provide a procedure for collection of the normal fee for a certified copy of the birth certificate from the mother or father. The fee shall be forwarded to the State Registrar when a complete record of the birth is obtained, and the State Registrar shall issue a certified copy of the birth certificate to the mother or father of the child. The issuance of a certified copy of the birth certificate by the State Registrar shall not apply to births where the death of the infant occurred a

short time following the birth, unless the certificate is requested by the father or mother, or where adoption is indicated.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at the birth or who sees the child within three days after the birth.
- (2) Any other person in attendance at or immediately after the birth.
- (3) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs in a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth as can be determined.

(e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by law.

(f)(1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless it is established by law that he is not the father of the child.

(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate unless paternity has been determined by a court of competent jurisdiction or unless the legitimation process specified in Sections 26-11- 1 through 26-11-3, inclusive, or otherwise provided by law has been completed.

(3) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(g) The birth certificate of a child born to a married woman as a result of artificial insemination, with consent of her husband, shall be completed in accordance with subdivision (1) of subsection (f).

(h) Either of the parents of the child shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within the five days prescribed in subsection (a).

§ 22-9A-8. Registration of infants of unknown parentage.

(a) Whoever assumes the custody of a live-born infant of unknown parentage shall report on a form and in a manner prescribed by the State Registrar within five days to the Office of Vital Statistics all of the following information:

- (1) The date and place of finding.
- (2) Sex, race, and approximate birth date of the child.
- (3) Name and address of the person or institution with whom the child has been placed for care.
- (4) Name given to the child by the custodian of the child.
- (5) Other data required by rules of the board.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and shall not be subject to inspection except upon an order of a court of competent jurisdiction.

§ 22-9A-9. Delayed registration of birth.

Any person born in the state whose birth has not been filed may have his or her birth registered by the State Registrar after complying with the requirements set forth below:

(1) Certificates of birth filed after the time specified in Section 22-9A-7 but within one year from the date of birth shall be registered on the standard form of live-birth certificate in the manner prescribed in Section 22-9A-7. The certificate shall not be marked "DELAYED REGISTRATION." In any case where the certificate is signed by someone other than the attendant or person in charge of the institution where birth occurred, a notarized statement stating the reason why the certificate cannot be signed by the attendant shall be attached to the certificate. When the State Registrar has reasonable cause to question the adequacy of the registration, he or she may require additional evidence in support of the facts of birth.

(2) Certificates of birth filed after one year but within five years of the date of birth shall be registered on the form of live birth in use at the time of birth and the certificate shall be plainly marked "DELAYED REGISTRATION." To be acceptable for filing, the certificate shall be signed by the physician or other person who attended the birth; or if the birth occurred in an institution, the person in charge of the institution may sign the certificate. If the physician or other person who attended the birth is not available, and the birth did not occur in an institution, the certificate may be signed by one of the parents, if a notarized statement is attached to the certificate giving the reason why the certificate cannot be signed by the attendant. Additional requirements for filing certificates of birth after one year but within five years shall be set by rules of the board.

(3) Certificates of birth filed five years or more after the date of birth may be filed for living persons and shall be made on a delayed certificate of birth form prescribed by the State Registrar and shall show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

a. Any living person born in this state whose birth is not recorded in this state, or his or her parent, guardian, next of kin, or older person acting for the registrant and having personal

knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to this section and instructions issued by the State Registrar.

b. Each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered, if the person is 18 years of age or over and is competent to sign and swear to the accuracy of the facts stated in the certificate; otherwise, the certificate shall be signed and sworn to by one of the following in the indicated order of priority:

1. One of the parents of the registrant.
2. The guardian of the registrant.
3. The next of kin of the registrant.
4. Any older person having personal knowledge of the facts of birth.

c. The minimum facts that shall be established by documentary evidence shall be each of the following:

1. The full name of the person at the time of birth.
2. The date of birth and place of birth.
3. The full maiden name of the mother.
4. The full name of the father, except that if the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the delayed certificate.

d. To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed certificate of birth shall be supported by at least three pieces of documentary evidence, only one of which may be an affidavit of personal knowledge. Facts of parentage shall be supported by at least one document which may be one of the documents described above other than an affidavit of personal knowledge. All documents submitted in support of the delayed birth registration shall be returned to the applicant.

e. Documents presented shall be from independent sources and shall be in the form of the original record or a duly certified copy or excerpt thereof from the custodian of the records or documents. All documents submitted in evidence, other than an affidavit of personal knowledge, shall have been established at least five years prior to the date of application or have been established prior to the tenth birthday of the applicant. An affidavit of personal knowledge, to be acceptable, shall be prepared by one of the parents, other relative, or any older person, and shall be signed before an official authorized to administer oaths. In all cases, the affiant shall be at least 10 years older than the applicant and have personal knowledge of the facts of birth.

(4) When an applicant does not submit the minimum documentation required in this section for delayed registration or when the State Registrar has reasonable cause to question the validity or adequacy of the sworn statement or the documentary evidence of the applicant, the State Registrar shall not register the delayed certificate of birth.

(5) Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall advise the applicant and all documents submitted in support of the registration shall be returned to the applicant.

§ 22-9A-10. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under Section 22-9A-9, a petition signed and sworn to by the petitioner may be filed with a circuit court of any county in this state in which he or she resides or was born, for an order establishing a birth record.

(b) The petition shall allege each of the following:

- (1) The person for whom a delayed certificate of birth is sought was born in this state.
- (2) No certificate of birth can be found in the Office of Vital Statistics.
- (3) Diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Section 22-9A-9.
- (4) The State Registrar has refused to register a delayed certificate of birth.
- (5) Other allegations as may be required.

(c) The petition shall be accompanied by a statement of the State Registrar made in accordance with Section 22-9A-9 and all documentary evidence which was submitted to the State Registrar in support of the registration.

(d) The court shall fix a time and place for hearing the petition and shall give the State Registrar 10 days notice of the hearing. The State Registrar or the authorized representative of the State Registrar may appear and testify in the proceedings, or evidence may be received by affidavit.

(e) If the court finds, from the evidence presented, that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and other findings as may be required and shall issue an order to establish a certificate of birth. The court order shall include each of the following:

- (1) The full name and sex of the person for whom the birth certificate is sought.
- (2) A statement that person was born in this state.
- (3) The date of birth and county of birth.
- (4) The full maiden name of the mother.
- (5) The full name of the father, if legally established.
- (6) A description of the evidence presented.
- (7) The date of the action of the court.

(f) The clerk of the court shall forward each order to the State Registrar not later than the tenth day of the calendar month following the month in which the order was entered. The order shall be registered by the State Registrar and shall constitute the authority for placing a delayed certificate of birth on file.

§ 22-9A-11. Court reports of adoption.

(a) For each adoption decreed by a court of competent jurisdiction in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the State Registrar. The report shall indicate those facts necessary to locate and identify the certificate of birth of the person adopted or in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the court as to the date and place of birth of the person. The report shall provide information necessary to establish a new certificate of birth of the person adopted, identify the order of adoption, and be certified by the clerk of the court.

(b) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or his or her attorney. The child-placing agency or any person having knowledge of the facts shall supply the court with additional information as may be necessary to complete the report. The provision of the information shall be prerequisite to the issuance of a final decree in the matter by the court.

(c) Within 10 days of the entry of the final order of adoption, the judge or the clerk of the court shall send to the State Registrar reports of decrees of adoption, annulment of adoption, and amendments of decrees of adoption together with related reports as the State Registrar may require.

(d) When the State Registrar receives a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, he or she shall forward the report to the State Registrar in the state of birth, the District of Columbia, or the territory of the United States, or if the child was born in Canada, to the appropriate registration authority in that country. If the birth occurred in a foreign country, and the child was not a citizen of the United States at the time of birth, the State Registrar shall prepare a "CERTIFICATE OF FOREIGN BIRTH" as provided in Section 22-9A-12.

§ 22-9A-11.1. Issuance of a Certificate of Foreign Birth without judicial proceedings.

(a) A child who has automatically acquired United States citizenship following a foreign adoption and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, [P.L. 106-395](#), shall be exempt from the provisions of [Section 22-9A-11](#), which require a judicial report to acquire a Certificate of Foreign Birth.

(b) The State Registrar, upon written request, shall prepare a Certificate of Foreign Birth reflecting the actual date and place of birth for a child who was born in a foreign country, adopted by a United States citizen, and who has automatically acquired citizenship in accordance with the federal Child Citizenship Act upon the production of all of the following documents:

(1) The child's Certificate of Citizenship.

- (2) A certified copy of the child's foreign birth certificate and certified English translation.
 - (3) The original documents related to the foreign adoption certified by the United States Embassy abroad and certified English translation.
 - (4) The Social Security card of the child.
 - (5) A valid government issued picture identification of parent or parents, such as a passport or driver's license.
 - (6) Proof of residency of the parent or parents in the State of Alabama.
- (c) The State Registrar shall develop any necessary forms for adoptive parents to submit in order to request a Certificate of Foreign Birth.

§ 22-9A-12. New birth certificate upon adoption, legitimation, or paternity determination; availability of original certificate; contact preference form.

- (a) The State Registrar shall establish a new certificate of birth for a person born in this state upon receipt of any of the following:
- (1) A report of adoption as provided in Section 22-9A-11 or a report of adoption prepared and filed in accordance with the laws of another state, the District of Columbia, a territory of the United States, or a foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth. A new certificate of birth shall not be established if so requested by the court decreeing the adoption.
 - (2) A request that a new certificate be established upon completion of the legitimation procedure specified in Sections 26-11-2 and 26-17-6. If the name of another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or following adoption.
 - (3) A certified copy of a valid court determination of paternity that establishes the name of the father and decrees the name the child is to bear together with the information necessary to identify the original certificate of birth.
- (b) The new certificate of birth prepared as a result of subsection (a) shall be on the form in use at the time of its preparation and shall include all of the following items and other information necessary to complete the certificate:
- (1) The name of the child.
 - (2) The actual place and date of birth as shown on the original certificate.
 - (3) The names and personal particulars of the adoptive parents or of the natural parents, whichever is appropriate.
 - (4) The name of the attendant.
 - (5) The birth number assigned to the original birth certificate.
 - (6) The original filing date.

(c) The new certificate shall be substituted for the original certificate of birth in the files, and the original certificate of birth and the evidence of adoption, legitimation, or paternity determination shall not be subject to inspection except upon order of a court of competent jurisdiction. Notwithstanding the foregoing, any person 19 years of age or older who was born in the State of Alabama and who has had an original birth certificate removed from the files due to an adoption, legitimation, or paternity determination may, upon written request, receive a copy of that birth certificate and any evidence of the adoption, legitimation, or paternity determination held with the original record. The copy of the original birth certificate shall be in a form that clearly indicates it is not a certified copy and that it may not be used for legal purposes. All procedures, fees, and waiting periods applicable to non-adopted citizens born in the State of Alabama seeking copies of certificates of birth shall apply.

(d) A birth parent may at any time request from the State Registrar of Vital Statistics a contact preference form that shall accompany a birth certificate issued under subsection (c).

The contact preference form shall provide the following information to be completed at the option of the birth parent:

- (1) I would like to be contacted.
- (2) I would prefer to be contacted only through an intermediary.
- (3) I prefer not to be contacted at this time. If I decide later that I would like to be contacted, I will submit an updated contact preference form to the State Registrar of Vital Statistics. I have completed an updated medical history form and have filed it with the State Registrar of Vital Statistics.

The medical history form shall be in a form prescribed by the Department of Vital Statistics and shall be supplied to the birth parent upon request of a contact preference form from the State Registrar of Vital Statistics.

Only those persons who are authorized to process applications made under subsection (c) may process contact preference and medical history forms.

The medical history form and contact preference form are confidential communications from the birth parent to the person named on the sealed birth certificate and shall be placed in a sealed envelope upon receipt from the birth parent. The sealed envelope shall be matched with and placed in the file containing the sealed birth certificate.

The sealed envelope containing the contact preference form and medical history form shall be released to a person requesting his or her own original birth certificate under subsection (c). The contact preference form and medical history form are a private communication from the birth parent to the person named on the sealed birth certificate and no copies of the forms shall be retained by the State Registrar of Vital Statistics.

(e) Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided in Section 22-9A-19.

(f) Upon receipt of a report or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as specified by the board.

(g) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section, and the date and place of birth have been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the State Registrar as provided in Section 22-9A-9 or Section 22-9A-10 before a new certificate of birth is established. The new birth certificate shall be prepared on the appropriate delayed birth certificate form.

(h) When a new certificate of birth is established by the State Registrar, all copies of the original certificate of birth in the custody of any other party shall be forwarded to the State Registrar upon receipt of his or her request.

(i)(1) The State Registrar shall, upon request, prepare and register a certificate in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a court in this state. The certificate shall be established upon receipt of a report of adoption from the court decreeing the adoption, proof of the date and place of birth of the child, and a request from the court, the adopting parents, or the adopted person if 18 years of age or over that a certificate be prepared. The certificate shall be labeled "CERTIFICATE OF FOREIGN BIRTH" and shall show the actual country of birth. A statement shall also be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued. After registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute. Notwithstanding the foregoing, any person 19 years of age or older who has had a CERTIFICATE OF FOREIGN BIRTH prepared in the State of Alabama may, upon written request, receive a copy of any information about the adoption held in files under the jurisdiction of the State Registrar.

(2) If the child was born in a foreign country but was a citizen of the United States at the time of birth, the State Registrar shall not prepare a "CERTIFICATE OF FOREIGN BIRTH" and shall notify the adoptive parents of the procedures for obtaining a revised birth certificate for their child through the U.S. Department of State.

§ 22-9A-13. Reports of fetal death; reports of induced termination of pregnancy.

(a) A report of fetal death shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within five days after the occurrence is known if the fetus has advanced to, or beyond, the twentieth week of uterogestation.

(1) When a fetal death occurs in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.

(2) When a fetal death occurs outside an institution, the physician in attendance shall prepare and file the report.

(3) When a fetal death occurs without medical attendance, the county medical examiner, the state medical examiner, or the coroner shall determine the cause of fetal death and shall prepare and file the report.

(4) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The county where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the county of fetal death.

(b) A report of induced termination of pregnancy for each induced termination of pregnancy which occurs in this state shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, no later than 10 days after the last day of the month during which the procedure was performed.

(1) When the induced termination of pregnancy is performed in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.

(2) When the induced termination of pregnancy is performed outside an institution, the physician in attendance shall prepare and file the report.

(3) Beginning January 1, 2013, the Office of Vital Statistics shall collect the following information for all induced terminations of pregnancies in addition to information already collected; provided, that the definition of induced termination of pregnancy in [Section 22-9A-1\(5\)](#) shall be construed to include every abortion as defined in [Section 26-23B-3\(1\)](#).

a. Postfertilization age:

1. If a determination of probable postfertilization age was made, whether ultrasound was employed in making the determination, and the week of probable postfertilization age determined.

2. If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.

b. Method of abortion: Which of the following was employed:

1. Medication abortion (such as, but not limited to, mifepristone/misoprostol or methotrexate/misoprostol).
 2. Manual vacuum aspiration.
 3. Electrical vacuum aspiration.
 4. Dilation and evacuation.
 5. Combined induction abortion and dilation and evacuation.
 6. Induction abortion with prostaglandins.
 7. Induction abortion with intra-amniotic instillation (such as, but not limited to, saline or urea).
 8. Induction abortion, other.
 9. Intact dilation and extraction (partial-birth).
 10. Method not listed (specify).
- c. Whether an intra-fetal injection was used in an attempt to induce fetal demise (such as, but not limited to, intra-fetal potassium chloride or digoxin).
- d. Age and race of the patient.
- e. If the probable postfertilization age was determined to be 20 or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated 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.
- f. If the probable postfertilization age was determined to be 20 or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that 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 other available methods.
- (4) Reports of induced termination of pregnancy shall not contain the name or the address of the patient whose pregnancy was terminated, nor shall the report contain any other information

identifying the patient, except that each report shall contain a unique medical record identifying number, to enable matching the report to the patient's medical records.

(5) Individual induced termination of pregnancy reports shall be maintained in strict confidence by the Office of Vital Statistics, shall not be available for public inspection, and shall not be made available except:

a. To the Attorney General or a district attorney with appropriate jurisdiction pursuant to a criminal investigation.

b. To the Attorney General or a district attorney pursuant to a civil investigation of the grounds for an action under [subsection \(b\) of Section 26-23B-7](#).

c. Pursuant to court order in an action under [Section 26-23B-7](#).

d. Pursuant to investigations under [Section 22-9A-25](#).

e. At the request of the board or its attorney pursuant to an investigation of civil or criminal legal action related to licensure or the need for licensure of health facilities or similar investigation or legal action for failure to file reports required by this section.

f. As provided in subdivision (b)(6) of this section.

(6) The Office of Vital Statistics shall annually issue a public report providing aggregate data for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subdivision (3). Each report shall also provide aggregate data for each such item for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The Office of Vital Statistics shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an induced termination of pregnancy was performed or attempted and shall not release the names of individual physicians or other staff members employed by institutions performing induced terminations of pregnancy. The Office of Vital Statistics shall not release the number of procedures performed by any particular physician, but shall include in each public report the number of induced terminations of pregnancy, by method and week of postfertilization age, reported by each institution. Information that may not be publicly released under this subdivision shall be made available only as provided with regard to individual induced termination of pregnancy reports in subdivision (5) of this section.

(7) The State Registrar may authorize the use of other aggregate statistical data for official government use.

(c) The reports required under this section are statistical reports only and are not to be incorporated into the official records of the Office of Vital Statistics. Certified copies of these records shall not be issued by the Office of Vital Statistics. The State Registrar shall retain and safeguard all individual reports received, making them available only as provided in subdivision (b)(5) of this section.

(d) The Office of Vital Statistics, in advance of 2013 and each succeeding calendar year, shall determine whether as a result of changes in abortion practice the list of methods of abortion for reports of induced termination of pregnancy to be used during that calendar year should be modified from those listed in subdivision (3)b. of subsection (b) so as to add new methods, modify the description of methods, or delete methods no longer in use, and shall issue a public notice incorporating changes based on that determination.

(e) The Office of Vital Statistics may charge a filing fee for each report of induced termination of pregnancy required by this section calculated to be sufficient, based on the number of reports estimated to be filed, to recoup and cover the costs to the Office of Vital Statistics of fulfilling its duties under subsections (b) to (d), inclusive, of this section.

§ 22-9A-13.1. Certificate of Birth Resulting in Stillbirth.

(a) For the purposes of this section, the following words shall have the following meanings:

(1) **CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH.** A certificate issued to record and memorialize the birth of a stillborn child.

(2) **STILLBIRTH or STILLBORN.** An unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

(b) Effective January 1, 2012, the State Registrar shall issue a Certificate of Birth Resulting in Stillbirth upon the request of a parent named on a report of fetal death filed on or after January 1, 2007. A Certificate of Birth Resulting in Stillbirth shall be issued within 60 days from the date of the request.

(c) The person who is required to file a report of fetal death under [Section 22-9A-13](#), shall advise the parent of a stillborn child:

(1) That a parent may, but is not required to, request the preparation of a Certificate of Birth Resulting in Stillbirth.

(2) That a parent may obtain a Certificate of Birth Resulting in Stillbirth by contacting the State Office of Vital Statistics after requesting the certificate and paying the required fee.

(3) How a parent may contact the Office of Vital Statistics to request a Certificate of Birth Resulting in Stillbirth.

(d) The State Board of Health may adopt rules to implement and administer this section. In addition to any other information required by the rules of the State Board of Health, the certificate shall include the following:

(1) The date of the stillbirth.

(2) The county in which the stillbirth occurred.

(3) The name of the stillborn child as provided in the report of fetal death. If a name was not provided at the time of the filing of the report of fetal death, the State Registrar, upon the request of a parent listed in the report of fetal death, shall add a name to the certificate when issued.

(4) The file number of the corresponding report of fetal death.

(5) The following statement: "This certificate is not proof of live birth."

(e) The fee for the issuance of the Certificate of Birth Resulting in Stillbirth shall be the same as the fee collected for the issuance of a certified copy of any other vital record.

§ 22-9A-14. Death registration.

(a) A certificate of death for each death which occurs in this state shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within five days of the death and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is not known, but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this section. The county where the body is found shall be shown on the certificate as the county of death. If the date of death is unknown, the date the dead body was found shall be shown on the certificate as the date of death.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the county where it is first removed shall be considered as the county of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death if it can be determined.

(b) The funeral director or person acting as the funeral director who first assumes custody of the dead body shall file the certificate of death. He or she shall obtain the personal and statistical data from the next of kin or the best qualified person or source available and shall forward the certificate to the person responsible for completion of the medical certification.

(c) The physician in charge of the care of the patient for the illness or condition that resulted in death shall complete and sign the medical certification and transmit the certificate to the Office of Vital Statistics in the manner directed by the State Registrar, within 48 hours after receipt of

the certificate. In the absence of the physician, the certificate may be completed and signed by another physician designated by the physician, or the certificate may be completed and signed by the chief medical officer of the institution in which death occurred or by the physician who performed an autopsy upon the decedent. Deaths required to be reported to the county medical examiner or coroner shall be reported whether the cause is known or suspected, primary or contributory, or recent, delayed, or remote.

(d) When the death occurs with no physician in charge of the care of the patient for the illness or condition that resulted in death, the county medical examiner, if one has been appointed, the State Medical Examiner, if he or she examines the body, or if neither occurs, the coroner shall determine the cause of death. In all cases, the medical certification shall be completed and signed and the certificate forwarded to the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 48 hours after receipt of the certificate. This section shall not diminish the duty of the coroner to hold inquests.

(e) If the cause of death cannot be determined within 48 hours after receipt of the certificate, the physician, county medical examiner, State Medical Examiner, or coroner shall indicate the medical certification as "PENDING" and shall sign the certificate. Immediately after the medical or other data necessary for determining the cause of death have been made known, the physician, county medical examiner, State Medical Examiner, or coroner shall, over his or her signature, forward the cause of death to the State Registrar. If the physician has reason to believe that the case is within the jurisdiction of the county medical examiner or coroner, he or she shall immediately report the case to the county medical examiner or coroner and shall advise the funeral director of this fact. If the county medical examiner or coroner does not assume jurisdiction, the physician shall sign the medical certification.

(f) When a death occurs in an institution and the death is not under the jurisdiction of the county medical examiner or coroner, the person in charge of the institution or his or her designated representative, shall initiate the preparation of the death certificate within 24 hours of death as follows:

(1) The full name of the decedent and the date of death shall be placed on the death certificate in the designated spot.

(2) The medical certification of death and the signature of the physician shall be obtained from the attending physician.

(3) The partially completed death certificate shall be presented to the funeral director or the person acting as the funeral director within 72 hours of death.

(g) When a death is presumed to have occurred in this state but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of an order of a court of competent jurisdiction, that shall include the finding of facts required to complete the death certificate. The death certificate shall be marked "PRESUMPTIVE" and shall show on its face the date of registration and shall identify the court and date of decree.

§ 22-9A-15. Delayed registration of death.

(a) When a death occurring in this state has not been registered within the time period prescribed by subsection (a) of Section 22-9A-14, a certificate of death may be registered on a regular certificate of death as follows:

(1) If the attending physician, county medical examiner, state medical examiner, or coroner at the time of death and the attending funeral director or person who acted as the funeral director are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed one year or more after the date of death, the physician, county medical examiner, state medical examiner, coroner, or the funeral director shall state in accompanying affidavits that the information on the certificate is based on records kept in their files.

(2) In the absence of the attending physician, county medical examiner, state medical examiner, coroner, or the funeral director or person who acted as the funeral director, the certificate may be filed by the next of kin of the deceased and shall be accompanied by both of the following:

a. An affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate.

b. Two documents which identify the decedent and his or her date and place of death.

(3) In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

(4) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

(b) Certificates of death registered one year or more after the date of death shall be marked "DELAYED REGISTRATION" and shall show on their face the date of the delayed registration.

§ 22-9A-16. Authorization for final disposition.

(a) The funeral director or person acting as the funeral director who first assumes custody of a dead body shall, prior to final disposition of the body, or prior to removal of the dead body from the state, obtain authorization for final disposition of the body or removal of the body from the state. The completion of the medical certification of cause of death on the death certificate by the physician, county medical examiner, state medical examiner, or coroner shall constitute authorization. If the body is to be cremated or buried at sea, additional authorization shall be obtained from the county medical examiner, state medical examiner, or coroner.

(b) With the consent of the physician, county medical examiner, state medical examiner, or coroner who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition. Prior to removing a dead body from the place of death, the funeral director shall do either of the following:

(1) Obtain assurance from the attending physician that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death and receive permission to remove the body from the place of death.

(2) Notify the county medical examiner or coroner and obtain authorization to remove the body.

(c) Prior to final disposition of a dead fetus, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parents authorization for final disposition. In the event the parents are incompetent, unable, or unwilling to sign the documents authorizing final disposition, the institution where the fetal death occurred, or if the fetal death occurred outside an institution, any licensed hospital in reasonable proximity, shall establish a mechanism to determine the final disposition.

(d) A written authorization for final disposition issued under the law of another state or the District of Columbia which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(e) When a dead body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body was released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition.

(f) A funeral director, embalmer, or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or rules promulgated pursuant to this chapter, shall keep a record which shall identify the name of the deceased, the date and place of death, and the date, place, and manner of disposition.

(g) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus as prescribed by rules of the board.

§ 22-9A-17. Marriage registration.

(a) A record of each marriage performed in this state shall be filed with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section.

(b) The judge of probate who issues the marriage license shall prepare the record on the form or in a format prescribed and furnished by the State Registrar upon the basis of information obtained from the parties to be married.

(c) Each person who performs a marriage shall certify the fact of marriage and return the record

to the judge of probate who issued the license within 30 days after the ceremony.

(d) Every judge of probate issuing marriage licenses shall complete and forward to the Office of Vital Statistics on or before the fifth day of each calendar month the records of marriage returned to the judge of probate during the preceding calendar month.

§ 22-9A-18. Divorce registration.

(a) A record of each divorce or annulment granted by any court in this state shall be filed by the clerk, register, or clerk and register of each court with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or his or her representative on a form or in a format prescribed and furnished by the State Registrar and shall be presented to the clerk or register with the petition. In all cases, the completed record shall be prerequisite to the granting of the final decree.

(b) The clerk, register, or clerk and register shall complete and forward to the Office of Vital Statistics on or before the fifth day of each calendar month the records of each divorce or annulment decree granted during the preceding calendar month.

§ 22-9A-19. Amendment of vital records.

(a) A certificate registered under this chapter may be amended only in accordance with this chapter and rules adopted by the board to protect the integrity and accuracy of vital records.

(b) A certificate that is amended under this section shall be marked "AMENDED" except as otherwise provided in this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be made a part of the record. Additions or minor corrections may be made to certificates within one year after the date of the event without the certificate being marked "AMENDED." The board shall prescribe by rules the conditions under which additions or minor corrections may be made.

(c) Amendment of names on a birth certificate.

(1) Until the fifth birthday of the registrant, given names for a child whose birth was recorded without given names may be added to the certificate upon affidavit of both parents, or the mother in the case of a child born out of wedlock, or the father in the case of the death or incapacity of the mother, or the mother in the case of the death or incapacity of the father, or the guardian or agency having legal custody of the registrant. The certificate shall not be marked "AMENDED."

(2) Until the first birthday of the child, given names may be amended upon affidavit of both parents, or the mother in the case of a child born out of wedlock, or the father in the case of the death or incapacity of the mother, or the mother in the case of the death or incapacity of the father, or the guardian or agency having legal custody of the registrant. The certificate shall be

marked "AMENDED." After one year from the date of birth, the provisions of subdivision (c)(3) of this section shall be followed.

(3) Upon receipt of a certified copy of an order from a court with competent jurisdiction changing the name of a person born in this state, the State Registrar shall amend the certificate of birth to show the new name.

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the name of the individual has been changed, the certificate of birth of the individual shall be amended as prescribed by rules to reflect the changes.

(e) If an applicant does not submit the minimum documentation required in the rules for amending a vital record, or if the State Registrar has reasonable cause to question the validity or adequacy of the sworn statements or the documentary evidence of the applicant, the State Registrar shall not amend the vital record, unless the deficiencies are corrected.

(f) Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of an order from a court of competent jurisdiction.

§ 22-9A-20. Reproduction of vital records.

The State Registrar, to preserve vital records, may prepare typewritten, photographic, microfilm, digital, electronic, or other reproductions of certificates or reports in the Office of Vital Statistics. The reproductions, when certified by the State Registrar, shall be accepted for all legal purposes as the original records. The documents from which permanent reproductions have been made and verified may be disposed of as provided by the State Records Commission.

§ 22-9A-21. Disclosure of information from vital records.

(a) To protect the integrity of vital records, to insure their proper use, and to insure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records, or to copy or issue a copy of all or part of any record, except as authorized by this chapter and by rules of the board or by order of a court of competent jurisdiction.

(b) The State Registrar or other custodians of vital records shall not permit inspection of, or disclose information contained in vital records, or copy or issue a copy of all or part of any records unless he or she is satisfied that the applicant is authorized to obtain a copy of the record.

(1) The registrant, a member of his or her immediate family, his or her guardian, and their respective legal representatives, when acting on their behalf and for their benefit, may, in any event, obtain copies.

(2) The term "legal representative" shall include an attorney at law, attorney in fact, physician, funeral director, or other designated agent acting on behalf and for the benefit of the registrant or his or her family. The State Registrar may require written authorization that the legal representative is acting on behalf and for the benefit of the principal.

(3) Information from or copies of records shall not be provided to the natural parents of adopted children, when neither has custody, or commercial firms or agencies requesting listings of names and addresses or copies of certificates.

(4) Others may obtain information from or copies of a vital record, if they demonstrate that the information or copy is needed for the determination or protection of his or her personal or property right. The board may adopt rules to define further those who may obtain information from or copies of vital records filed under this chapter.

(c) The State Registrar may permit the use of data from vital records for statistical or legitimate research purposes, subject to conditions he or she may impose. No data shall be furnished from records for legitimate research purposes until the State Registrar has received in writing an agreement signed by a responsible agent of the research organization agreeing to conform to the conditions. Legitimate research for the purposes of this section shall mean a systematic statistical study, conforming to or in accordance with generally accepted scientific standards or principles, designed to develop or contribute to scientific knowledge, and that does not identify the persons in the study. Prior to release of data identifying any specific institution, the institution shall be notified in writing by the State Registrar that the data will be released.

(d) The State Registrar may disclose data from vital records to federal, state, county, or municipal agencies of government that request the data in the conduct of their official duties, upon proper request. Conditions for disclosure may be imposed by the State Registrar and the State Registrar may require a responsible agent of the governmental agency to sign a written agreement conforming to those conditions.

(e) Marriage and divorce certificates in the custody of the State Registrar shall be considered nonrestricted public records and any person may obtain copies of the records for any purpose upon submission of an application containing sufficient information to locate the record and payment of the required fee.

(f) When 125 years have elapsed after the date of birth or 25 years have elapsed after the date of death, the records of these events in the custody of the State Registrar shall become nonrestricted public records and any person may obtain copies of the records upon submission of an application containing sufficient information to locate the record and payment of the required fee. The records may be made available for viewing in photographic, digital, electronic, or other suitable format as provided for by rules of the board.

(g) The board is authorized to provide for a system for death reviews using vital records and information from vital records and other medical records deemed necessary for these reviews. All information relating to individuals and physicians obtained for these reviews and all results

of these reviews relating to individuals and physicians shall be deemed confidential, shall not be admissible in court for any purpose, and shall not be subject to discovery in any civil action. Nothing in this section shall limit the admissibility or discoverability of patient medical records, regularly and ordinarily kept in the course of treatment of a patient, that otherwise would be admissible or discoverable.

§ 22-9A-22. Copies or data from the system of vital statistics.

(a) In accordance with Section 22-9A-21 and any rules adopted pursuant to that section:

(1) The State Registrar and other custodians of vital records authorized by the State Registrar to issue certified copies shall upon receipt of an application issue a certified copy of vital records in his or her custody or a part of the record. The vital records may be in the form of originals, photographic, microfilm, digital, electronic, or other reproductions, or data filed by digital or electronic means. Each copy issued shall show the date of registration and copies issued from records marked "DELAYED REGISTRATION" or "AMENDED" shall be similarly marked and show the effective date. All forms and procedures used in the issuance of certified copies of vital records in this state shall be provided or approved by the State Registrar.

(2) A certified copy of a vital record or any part of the record, issued in accordance with this section, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated in the copy, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(3) The federal agency responsible for national vital statistics may be furnished copies of records or data from the system of vital statistics as it may require for national statistics, if the federal agency shares in the cost of collecting, processing, and transmitting the records or data, and the records or data are used only for purposes provided for in the agreement between the federal agency and the State Registrar. Any additional uses of the records or data shall be approved by the State Registrar.

(4) Federal, state, local, and other public or private agencies in the conduct of their official duties may, upon request and payment of a reasonable fee, be furnished copies of records or other data from the system of vital statistics for statistical or administrative purposes, if the copies of records or data are used only for purposes for which they were obtained, unless specific approval for the additional use is authorized by the State Registrar.

(5) The State Registrar may, by agreement, transmit copies of records and other reports required by this chapter to offices of vital statistics outside this state, when the records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall specify the statistical and administrative purposes for which the records may be used, and the agreement shall provide further instructions for the proper retention and disposition of the copies.

(b) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the State Registrar may match birth and death certificates, in accordance with rules of the board, and to post the facts of death to the appropriate birth certificate. Certified copies issued from birth certificates marked "DECEASED" shall be similarly marked.

(c) When the State Registrar receives information that a vital record was registered through misrepresentation or fraud, he or she may withhold the issuance of certified copies of the vital record until a determination of the facts has been made. If after investigation, the State Registrar determines that the vital record was registered through misrepresentation or fraud, he or she shall place the vital record and the evidence which supports the finding of misrepresentation or fraud in a special file. This file shall not be subject to inspection, except by order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the Office of Vital Statistics.

(d) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter or rules adopted pursuant to this chapter.

§ 22-9A-23. Fees.

(a) Fees to be paid to the Office of Vital Statistics are as follows:

(1) The fee for making any search of the records and reporting the findings or for making one certified copy of the record if found shall be fifteen dollars (\$15). If the search is made in a local registration district, the local office shall be entitled to retain the portion of this fee as prescribed by the board.

(2) The fee for each additional copy of the same record ordered at the same time shall be six dollars (\$6). If these copies are made in a local registration district, the local office shall retain the portion of these fees as prescribed by the board.

(3) The fee for issuing an authenticated or exemplified copy shall be twenty-five dollars (\$25), and shall include the certification fee of the Secretary of State.

(4) The fee for the preparation of an amendment to an original vital record and issuing a certified copy at the time it is amended shall be twenty dollars (\$20).

(5) The fee for preparation of a new birth certificate after a legitimation or adoption and issuing a certified copy at the time it is prepared shall be twenty-five dollars (\$25).

(6) The fee for preparation of a delayed certificate and issuing a certified copy at the time it is prepared shall be twenty dollars (\$20).

(7) The fee for forwarding the legal documents for an adoption granted in this state for a person born in another state, the District of Columbia, or a territory of the United States, shall be ten dollars (\$10).

(8) An additional fee of fifteen dollars (\$15) shall be added to the regular fee for non-routine, same day expedited service, and all special delivery mail that requires special attention.

(9) The State Registrar may prepare a special certificate of birth which shall be in a format that is suitable for framing or display. The fee for this special certificate of birth shall be forty-five dollars (\$45), of which seventeen dollars (\$17) shall be forwarded to the Children's Trust Fund.

(10) The State Registrar shall determine the cost, including, but not limited to, staff time, computer time, copying cost, and supplies, for processing any non-routine statistical or research project or any other non-routine service other than those described above.

(b) Applications for searches, copies, authentications, and reports shall be accompanied by the prescribed fee. Payments for special or presumptive searches, reports, and contract services may be postponed until the amount to be paid is determined.

(c) Fees collected under this section, except as provided for local registration offices and the Children's Trust Fund, shall be paid into the State Treasury to the credit of the State Board of Health and are appropriated to the board to carry out the purposes of this chapter; however, the expenditure of the sums so appropriated shall be budgeted and allotted pursuant to the Budget Management Act and Article 4 of Chapter 4 of Title 41.

(d) Notwithstanding any other provisions of this chapter, the board shall not charge a fee to any hospital in connection with this chapter.

§ 22-9A-24. Persons required to keep records and to furnish information.

(a)(1) Every person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to the institution. This record shall include information as required for the certificates of birth and death and the reports of fetal death required by this chapter. The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be part of the record.

(2) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record as provided for in subsection (e) of Section 22-9A-16.

(3) Not later than the fifth day of the month following the month of occurrence, the person in charge of each institution shall send to the Office of Vital Statistics a list showing all births,

deaths, and fetal deaths occurring in that institution during the preceding month. The lists shall be on forms or in a format prescribed by the State Registrar.

(b)(1) A funeral director who removes from the place of death, transports, or makes final disposition of a dead body or fetus shall keep a record as provided for in subsection (f) of Section 22-9A-16.

(2) Not later than the fifth day of the month following the month of occurrence, each funeral director shall send to the Office of Vital Statistics a list showing all dead bodies embalmed or otherwise prepared for final disposition or dead bodies finally disposed of by the funeral director during the preceding month. The list shall be on forms or in a format provided by the State Registrar.

(c) Not later than the fifth day of the month following the month of occurrence, each county medical examiner, state medical examiner, or coroner who investigates a death or takes charge of a dead body or is responsible for certifying the cause of death shall send to the Office of Vital Statistics a list showing all of these deaths. The list shall contain the name of the deceased and the date and place of death and shall be on forms or in a format prescribed by the State Registrar.

(d) Records maintained under this section shall be made available for inspection by the State Registrar or his or her representative upon demand.

§ 22-9A-25. Enforcement.

Each local and deputy registrar is charged with the strict and thorough enforcement of the provisions of this chapter in his or her registration district, under the supervision and direction of the State Registrar. He or she shall make an immediate report to the State Registrar of any violation of this section coming to his or her knowledge by observation, upon complaint of any person, or otherwise. The State Registrar shall thoroughly and efficiently execute the provisions of this chapter and rules of the board in every part of the state and shall possess supervisory power over local registrars and deputy registrars, to ensure the compliance with all requirements of this chapter. The State Registrar, either personally or by an accredited representative, may investigate cases of irregularity or violation of this chapter and rules of the board, and all registrars shall aid him or her, upon request, in the investigations. If the State Registrar deems it necessary, he or she shall report cases of violation of any provision of this chapter to the proper district attorney and grand jury with a statement of the facts and circumstances. The district attorney, upon receipt of the report, shall initiate and promptly pursue the necessary court proceedings against the person or corporation responsible for the violation. The Attorney General, upon request of the State Registrar, shall assist in the enforcement of this chapter and the rules of the board.

§ 22-9A-26. Penalty for violation of chapter or rules of the State Board of Health.

(a) Any person who does any of the following shall be guilty of a Class C felony:

(1) Willfully and knowingly makes any false statement in a certificate, record, or report required by this chapter or rules of the board, or in an application for an amendment to a certificate, record, or report, or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment of the report, record, or certificate.

(2) With intent to deceive and without lawful authority, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by this chapter or rules of the board, or a certified copy of the certificate, record, or report.

(3) Willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy thereof, required by this chapter or rules of the board that is any of the following:

a. Made, counterfeited, altered, amended, or mutilated.

b. False in whole or in part.

c. Relates to the birth of another person, whether living or deceased.

(4) As an employee of the Office of Vital Statistics or any district designated under Section 22-9A-4, willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception.

(5) Without lawful authority possesses any certificate, record, or report, required by this chapter or rules of the board, or copy or certified copy of the certificate, record, or report knowing same to have been stolen or otherwise unlawfully obtained.

(b) Any person who does any of the following shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$100.00 nor more than \$500.00 per violation:

(1) Willfully and knowingly fails or refuses to provide information required by this chapter or rules of the board adopted pursuant to this chapter.

(2) Willfully and knowingly finally disposes of a dead body without authorization as specified in Section 22-9A-16.

(3) Willfully and knowingly neglects or violates any of the provisions of this chapter or rules of the board, or refuses to perform any of the duties imposed upon him or her by this chapter or rules of the board.

§ 22-9A-27. Continuation of rules and forms.

All rules, forms, and procedures promulgated by the board prior to May 21, 1992 shall continue in force and effect until the forms, rules, or procedures are repealed, amended, replaced, or rescinded by action of the board through the Alabama Administrative Procedure Act, Sections 41-22-1 to 41-22-27, inclusive.

§ 22-9A-28. Applicability.

The provisions of this chapter also apply to all certificates of birth, death, marriage, divorce, or

annulment, and reports of fetal death and induced termination of pregnancy previously received by the Office of Vital Statistics and in the custody of the State Registrar or any other custodian of vital records.

Chapter 10. Nuisances Menacing Public Health, §§ 22-10-1 through 22-10-3.

§ 22-10-1. Enumeration of conditions, etc., constituting public nuisances menacing public health.

The following things, conditions and acts, among others, are hereby declared to be public nuisances per se, menacing public health and unlawful:

- (1) Animals (including fish, birds, fowls and insects), other than human beings, infected with or acting as, or likely to act as, conveyors of disease or infection whereby they are likely to become menaces to public health;
- (2) Insanitary buildings, yards, premises, places, privies, ponds, marshes, swamps and dumps which are, or are likely to become, menaces to public health;
- (3) Insanitary clothing, bedding, furniture, vehicles, containers, receptacles, appliances and equipment which are, or are likely to become, nuisances to public health;
- (4) Unwholesome, or decayed or infected meats, fish, fruits or other food or foodstuffs, medicines, drugs, beverages or drinking waters which are, or are likely to become, menaces to public health;
- (5) Such other acts, things or conditions as may, from time to time, be by the rules and regulations of the State Board of Health declared to be public nuisances per se, menacing public health;
- (6) The ownership, possession, management, control, maintenance, permitting or use of any of the things or conditions described or referred to in this section or in any rule or regulation adopted under subdivision (5) of this section;
- (7) The conducting of a business, trade, industry or occupation or the doing of a thing, not inherently insanitary or a menace to public health, in such a manner as to make it a menace, or likely to become a menace, to public health; and
- (8) The conducting of a business, trade or industry or occupation or the doing of a thing lawful, but inherently insanitary or a menace to public health, without complying with safeguards for the protection of health as may, from time to time, be prescribed by the rules and regulations of the State Board of Health.

§ 22-10-2. How and by whom nuisances to be abated.

Any such nuisance shall be abated by the county board of health and the county health officer in any of the ways provided in this chapter that may be appropriate or in any other lawful manner including abatement by a complaint. And an effort to abate by one method shall not preclude resort to any other method or methods. In litigation undertaken by such board for the abatement

of a nuisance, said litigation may be conducted in the name of said board.

§ 22-10-3. Summary destruction of property without compensation.

When such nuisance consists of one or more of the diseased animals mentioned in this chapter, or of insanitary clothing or bedding, furniture, vehicles, containers, receptacles or appliances, or of unwholesome or decayed or infected meats, fish, fruits or other foods or foodstuffs, medicines, drugs or beverages or consists of personal property of small value and which nuisance, in the opinion of the county board of health, should be abated by destroying rather than curing, cleansing or disinfecting the animal or animals or thing or material involved; or consists of equipment which by reason of its nature cannot be used without being such a nuisance; or consists of a privy of an insanitary or improper type, the county board of health shall, if after a careful investigation of the facts it considers such a course necessary for the protection of the public health, adjudicate such animal or animals, or things or material involved or such privy, as the case may be, to be such nuisance and order its summary destruction without compensation to the owner thereof; and thereupon, the county health officer shall proceed with such destruction in such manner as reasonably to avoid danger of infection.

Chapter 11A. Notifiable Diseases, §§ 22-11A-1 through 22-11A-73, 22-11A-110 through 22-11A-124.

Article 1. General Provisions.

§ 22-11A-1. State Board of Health to designate notifiable diseases and health conditions.

The State Board of Health shall designate the diseases and health conditions which are notifiable. The diseases and health conditions so designated by the Board of Health are declared to be diseases and health conditions of epidemic potential, a threat to the health and welfare of the public, or otherwise of public health importance. The occurrence of cases of notifiable diseases and health conditions shall be reported as provided by the rules adopted by the State Board of Health.

§ 22-11A-2. Persons responsible to report diseases; contents of report; confidential information; person making report immune from liability.

Each physician, dentist, nurse, medical examiner, hospital administrator, nursing home administrator, laboratory director, school principal, and day care center director shall be responsible to report cases or suspected cases of notifiable diseases and health conditions. The report shall contain such information, and be delivered in such a manner, as may be provided for from time to time by the rules of the State Board of Health. All medical and statistical information and reports required by this article shall be confidential and shall not be subject to

the inspection, subpoena, or admission into evidence in any court, except proceedings brought under this article to compel the examination, testing, commitment or quarantine of any person or upon the written consent of the patient, or if the patient is a minor, his parent or legal guardian. Any physician or other person making any report required by this article or participating in any judicial proceeding resulting therefrom shall, in so doing, be immune from any civil or criminal liability, that might otherwise be incurred or imposed. No provision of this section shall be interpreted to prevent the publication of statistical reports or other summaries provided that said reports or summaries do not identify individual persons.

§ 22-11A-3. Action of health officer upon being notified of diseases; quarantine.

Whenever the State Health Officer or his representative, or the county health officer or his representative, is notified of any person or persons afflicted with any of the notifiable diseases or health conditions designated by the State Board of Health, he shall, at his discretion, isolate or quarantine such person or persons as further provided in this article. Such quarantine shall be established and maintained in accordance with the rules adopted by the State Board of Health for the control of the disease with which the person or persons are afflicted.

§ 22-11A-4. Physician, hospital, etc., records available to Health Officer.

Any physician, hospital, laboratory, or other provider of medical services having rendered treatment, care, diagnostic or laboratory services to any person suspected of having a notifiable disease or health condition shall make his or its records on that individual readily available to the State Health Officer or his designee.

§ 22-11A-5. When State Board of Health to take charge of investigation.

The State Board of Health may take charge of the investigation of an epidemic or of the suppression thereof, or both, whenever, in the opinion of the State Health Officer, the public welfare requires such a course of action and, in that event, shall have and exercise all the power and authority that the county board of health and county health officer would have in the premises.

§ 22-11A-6. Penalty for failure to make report.

Any physician or other person designated in Section 22-11A-2 who has knowledge of a case of a notifiable disease or health condition, who refuses or willfully fails to make to the health officer, in whose jurisdiction the case is located, a full and prompt report thereof, specifying the character of the notifiable disease or health condition and the name and locality of the patient, together with such other details as may be required by the State Board of Health, shall be guilty of a misdemeanor, and upon conviction, may be fined not less than \$100.00 nor more than \$500.00.

§ 22-11A-7. Persons having notifiable disease to obey directions of health officials.

Any person reported as having any of the notifiable diseases or health conditions designated by the State Board of Health shall conform to or obey the instructions or directions given or communicated to him by the county board of health, county health officer or his designee, or State Board of Health, State Health Officer, or his designee, to prevent the spread of the disease.

§ 22-11A-8. Health officer to investigate complaints of diseases; afflicted persons to be moved to suitable place; expenses of removal.

Whenever complaint is made in writing to the health officer of a county that a person, not at his own home, is afflicted with any of the notifiable diseases or health conditions designated by the State Board of Health, such health officer shall, thoroughly and promptly, investigate said complaint. If, upon investigation, said health officer is of the opinion that said complaint is well founded, he may cause such person to be removed to such place as may have been provided for such cases in the county, city or town in which such person is found or, if there is no such place provided for such cases, then, to such place as said health officer may deem suitable, subject to the approval of the authorities of the county, city or town, as the case may be. The removal of said person shall be at the expense of said person, or, in case the person is a minor, then, at the expense of his parent or guardian or, if the person be indigent, then, at the expense of the town, city, or county, as the case may be.

§ 22-11A-9. Tuberculosis cases to be reported; contents of report; reports confidential.

Any physician who diagnoses or treats a case of active tuberculosis, the administrator of any hospital, dispensary, correctional facility or other institution in which there is a case of active tuberculosis, the person in charge of any laboratory performing a positive test for active or suspected active tuberculosis, and pharmacist dispensing anti-tuberculosis medication shall report this information to the State Health Officer, the county health officer, or their designee, in the manner provided in Section 22-11A-1. These reports shall include, at a minimum, the name of the patient and the name and address of the physician. The reports required by this section shall be confidential and shall not be subject to public inspection, subpoena, or admission into evidence in any court except proceedings brought under this article to compel the examination, treatment, commitment or quarantine of any person or upon the written consent of the patient, or if the patient is a minor, his parent or legal guardian.

§ 22-11A-10. State Board of Health to investigate reported cases of tuberculosis; voluntary treatment; probate court may order compulsory treatment and quarantine; cost of treatment; exercise of religious freedom.

Whenever the State Board of Health or its authorized representative shall discover, as a result of its own investigation or as a result of any report required by this article, that any person may be afflicted with tuberculosis, the State Board of Health, through its authorized representative, shall

investigate or further investigate the circumstances and, if after investigation, the representative of the State Board of Health is of the opinion that an active case of tuberculosis is found, he shall encourage the person infected to take voluntary treatment to meet the minimum requirements prescribed by the State Board of Health. If such afflicted person refuses voluntary treatment, then the State Board of Health, through its authorized representative, may petition the probate court to order commitment of the afflicted person for compulsory treatment and quarantine as further provided in this article. The compulsory treatment and quarantine shall be at a facility designated by the State Board of Health as a Tuberculosis Recalcitrant Treatment Center. The afflicted person shall be committed until, in the opinion of the attending physician, the afflicted person's tuberculosis is cured or said person is no longer a threat to public health. The court issuing a commitment order under this article shall retain jurisdiction of the afflicted person and may recommit said person if having been discharged, said person fails to complete the prescribed course of outpatient treatment. The cost of compulsory treatment care and maintenance of persons committed to a contract tuberculosis hospital under the provisions of this article shall be provided for by the state from any funds appropriated for the care and treatment of tuberculosis patients in a manner determined by the State Board of Health. Any funds appropriated to pay the state allocation provided for in Section 22-11A-12 may be spent for such purpose on requisitions signed by the State Health Officer. Nothing in this section shall be construed to authorize or empower the medical treatment of any person who desires treatment by prayer or spiritual means, in the exercise of religious freedom; provided, however, that such person shall be quarantined or isolated, or both, and while so quarantined or so isolated, or both, shall comply with all applicable sanitary rules, laws, and regulations.

§ 22-11A-11. Contract hospitals to admit indigent patients with chronic lung diseases; costs.

The State Board of Health, at its option, may authorize regional contract tuberculosis hospitals to admit indigent patients afflicted with chronic lung diseases other than tuberculosis. Costs for the care and treatment of indigent patients afflicted with chronic lung diseases other than tuberculosis who are treated in regional tuberculosis hospitals under the provisions of this article shall be paid in the same manner and from the same funds that the costs for care and treatment of indigent tuberculosis patients are paid.

§ 22-11A-12. Statewide outpatient clinics; State Board of Health to contract for regional tuberculosis hospitals; expenditures.

(a) It shall be the duty of the State Board of Health to assure the statewide operation of outpatient clinics necessary for the treatment and control of tuberculosis. These clinics shall make available anti-tuberculosis drugs, other tuberculosis services, and conduct a continuing search for individuals infected with tuberculosis.

(b) The State Board of Health shall have the authority to contract with accredited general hospitals to serve as regional contract tuberculosis hospitals and to determine the method of

reimbursement. The regional contract tuberculosis hospitals shall furnish the State Board of Health with such reports as are required by the board. The regional tuberculosis hospitals shall be compensated in a manner fixed by the State Board of Health.

(c) The amount of expenditure for the purpose of treatment of tuberculosis, operation of clinics for treatment and control of tuberculosis, and provision of anti-tuberculosis drugs shall be that sum provided in the general appropriation act together with any public or private grants or appropriations.

§ 22-11A-13. Sexually transmitted diseases.

Sexually transmitted diseases which are designated by the State Board of Health are recognized and declared to be contagious, infectious and communicable diseases and dangerous to public health. The State Board of Health is authorized and directed to promulgate rules for the testing, reporting, investigation and treatment of sexually transmitted diseases.

§ 22-11A-14. Cases of sexually transmitted diseases to be reported; contents of report; reports confidential; penalty for violation; measures for protection of others.

(a) Any physician who diagnoses or treats a case of sexually transmitted disease as designated by the State Board of Health, or any administrator of any hospital, dispensary, correctional facility or other institution in which a case of sexually transmitted disease occurs shall report it to the state or county health officer or his designee in a time and manner prescribed by the State Board of Health.

(b) The report shall be upon a form prescribed by the State Board of Health and, at a minimum, shall state the patient's full name, date of birth, race, sex, marital status, address, telephone number, place of employment, stage of disease, medication and amount given, and the date of onset.

(c) Any person who is charged with the responsibility of operating a laboratory which performs tests for sexually transmitted diseases as designated by the State Board of Health shall report all positive and/or reactive test results to the State Board of Health in a time and manner prescribed by the State Board of Health.

(d) The laboratory report shall be on a form prescribed by the State Board of Health which, at a minimum, shall include the patient's full name, age or date of birth, race, test results, name and address of attending physician and date of report.

(e) The reports required by this section shall be confidential and shall not be subject to public inspection or admission into evidence in any court except proceedings brought under this article to compel the examination, testing, commitment or quarantine of any person or upon the written consent of the patient.

(f) Any person violating the provisions of this section or rules made pursuant thereto shall be guilty of a misdemeanor, and upon conviction, may be fined not less than \$100.00 nor more than \$500.00.

(g) Upon receipt of a report of a case of sexually transmitted disease, the county or State Health Officer shall institute such measures as he or she deems necessary or appropriate for the protection of other persons from infection by such diseased person as said health officer is empowered to use to prevent the spread of contagious, infectious or communicable diseases.

§ 22-11A-15. Syphilis examination for marriage license; Repealed.

§ 22-11A-16. Serologic or other biologic sample required to be taken of pregnant women and of newborns.

(a) Every physician or other person permitted by law to attend a pregnant woman during gestation shall, in the case of each woman so attended, take or cause to be taken any serologic or other biologic sample of the woman as provided by the State Board of Health. Any sample shall be submitted to a laboratory approved by the board for testing for those sexually transmitted diseases for which there exists an effective vaccine or curative treatment approved by the federal Food and Drug Administration and as provided by the board.

(b) Every physician or other person permitted by law to attend a pregnant woman during delivery shall take or cause to be taken any serologic or other biologic sample of the woman and any newborn as provided by the State Board of Health. Any sample shall be submitted to a laboratory approved by the board for testing for those sexually transmitted diseases for which there exists an effective vaccine or curative treatment approved by the federal Food and Drug Administration and as provided by the board.

(c) All positive or reactive tests shall be reported as provided in Section 22-11A-14.

§ 22-11A-17. Testing of correctional facility inmates for sexually transmitted diseases; treatment; discharge of infectious inmates; victim may request results of HIV testing.

(a) All persons sentenced to confinement or imprisonment in any city or county jail or any state correctional facility for 30 or more consecutive days shall be tested for those sexually transmitted diseases designated by the State Board of Health, upon entering the facility, and any inmate so confined for more than 90 days shall be examined for those sexually transmitted diseases 30 days before release. The results of any positive or reactive tests shall be reported as provided in Section 22-11A-14. Additionally, the results of any positive or negative test for HIV of a sexual offender shall be provided to the State Health Officer or his or her designee as provided in Section 22-11A-14. The provisions of this section shall not be construed to require the testing of any person held in a city or county jail awaiting removal to a state correctional facility.

(b) The authorities of any state, county or city facility shall provide for treatment of any inmate diagnosed with a treatable sexually transmitted disease and not otherwise financially able to pay for such treatment. In the case of a discharge inmate who is infectious, a written notice shall be submitted to the State Health Officer or to the county health officer of the locality to which the prisoner is returned, setting forth the necessary facts and a record of the treatment administered while in custody.

(c) At the request of the victim of a sexual offense (as defined in Section 13A-6-60, et seq.), the State Health Department shall release the results of any tests on the defendant convicted of such sexual offense, for the presence of etiologic agent for Acquired Immune Deficiency Syndrome (AIDS or HIV) to the victim of such sexual offense. The State Health Department shall also provide the victim of such sexual offense counsel regarding AIDS disease, AIDS testing, in accordance with applicable law and referral for appropriate health care and support services.

§ 22-11A-18. Isolation of person believed to have sexually transmitted disease; such person required to report for treatment; costs; compulsory treatment and quarantine.

(a) Any person where there is reasonable cause to believe has a sexually transmitted disease or has been exposed to a sexually transmitted disease shall be tested and examined by the county or State Health Officer or his designee or a licensed physician. Whenever any person so suspected refuses to be examined, such person may be isolated or committed as provided in this article until, in the judgment of the State or county Health Officer, that person is no longer dangerous to public health. The cost of rooming and boarding such person, other than when confined to his/her own residence, shall be the responsibility of the state.

(b) The State Health Officer or county health officer shall require all persons infected with a sexually transmitted disease to report for treatment by the health officer or a licensed physician, and continue treatment until such disease, in the judgment of the attending physician is no longer communicable or a source of danger to public health. When such infected persons are unable to pay the attending physician's fees and are indigent, they shall submit to treatment at state expense. Whenever, in the judgment of the state or county health officer, such a course is necessary to protect public health, a person infected with a sexually transmitted disease may be committed or isolated for compulsory treatment and quarantine in accordance with the provisions of this article. The cost of rooming and boarding such person, other than when confined to his/her own residence, shall be the responsibility of the state.

§ 22-11A-19. Minor 12 years or older may consent to medical treatment for sexually transmitted disease; medical care provider may inform parent or guardian.

Notwithstanding any other provision of law, a minor 12 years of age or older who may have come into contact with any sexually transmitted disease as designated by the State Board of Health may give consent to the furnishing of medical care related to the diagnosis or treatment of such disease, provided a duly licensed practitioner of medicine in Alabama authorizes such

diagnosis and treatment. The consent of the minor shall be as valid and binding as if the minor had achieved his or her majority, as the case may be. Such consent shall not be voidable nor subject to later disaffirmance because of minority. The medical provider or facility of whatever description providing diagnostic procedures or treatment to a minor patient who has come into contact with any designated sexually transmitted disease, may, but shall not be obligated to, inform the parent, parents or guardian of any such minor as to the treatment given or needed.

§ 22-11A-20. Physicians to instruct persons on prevention and cure of sexually transmitted diseases.

Every physician who examines or treats a person having a sexually transmitted disease shall instruct such person in measures for preventing the spread of such disease and the necessity of treatment until cured.

§ 22-11A-21. Penalties for treating or preparing medicine without a license; penalty for person afflicted with sexually transmitted disease to transmit such disease to another person.

(a) Any person who shall treat or prescribe for any person having a sexually transmitted disease except a physician licensed to practice medicine in Alabama by the Medical Licensure Commission shall be guilty of a Class C misdemeanor.

(b) Any druggist or other person who shall sell any drug, medicine or preparation or preparations advertised, called for, labeled or intended to be used as a cure or treatment for a sexually transmitted disease, except on the written prescription of a licensed physician, shall be guilty of a Class C misdemeanor.

(c) Any person afflicted with a sexually transmitted disease who shall knowingly transmit, or assume the risk of transmitting, or do any act which will probably or likely transmit such disease to another person shall be guilty of a Class C misdemeanor.

§ 22-11A-22. Medical records of persons infected with sexually transmitted diseases confidential; penalty for release.

All information, reports and medical records concerning persons infected with sexually transmitted diseases designated by the State Board of Health shall be confidential and shall not be subject to public inspection or admission into evidence in any court except commitment proceedings brought under this article. Individual medical records may be released on the written consent of the patient. Anyone violating the provisions of this section shall be guilty of a Class C misdemeanor.

§ 22-11A-23. Any person believed exposed to diseases to be tested; any person believed afflicted shall seek and accept treatment.

Any person who the state or county health officer has reason to believe has been exposed to any of the diseases designated under this article shall be tested. Any person who the state or county health officer has reason to believe is afflicted with any of the diseases designated under this article shall seek and accept treatment at the direction of the health officer or a physician licensed to practice medicine in Alabama.

§ 22-11A-24. Commitment to Department of Public Health for compulsory treatment when person exposed or afflicted and refuses treatment.

When any person exposed to a disease or where reasonable evidence indicates exposure to a disease or infection designated under this article refuses testing or when any person afflicted with a disease designated under this article refuses treatment and/or conducts himself so as to expose others to infection, the state or county health officer or the designee may petition the probate judge of the county in which such person is located to commit him to the custody of the Alabama Department of Public Health for compulsory testing, treatment and quarantine.

§ 22-11A-25. Commitment petition -- Contents.

The petition shall be executed under oath and shall contain the name and address of the petitioner, the name and location of the person sought to be committed, the disease to which the person has been exposed or is afflicted with, and a statement of the reasons why the petitioner believes the person has been exposed or is afflicted with one of the designated diseases and the danger he poses to public health.

§ 22-11A-26. Commitment petition -- Probate judge may take sworn testimony of petitioner; petition without merit to be dismissed.

When any petition is filed, seeking to commit any person to the custody of the Alabama Department of Public Health, the probate judge shall immediately review the petition and may require the petitioner to be sworn in and to answer, under oath, questions regarding the petition and the person sought to be committed. If it appears from the face of the petition or the testimony of the petitioner that the petition is totally without merit, the probate judge may order the petition dismissed without further proceedings.

§ 22-11A-27. Commitment petition -- Notice of petition to be served; contents.

When any petition has been filed seeking to commit a person to the custody of the Alabama Department of Public Health on the ground that such person is a danger to public health and such petition has been reviewed by the probate judge, the probate judge shall order the sheriff of the

county in which such person is located to serve a copy of the petition, together with a copy of the order setting the petition for hearing, upon such person. Said notice shall include the date, time and place of the hearing; a clear statement of the purpose of the proceeding and the possible consequences to the subject thereof; the alleged factual basis for the proposed commitment; a statement of the legal standards upon which commitment is authorized; and a list of the names and addresses of the witnesses who may be called to testify in support of the petition. Said notice shall be served on the person sought to be committed at least five days prior to the date of the hearing.

§ 22-11A-28. Commitment petition -- Limitations placed upon liberty of person; probate judge determination; standard for imposing limitations; probable cause hearing; temporary treatment before final hearing.

(a) When a petition has been filed, seeking to have limitations placed upon the liberty of a person, pending the outcome of a final hearing on the merits, the probate judge shall order the sheriff of the county in which such person is located, to serve a copy of the petition upon such person and to bring such person before the probate judge instantler. When any such person against whom a petition has been filed, seeking to have limitations placed upon such person's liberty pending the outcome of a full and final hearing on the merits, is initially brought before the probate judge, the probate judge shall determine from an interview with the person sought to be committed and with other available persons, what limitations, if any, shall be imposed upon such person's liberty and what temporary treatment, if any, shall be imposed upon such person pending further hearings.

(b) No limitations shall be placed upon such person's liberty nor treatment imposed upon such person unless such limitations are necessary to prevent such person from doing substantial and immediate harm to himself or to others or to prevent such person from leaving the jurisdiction of the court. No person shall be placed in a jail or other facility for persons accused of or convicted of committing crimes unless such person poses an immediate, real and present threat of substantial harm to himself or to others, and no other appropriate public facility is available to safely detain such person.

(c) When any person sought to be committed has any limitations imposed upon his liberty or any temporary treatment imposed upon him by the probate judge, pending final hearings on such petition, the probate judge, at the time such limitations or treatment is imposed, shall set a probable cause hearing within seven days of the date of such imposition. If, at such probable cause hearing, the probate judge finds that probable cause exists that such person should be detained temporarily and finds that temporary treatment would be in the best interest of the person sought to be committed, the probate judge shall enter an order so stating and setting the date, time and place of a final hearing on the merits of the petition. The final hearing shall be set within 30 days of the filing of the petition.

§ 22-11A-29. Commitment petition -- Appointment of guardian ad litem and attorney.

At the time when any petition has been filed seeking to commit any person to the custody of the Alabama Department of Public Health, the probate judge shall appoint a guardian ad litem to represent and protect the rights of such person and shall determine if the person has the funds and capacity to secure the services of an attorney to represent him. If the person does not have the funds or capacity to secure the services of an attorney, the probate judge shall appoint an attorney, who may be the same person as the guardian ad litem, to represent him.

§ 22-11A-30. Commitment petition -- Order for person to appear for hearing and be examined by physician.

When a petition has been filed seeking to commit any person to the custody of the Alabama Department of Public Health, the probate judge shall order such person to appear at the places and times designated for hearing the petition, and may order the person to appear at designated times and places to be examined by licensed physicians. If the respondent does not appear as ordered by the probate judge, the probate judge may order the sheriff of the county in which the person is located to take the respondent into custody and compel his attendance as ordered by the probate judge.

§ 22-11A-31. Commitment petition -- Rules to apply at hearings.

At all hearings conducted by the probate judge in relation to a petition to commit any person to the custody of the Alabama Department of Public Health or such other facility as the court may order, the following rules shall apply:

- (1) The person sought to be committed shall be present unless, prior to the hearing, the attorney for such person has filed in writing a waiver of the presence of such person on the ground that the presence of such person would be dangerous to such person's health or that such person's conduct could reasonably be expected to prevent the hearing from being held in an orderly manner, and the probate judge has judicially found and determined from evidence presented in an adversary hearing that the person proposed to be committed is so mentally or physically ill as to be incapable of attending such proceedings. Upon such findings, an order shall be entered approving the waiver.
- (2) The person sought to be committed shall have the right to compel the attendance of any witness who may be located anywhere in the State of Alabama and to offer evidence including the testimony of witnesses, to be confronted with the witnesses in support of the petition, to cross-examine and to testify in his own behalf, but no such person shall be compelled to testify against himself. The attorney representing the person sought to be committed shall be vested with all rights of said person during all of the hearings if such person is not present in court to exercise his rights.
- (3) The probate judge shall cause the hearing to be transcribed or recorded stenographically, mechanically, or electronically and shall retain such transcription for a period of not less than three years from the date the petition is denied or granted and not less than the duration of any commitment pursuant to such hearing.

(4) All hearings shall be heard by the probate judge and shall be open to the public unless the person sought to be committed or his attorney requests in writing that the hearings be closed to the public.

(5) The rules of evidence applicable in other judicial proceedings in this state shall be followed in involuntary commitment proceedings.

§ 22-11A-32. Commitment petition -- Findings; rehearing; confinement when no treatment available.

(a) If, at the final hearing, upon a petition seeking to commit a person to the custody of the Alabama Department of Public Health or such other facility as the court may order, the probate judge, on the basis of clear and convincing evidence, shall find:

(1) That the person sought to be committed has been exposed or is afflicted with one of the diseases designated in this article;

(2) That the person has refused testing or voluntary treatment;

(3) That, as a consequence of the disease, the person is dangerous to himself and the health of the community;

(4) That the person conducts himself so as to expose others to the disease;

(5) That treatment is available for the person's illness if confined or that confinement is necessary to prevent further spread of the disease; and

(6) That commitment is the least restrictive alternative necessary and available for the treatment of the person's illness and the protection of public health;

Then upon such findings, the probate judge shall enter an order, setting forth his findings, granting the petition and ordering the person committed to the custody of the Alabama Department of Public Health or such other facility as the court may order.

(b) If upon rehearing, the probate judge shall find, from the evidence, that one or more of the elements required for commitment, shall no longer be applicable to the person who is the subject of the rehearing, the probate judge shall discharge the person.

(c) If the probate judge finds that no treatment is presently available for the person's illness, but that confinement is necessary to prevent the person from causing harm to the health of the community, the order committing the person shall provide that, should treatment become available during the person's confinement, such curative treatment will immediately be made available to him.

§ 22-11A-33. Probate court retains jurisdiction over person committed.

The probate court committing any person to the custody of the Alabama Department of Public Health or such other facility as the court may order shall retain jurisdiction over such person concurrently with the probate court of the county in which the person is subsequently located for

so long as the person is in custody, and the probate court committing such person may hold any hearing regarding such person at any place within the State of Alabama where such person may be located.

§ 22-11A-34. Law enforcement officers to convey person to custody of Department of Public Health; public health facilities to report on progress of persons committed.

The probate judge shall order one or more persons or law enforcement officers to convey any person committed to the custody of the Alabama Department of Public Health to such facility as designated by the department or to the custody of such other facility as the court may order, and all necessary expenses incurred by the persons or officers conveying such person shall be taxed as costs of the proceeding. Such facilities shall report to the probate judge as to the progress of all persons who have been committed therein. Such reports shall be made as often as may be ordered by the probate court.

§ 22-11A-35. Attorney and expert fees.

In any commitment proceeding, the fees of any attorney appointed by the probate judge to serve as guardian ad litem shall be set at the rates established by Section 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge; and all other costs allowable by law shall be paid by the State General Fund upon order of the probate judge.

§ 22-11A-36. Appeal of commitment order; notice of appeal; limitations to be placed upon liberty of person pending appeal.

An appeal from an order of the probate court granting a petition seeking to commit a person to the custody of the Alabama Department of Public Health or such other facility as the court may order lies to the circuit court for trial de novo unless the probate judge who granted the petition was learned in the law, in which case the appeal lies to the Alabama Court of Civil Appeals on the record. Notice of appeal shall be given in writing to the probate judge within five days after the respondent has received actual notice of the granting of the petition and shall be accompanied by security for costs, to be approved by the probate judge, unless the probate judge finds that the person sought to be committed is indigent, in which case no security shall be required. Upon the filing of a notice of appeal, the probate judge shall determine and enter an order setting forth the limitations to be placed upon the liberty of the person sought to be committed, pending appeal. Upon the filing of a notice of appeal, the probate judge shall certify the record to the clerk of the reviewing court. The petition shall be set for hearing by the reviewing court within 60 days of the date that the notice of appeal is filed in the probate court, and such hearing shall not be continued except for good cause, upon motion in writing by the person sought to be committed. The costs of the proceedings in the reviewing court shall be taxed in the same manner as in the probate court. All requirements relative to hearings in probate court shall apply to appeals heard in the circuit court.

§ 22-11A-37. Testing and treatment of inmate of correctional facility.

When there is reasonable cause to believe that an inmate of any state correctional facility or any municipal or county jail has been exposed to or is afflicted with any of the diseases designated by this article, the State or county Health Officer may petition the superintendent of the facility to isolate the inmate for compulsory testing, treatment and quarantine.

§ 22-11A-38. Notification of third parties of disease; rules; who may be notified; liability; confidentiality; disclosure of information for certain criminal proceedings; penalty.

(a) The State Committee of Public Health is hereby authorized to establish the rules by which exceptions may be made to the confidentiality provisions of this article and establish rules for notification of third parties of such disease when exposure is indicated or a threat to the health and welfare of others. All notifications authorized by this section shall be within the rules established pursuant to this subsection.

(b) Physicians and hospital administrators or their designee may notify pre-hospital transport agencies and emergency medical personnel of a patient's contagious condition. In case of a death in which there was a known contagious disease, the physician or hospital administrator or their designee may notify the funeral home director.

(c) The attending physician or the State Health Officer or his designee may notify the appropriate superintendent of education when a student or employee has a contagious disease that endangers the health and welfare of others.

(d) Physicians or the State Health Officer or his designee may notify a third party of the presence of a contagious disease in an individual where there is a foreseeable, real or probable risk of transmission of the disease.

(e) Any physician attending a patient with a contagious disease may inform other physicians involved in the care of the patient and a physician to whom a referral is made of the patient's condition.

(f) No physician, employee of the health department, hospitals, other health care facilities or organizations, funeral homes or any employee thereof shall incur any civil or criminal liability for revealing or failing to reveal confidential information within the approved rules. This subsection is intended to extend immunity from liability to acts which could constitute a breach of physician/patient privilege but for the protections of this subsection.

(g) All persons who receive a notification of the contagious condition of an individual under this section and the rules established hereunder, shall hold such information in the strictest of

confidence and privilege and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

(h) Notwithstanding the provisions of this section or any other provisions of law, the State Health Officer or his or her designee shall under the circumstances set forth below disclose such information as is necessary to establish the following: That an individual is seropositive for HIV infection, confirmed by appropriate methodology as determined by the Board of Health; that the individual has been notified of the fact of his or her HIV infection; and that the individual has been counseled about appropriate methods to avoid infecting others with the disease. Such information shall be provided only under either of the following circumstances:

(1) In response to a subpoena from a grand jury convened in any judicial circuit in the state, when such a subpoena is accompanied by a letter from the Attorney General or an Alabama district attorney attesting that the information is necessary to the grand jury proceedings in connection with an individual who has been charged with or who is being investigated for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected. Prior to release of such evidence to the grand jury, such evidence shall be reviewed in camera by a court of competent jurisdiction to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary for the grand jury proceedings.

(2) In response to a subpoena from the State of Alabama or the defendant in a criminal trial in which the defendant has been indicted by a grand jury for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected, and, if subpoenaed by the State of Alabama, such material has previously been presented to the appropriate grand jury for review pursuant to subdivision (1), above. Prior to the introduction of such evidence in a criminal trial, it shall be reviewed by the court in camera to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary to prosecute or defend the criminal matter.

(i) Nothing in this section shall be construed to mean a physician, hospital, health department, or health care facility or employee thereof will be under any obligation to test an individual to determine their HIV infection status.

(j) Except as provided in this section, any information required pursuant to this article shall remain confidential.

(k) Any person violating any provision of this section or approved guidelines shall be guilty of a Class "C" misdemeanor.

§ 22-11A-39. Notification of pre-hospital agencies who assisted in delivering person with infectious disease to hospital.

The chief administrator, or his designee, of a hospital, pursuant to rules promulgated by the Department of Public Health, shall notify all pre-hospital agencies who assisted in handling and delivering a person to a hospital, if the hospital learns said person has an infectious disease. The State Board of Health shall designate what shall constitute an infectious disease for the purpose of this section. For the purposes of this section the term "hospital" shall have the meaning prescribed by Section 22-21-20. For the purposes of this section the term "pre-hospital agencies" shall include but shall not be limited to paramedics, firemedics, firemen, law enforcement officers, ambulance drivers, medical personnel, and similar emergency personnel.

§ 22-11A-40. Laboratory tests for AIDS and other diseases; fees; personnel.

All laboratory tests for acquired immune deficiency syndrome (AIDS) or like test for viruses that lead to the development of AIDS or any other notifiable disease that may be designated by the State Board of Health, shall be a test approved by the board. When approving such test the Board of Health shall develop a proficiency testing program necessary to ascertain the qualifications and competency of the personnel conducting the test. The State Board of Health is authorized to charge a reasonable fee to offset the cost of the proficiency testing program. All fees collected shall be deposited to the credit of the State Board of Health for the purpose of carrying out the provision of Chapter 11A of Title 22. Any laboratory or personnel thereof who reports the test results of any of the diseases referenced in this section when performed by any methods or procedures not approved by the Board of Health shall be guilty of a Class C misdemeanor.

§ 22-11A-41. Approval of testing or diagnostic kits.

All individual testing and diagnostic kits or like kits for the identification of any of the designated notifiable diseases in Chapter 11A of Title 22 that are advertised, promoted or marketed for sale to the general public in the state shall be approved by the State Board of Health.

Article 2. Human Immunodeficiency Virus and Aids.

§ 22-11A-50. Definitions.

As used in this article, the following words and phrases shall have the following meanings respectively ascribed to them, unless the context clearly indicates otherwise:

- (1) HIV. Human Immunodeficiency Virus.
- (2) AIDS. Acquired Immune Deficiency Syndrome.

(3) HIV INFECTION. Infection with human immunodeficiency virus as determined by antibody tests, culture or other means approved by the State Board of Health.

§ 22-11A-51. Informed consent required for HIV testing.

(a) Before any HIV test is performed, the health care provider or testing facility shall obtain from the person a voluntary informed consent to administer the test.

(b) A general consent form should be signed for medical or surgical treatment which specifies the testing for HIV infection by any antibody tests or other means and may be considered as meeting the standard of informed consent in subsection (a).

§ 22-11A-52. Informed consent implied under certain circumstances.

When a written consent for HIV testing has not been obtained, consent shall be implied when an individual presents himself to a physician for diagnostic treatment or other medical services and the physician shall determine that a test for HIV infection is necessary for any of the following reasons:

- (1) Said individual is, based upon reasonable medical judgment, at high risk for HIV infection;
- (2) Said individual's medical care may be modified by the presence or absence of HIV infection;
- (3) The HIV status of the said individual shall be necessary in order to protect health care personnel from HIV infection.

§ 22-11A-53. Notification of positive test result; counseling; referral to appropriate health care services; explanation of individual responsibility.

An individual tested shall be notified of a positive test result by the physician ordering the test, his designee, a physician designated by the applicant or by the Department of Public Health. Such notification shall include:

- (1) Face-to-face post-test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which may spread the disease to others;
- (2) Information as to the availability of appropriate health care services, including mental health care, and appropriate social and support services; and
- (3) Explanation of the benefits of locating, testing and counseling any individual to whom the infected individual may have exposed the HIV virus and a full description of the services of public health with respect to locating and counseling all such individuals.

§ 22-11A-54. Confidentiality.

A health care or other testing facility shall maintain confidentiality regarding medical test results with respect to the HIV infection or a specific sickness or medical condition derived from such infection and shall disclose results only to those individuals designated by this article or

otherwise as authorized by law.

Article 3. Infected Health Care Worker.

§ 22-11A-60. Definitions.

As used in this article, the following words shall have the following meanings:

- (1) **HEALTH CARE FACILITY.** A hospital, nursing home, ambulatory surgical center, outpatient surgical facility, ambulance service, rescue squad, paid fire department, volunteer fire department, or any other clinic, office, or facility in which medical, dental, nursing, or podiatric services are offered.
- (2) **HEALTH CARE WORKER.** Physicians, dentists, nurses, respiratory therapists, phlebotomists, surgical technicians, physician assistants, podiatrist, dialysis technicians, emergency medical technicians, paramedics, ambulance drivers, dental hygienists, dental assistants, students in the healing arts, or any other individual who provides or assists in the provision of medical, dental, or nursing services.
- (3) **HEPATITIS B VIRUS (HBV) INFECTION.** The presence of the HBV as determined by the presence of hepatitis B(e) antigen for six months or longer or by other means as determined by the State Board of Health.
- (4) **HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION.** The presence of antibodies to Human Immunodeficiency Virus as determined by enzyme immunoassay and Western Blot or the presence of the HIV infection as determined by viral culture, or by other means as determined by the State Board of Health.
- (5) **INFECTED HEALTH CARE WORKER.** A health care worker infected with HIV or HBV as defined herein.
- (6) **INVASIVE PROCEDURES.** (a) Those medical or surgical procedures characterized by the digital palpation of a needle tip in a body cavity or by the simultaneous presence of the health care worker's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site.
(b) Invasive dental procedures shall include those that provide the opportunity for an intraoral percutaneous injury to the dental health care worker and could result in the blood of the health care worker coming in contact with the blood or mucous membrane of the patient as adopted by the Board of Dental Examiners in rules developed pursuant to Section 22-11A-70.
(c) These procedures shall not include physical examinations; blood pressure checks; eye examinations; phlebotomy; administering intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; vaginal, oral, or rectal exams; endoscopic or bronchoscopic procedures; or placing and maintaining peripheral and central intravascular lines, nasogastric tubes, endotracheal tubes, rectal tubes, and urinary catheters.

§ 22-11A-61. Reporting of infected worker to State Health Officer.

(a) Any health care worker infected with HIV or HBV who performs an invasive procedure shall notify the State Health Officer, or his or her designee, of the infection in a time and manner prescribed by the State Board of Health.

(b) Any physician providing care to an infected health care worker shall notify the State Health Officer, or his or her designee, about the presence of the infection in the health care worker in a time and manner prescribed by the State Board of Health.

§ 22-11A-62. Performing invasive procedures.

No health care worker having knowledge that he or she is infected with either HIV or HBV shall perform or assist in the performance of an invasive procedure unless and until he or she has notified the State Health Officer, as provided in Section 22-11A-61, and agrees to cooperate with any investigation authorized in Section 22-11A-63 and any necessary practice modifications.

§ 22-11A-63. Investigation by State Health Officer.

(a) Upon notification of the existence of an infected health care worker, the State Health Officer shall undertake an investigation of the practice of the health care worker. In the investigation, the State Health Officer shall seek advice of individuals and organizations deemed necessary. The investigation shall determine if the infected health care worker performs invasive procedures. If the health care worker is determined not to perform invasive procedures, no review panel shall be established, no restrictions shall be placed on his or her practice, and all information obtained in the investigation shall be confidential as provided for in Section 22-11A-69. If the infected health care worker is determined to perform invasive procedures, the State Health Officer shall cause an expert review panel to be formed. To the extent possible, the review shall be conducted so that the identity of the health care worker shall not be disclosed to the expert review panel. However, disclosure of the health care worker's identity shall be made when any member of the review panel shall deem it necessary to make a recommendation to the State Health Officer or by the attendance of the infected health care worker at the expert review panel.

(b) The expert review panel may include the physician of the infected health care worker, and shall include the following:

- (1) A health care worker with expertise in procedures performed by the infected health care worker chosen by the licensing board of the health care worker, if licensed.
- (2) A physician appointed by the State Health Officer with expertise in infectious diseases other than one providing care to the infected health care worker.
- (3) A public health physician appointed by the State Health Officer.

(4) Two representatives of the licensing board of the infected health care worker, if licensed, and if the health care worker's practice is institutionally based, a representative of the affected institution appointed by the institution.

(5) Other individuals determined necessary by the State Health Officer.

(c) The expert review panel formed pursuant to this section shall review the overall practice and procedures performed by the infected health care worker and shall consider:

(1) The procedures performed by the infected health care worker.

(2) The adherence to universal precautions by the infected health care worker.

(3) The past history of the health care worker of occupational injury while performing the invasive procedures.

(4) Any prior evidence of the health care worker related to patient transmission of HIV or HBV.

(5) The presence of conditions such as dermatitis, dementia, neuropathy, or other conditions that may increase the risk of transmission.

(6) Current Centers for Disease Control and Prevention guidelines on the management of infected health care workers.

(d) The performance of invasive procedures alone shall not present sufficient cause to limit the practice of the infected health care worker. The health care worker is entitled to be present at meetings of the expert review panel and to present any information pertinent to the panel deliberations. All meetings of the expert review panel shall be held in executive session and shall not be open to the public.

(e) The expert review panel shall recommend to the State Health Officer limitations, if any, on the practice of the infected health care worker that are reasonable and necessary to protect the patients of the health care worker and the public. The expert review panel shall also provide recommendations to the State Health Officer about the need to notify patients who previously may have had an invasive procedure performed by an infected health care worker. The State Health Officer shall accept the recommendations of the expert review panel and issue a final order based on the recommendations.

(f) The State Health Officer shall provide a written final order to the infected health care worker specifying those restrictions, limitations, conditions, or prohibitions with which the infected health care worker shall comply in order to continue to engage in medical, dental, podiatric, or nursing practice, or to continue to be employed at a health care facility. If restrictions or conditions limit the practice of the health care worker, the administrator of the institution in which the health care worker practices, the employer of the infected health care worker, and the appropriate licensing board of the infected health care worker shall be provided a copy of the final order of the State Health Officer. For health care workers no longer performing invasive procedures, the final order shall include those notifications as may have been deemed necessary in Section 22-11A-69.

(g) The final order of the State Health Officer may be appealed to the State Committee of Public Health by delivery of written notice of appeal to the State Health Officer not more than 30 days after the date of the State Health Officer's final order. The appeal may be heard by the State Committee of Public Health in its entirety or may be assigned to an administrative law judge or hearing officer for trial and recommended decision. All hearings, administrative proceedings, and deliberations of the committee in connection with the appeal shall be held in executive session and shall not be open to the public. The committee shall accept, modify, or reject the final order of the State Health Officer.

§ 22-11A-64. Appeal process.

(a) Any health care worker who has appealed the State Health Officer's final order to the State Committee of Public Health and who is aggrieved by the outcome may appeal that decision by filing a notice of appeal in the circuit court of his or her county of residence or in the Circuit Court of Montgomery County within 30 days of the issuance of the final decision of the State Committee of Public Health.

(b) The health care worker may be represented by counsel or may participate in proceedings in the court on his or her own behalf. If the health care worker elects to represent himself or herself, the pleadings, documents, and evidence filed with the court shall be liberally construed to do substantial justice. The court shall provide assistance to the health care worker in preparing and filing the notice of appeal and shall take those steps that are necessary to keep the health care worker's identity confidential. The assistance may be provided by court personnel.

(c) The court shall consider an application for stay of the final decision of the State Committee of Public Health under the same standard applicable to an application for preliminary injunction. In no event shall a stay be granted on the ex parte application of an appealing health care worker, unless notice and opportunity to be heard are waived by the State Committee of Public Health. Stays erroneously granted on ex parte application shall be void. No bond or security shall be required in the event a stay is granted.

(d) The appeal shall be conducted by the court without a jury and shall be confined only to the administrative record and the following:

(1) Evidence which either party can demonstrate was erroneously denied entry into the record.

(2) Evidence which was not available to be offered into the record because it had not been discovered by the time of the administrative proceedings and could not have been discovered through reasonable diligence.

(3) Evidence not offered in the administrative proceedings because of excusable neglect or previous unavailability.

(4) Evidence excluded or not offered during the administrative proceedings because of fraud or misconduct in the proceedings not caused by the party seeking introduction of the evidence.

(e) The court may exclude from its record any evidence erroneously entered into the administrative record. Hearsay evidence rules may be disregarded in the discretion of the trial court when the interests of justice require.

(f) The final decision of the State Committee of Public Health shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the committee as to the weight of the evidence on questions of fact. The court may affirm the decision of the committee or remand the case for taking additional testimony or evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the final order, equitable or legal, including declaratory relief, if the court finds that any of the following substantial rights of the appealing health care worker have been prejudiced because the final decision:

- (1) Violates constitutional or statutory provisions.
- (2) Exceeds the authority granted by this article.
- (3) Violates a pertinent rule adopted pursuant to this article.
- (4) Was made upon unlawful procedure.
- (5) Is affected by other error of law.
- (6) Is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.
- (7) Is arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(g) Unless the court affirms the final decision of the State Committee of Public Health, the court shall set forth in a written document, which shall become a part of the record, the reasons for its decision. The proceedings shall be recorded, and if there is an appeal, a transcript shall be prepared immediately.

(h) A confidential and anonymous appeal shall be available to either party aggrieved by the decision of the circuit court.

(i) All proceedings under this section shall be confidential and anonymous. In all pleadings or court documents, the infected health care worker shall be identified only by initials or a pseudonym. The Alabama Supreme Court shall issue any additional rules it deems necessary to assure that appeals under this section are handled in a confidential and anonymous manner.

(j) Notwithstanding any language to the contrary in the Alabama Administrative Procedure Act, this article shall take precedence and shall govern in the event there is a conflict between the Alabama Administrative Procedure Act and this article. In all other respects, appeals shall be governed by the Alabama Administrative Procedure Act.

§ 22-11A-65. Monitoring of practice of infected health care worker.

The State Health Officer shall cause the infected health care worker's practice to be reviewed at intervals established by the expert review panel but not less than annually. The review shall verify the compliance with any restrictions or conditions on the infected health care worker's practice as established pursuant to subsection (f) of Section 22-11A-63. For infected health care workers for whom no restrictions have previously been necessary, the review shall determine if, based upon factors identified in subsection (c) of Section 22-11A-63, restrictions are necessary. The findings of any review shall be forwarded to the State Health Officer pursuant to Section 22-11A-63 who shall forward evidence of noncompliance with previously established restrictions to the appropriate licensing board or to the employer of the infected health care worker if he or she does not have a professional license. If the review determines that practice restrictions may be necessary for an infected health care worker for whom practice restrictions had not been previously necessary, the State Health Officer shall convene an expert review panel as provided in Section 22-11A-63.

§ 22-11A-66. Violations.

In addition to any other law or regulation, it shall be grounds for the revocation, suspension, or restriction of the professional license of any health care worker who is infected with HIV or HBV if the infected health care worker is found to be practicing in violation of this article.

§ 22-11A-67. Records and information necessary to assist investigation.

(a) Any health care worker found to have HBV or HIV infection and any health care facility at which an infected health care worker is employed or practices shall make available to the State Board of Health, and to the expert review panel, any and all patient medical records and other records requested by those groups, except that records or documents greater than three years old shall not be provided.

(b) The following persons and facilities shall provide to the State Board of Health and the expert review panel all requested documents or records three years old or less:

- (1) Any person having knowledge of a health care worker diagnosed as infected with HIV or HBV infection.
- (2) The administrator of any health facility having knowledge of a health care worker diagnosed as infected with HIV or HBV infection.
- (3) Any person serving as the guardian of or the conservator of any health care worker diagnosed with HIV or HBV infection, or any person who is the administrator or executor of the estate of any health care worker diagnosed with HIV or HBV infection.
- (4) Any person serving as the custodian of patient records of any HBV or HIV infected health care worker.
- (5) Any facility employing a worker diagnosed with HIV or HBV infection.

(c) The hospital or other individual or organization providing records may collect the usual fee for copies of records or documents.

§ 22-11A-68. Immunity from liability for those involved in investigation.

(a) Members and staff of the State Board of Health, the State Committee of Public Health, the Board of Medical Examiners, the Medical Licensure Commission, the Board of Nursing, the Board of Dental Examiners, the Board of Podiatry, physicians, hospitals, other health care facilities, and other entities and persons required to report or furnish information under this article and any expert review panels, consultants to any expert review panel, and agents and employees of the Alabama Department of Public Health shall not be subject to civil or criminal liability for making reports or furnishing any information required by this article or for actions taken or actions not taken in the line and scope of official or required duties during their investigations, hearings, rulings, and decisions.

(b) All information collected during the investigation of an infected health care worker is privileged and shall be released in one of the following ways only:

(1) To professional licensing boards, employers, and patients in a manner provided elsewhere in this article, and to employees, agents, and consultants of the Department of Public Health, provided that any release of information under this subsection shall conform to rules adopted by the Board of Health and shall be restricted to individuals with a legitimate need to know the information.

(2) Upon the lawful order of a court of competent jurisdiction. The information shall be released only upon a finding by the court that the interest of the party applying for the information outweighs the privacy interest of any individuals identified, and the public interest and the interest of the Board of Health in safeguarding the confidentiality of the information. No order shall be issued without notice and an opportunity to be heard by the Board of Health. Upon application by the Board of Health, the court shall also afford an opportunity to be heard by any individual identified in the information, who may be represented by counsel anonymously. Any order issued ex parte or without an opportunity for a hearing as provided in this subsection shall be void unless the hearing is waived by the affected parties. The court may examine the information in camera before deciding upon the terms of its release. Any order releasing the information shall include any terms the court finds are necessary to protect the legitimate privacy interests of identified persons and shall include an additional protective order specifying the individuals to whom the information may be released and enjoining the individuals from releasing it to any other persons. An individual violating the court order may be punished for civil and criminal contempt.

(c) Any individual releasing information in violation of subsection (b) of this section shall not be exempt from liability for the release of the information. Any person providing information to the Department of Public Health in connection with an investigation conducted hereunder shall not

be subject to liability for providing records or other information which the individual knows or reasonably believes to be truthful.

§ 22-11A-69. Confidentiality standards; uses of information gained during investigation.

(a) The records, proceedings, deliberations, and documents related to the investigation and review of any infected health care worker are confidential and shall be used by committees, licensing boards of licensed health care workers, panels, and individuals only in the exercise of their official duties and shall not be public records nor be admissible in court for any purpose nor subject to discovery in any civil action except appeals governed by Sections 22-11A-64 and 22-11A-65 and appeals from adverse professional license determinations made pursuant to Sections 22-11A-66 and 22-11A-72(a). Information gained during the investigation of an infected health care worker and the decision about restriction of practice of an infected health care worker shall be made available to the appropriate licensing board and to the employer of an infected health care worker and may be used by the licensing board in any subsequent administrative hearing or procedure.

(b) However, nothing in this article shall preclude the notification of patients who have had an invasive procedure performed by an infected health care worker when deemed necessary by the State Health Officer to protect the patients of the health care worker.

(c) Any person violating the confidentiality provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than \$50 nor more than \$500.

(d) Under no circumstances shall disclosure of the identity of the infected health care worker to members of the expert review panel pursuant to Section 22-11A-63 constitute a violation of the confidentiality provisions of this section.

§ 22-11A-70. Promulgation of rules for administration.

(a) The State Board of Health may adopt rules necessary for the administration of this article. The State Board of Health, the Board of Medical Examiners, the Medical Licensure Commission, the Board of Dental Examiners, the Board of Nursing, and the Board of Podiatry may each adopt rules governing professional licensure determinations made under the provisions of this article.

(b) The State Board of Health may institute a civil action in any circuit court in the state to seek an extraordinary writ compelling compliance with this article or any rule or order promulgated or issued pursuant to this article. Those civil actions shall have preferred or expedited scheduling and hearing by the circuit courts.

§ 22-11A-71. Entitlement to costs.

Individuals serving on review panels, or otherwise providing consultation or assistance to the State Health Officer in the enforcement of this article shall be entitled to mileage and per diem as provided by law.

§ 22-11A-72. Penalties.

(a) It shall be grounds for revocation, suspension, or restriction of the professional license of any licensed infected health care worker who shall be found to perform invasive procedures and shall have failed to notify the State Health Officer as provided in Section 22-11A-61.

(b) Any physician providing care to an individual known to the physician to be an infected health care worker who fails to report the infected health care worker to the State Health Officer as provided in Section 22-11A-61 shall be guilty of a Class C misdemeanor and, upon conviction, shall be punished as provided by law.

(c) Any individual who deliberately fails to provide records under his or her control or who falsifies those records shall be guilty of a Class C misdemeanor and, upon conviction, shall be punished as provided by law.

§ 22-11A-73. Reporting requirements; knowledge of infection through application.

Nothing in this article is intended to impose any reporting requirements on life, health, or disability income insurers who learn that an applicant or insured is infected with HIV or HBV solely through the application, underwriting, or claims processes, which insurer may have no means of knowing or verifying that a particular applicant or insured is a health care worker within the meaning of this article.

Article 5. Patient Infection Data Reporting and Collection.

§ 22-11A-110. Short title.

This article shall be cited and known as the “Mike Denton Infection Reporting Act.”

§ 22-11A-111. Definitions.

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

(1) Department. The Alabama Department of Public Health.

(2) Board. The State Board of Health.

(3) Council. The Health Care Data Advisory Council.

(4) Data. Patient information submitted by health care facilities to the Department of Public Health necessary to carry out the requirements of this article. The information required to be reported by health care facilities to the department shall be based upon the Federal Centers for Disease Control and Prevention's National Healthcare Safety Network definitions of hospital-acquired infections and the guidelines for reporting.

(5) Health care facility. General, critical access, and specialized hospitals licensed pursuant to Section 22-21-20.

(6) Health care facility acquired infections. A localized or systemic condition that:

- a. Results from adverse reaction to the presence of an infectious agent or agents or its toxins.
- b. Was not present or incubating at the time of admission to the health care facility.

§ 22-11A-112. Health care facility acquired infection data collection and dissemination.

(a) The board, upon consultation with and approval of the council, shall establish and maintain a system for the protection, collection, and dissemination of health care facility acquired infection data.

(b) The health care facility acquired infection data collection, and dissemination shall become operational within 12 months after the State Health Officer certifies to the Governor in writing that the department has sufficient funds to finance its development, implementation, and operation.

(c) The department may contract for any services needed to carry out the provisions of this article.

§ 22-11A-113. Rules and regulations governing implementation.

By August 1, 2010, the board, after consultation with and the approval of the council, shall promulgate all rules and regulations pursuant to the Administrative Procedure Act necessary to implement the provisions of this article.

§ 22-11A-114. Reporting categories.

(a) All general, critical access, and specialized hospitals licensed pursuant to Section 22-21-20, shall report data on health care facility acquired infections for the specific clinical procedures as recommended by the council and defined by the department, in the following categories: Surgical site infections; ventilator associated pneumonia and central line related bloodstream infections.

(b) The board may promulgate rules to require health care facilities licensed pursuant to Section 22-21-20, to collect data on health care facility acquired infection rates either in lieu of or in addition to the categories specified in this section.

§ 22-11A-115. Submission of first report.

Within one year of the certification by the department, health care facilities shall make the first report due under this article. The board shall specify by rule the types of information on patients with health care facility acquired infections which shall be submitted and the method of submission. The first report due under this article submitted by health care facilities shall only be required to cover those persons provided services during the immediately preceding three months' time period.

§ 22-11A-116. Confidentiality of information.

Individual patient information submitted to the department under the provisions of this article shall not be public information. Reports and studies prepared and released by the department based upon such data shall be public information. Reports and studies prepared by the department shall be statistically risk adjusted using a generally accepted formula for such adjustments to account for variations in patient morbidity and diagnoses. The department shall not release any information obtained from the data in a form which could be used to identify a patient. The department may authorize the use of the data redacted to prevent the release of confidential patient information by legitimate research organizations, so long as patient confidentiality is maintained.

§ 22-11A-117. Studies and publication.

The department may undertake a reasonable number of studies and publish information in collaboration with licensed health care providers based upon the data obtained pursuant to the provisions of this article. One of the purposes for such studies will be to provide specific comparative health care facility acquired infection rates. The department shall allow all health care facilities that have submitted data which will be used in any report to review and comment on the report prior to its publication or release for general public use. The department shall

include comments of a health care facility, at the option of the health care facility, in the publication, if the department does not change the publication based upon those comments.

§ 22-11A-118. Health Care Data Advisory Council.

(a) There is established the Health Care Data Advisory Council to assist in developing regulations and standards necessary to implement the provisions of this article, to review and serve as consultants to the board on matters related to any reports or publications prior to a report or publication release and to serve as consultants to the board on matters relating to the protection, collection, and dissemination of health care facility acquired infection data.

(b) The council shall consist of 18 members and be constituted in the following manner:

(1) Six hospital members to be appointed by the Alabama Hospital Association, two of which shall be infection control professionals.

(2) Three members to be appointed by the Medical Association of the State of Alabama.

(3) Two members to be appointed by the Business Council of Alabama, at least one of whom represents a small business, all of whom are purchasers of health care, and none of whom are primarily involved in the provision of health care or health insurance.

(4) One member to be appointed by the Mineral District Society.

(5) One consumer member who is not a health care professional or does not provide health insurance or an agent thereof to be appointed by the Governor.

(6) One member to be appointed by Blue Cross/Blue Shield of Alabama.

(7) One member to be appointed by the Alabama Association of Health Plans.

(8) One member to be appointed by the State Health Officer who is an active member of the Association for Professionals in Infection Control, licensed to practice in the State of Alabama, and currently practicing in a clinical setting.

(9) One member to be appointed by the Public Education Employees' Health Insurance Board.

(10) One member to be appointed by the State Employees' Insurance Board.

(11) The State Health Officer shall act as chair of the board, without a vote, except where there is a tie vote of the other board members present at a meeting.

(c) The council membership shall reflect the racial, gender, geographic, urban and rural, and economic diversity of the state.

(d) The terms of the appointed members shall be staggered as follows: The State Health Officer shall divide the members into two equal groups. The members of the first group shall be appointed for an initial term of two years. The members of the second group shall be appointed for an initial term of four years. Thereafter, the term of office of each member shall be for four years. A member may serve two consecutive terms. A member shall serve until a successor is

appointed. If a vacancy occurs, the original appointing authority shall fill the vacancy for the remainder of the unexpired term.

(e) The council shall meet within 30 days after the appointment of the council membership and establish procedures and other policies necessary to carry on the business of the council. A quorum shall be a majority of the appointed members. All meetings of the council shall be announced in advance and conducted pursuant to the Open Meetings Act, found at Section 36-25A-1, et seq.

(f) The members of the council shall not receive a salary or per diem allowance for serving as members of the council, but shall be entitled to reimbursement for expenses incurred in the performance of the duties of the office at the same rate allowed state employees pursuant to general law.

(g) The council may appoint a technical advisory committee if desired. The technical advisory committee members do not have to be members of the council.

(h) The State Health Officer or his or her designee shall be an ex officio member and chair of the board without vote, except where there is a tie vote of the other board members present at a meeting.

§ 22-11A-119. Rules and regulations governing penalties.

The board shall promulgate rules and regulations developed pursuant to the Administrative Procedure Act for certain civil monetary penalties for health care facilities which substantially fail to comply with the provisions of this article.

§ 22-11A-120. Rules and regulations governing dissemination and costs.

The board shall promulgate rules and regulations pursuant to the Administrative Procedure Act providing for the dissemination and costs of reports and publications to any party deemed appropriate by the department.

§ 22-11A-121. Use of data.

(a) The department shall utilize the data and information received for the benefit of the public.

(b) Individual patient data submitted to the department by health care facilities pursuant to this article shall at all times remain confidential and privileged from discovery. This article does not

expand or repeal any protection from discovery, privilege, or confidentiality for patient specific information that exists by statute, regulation, or decision by a court of final jurisdiction.

§ 22-11A-122. Enforcement.

The department may bring civil actions in any court of competent jurisdiction, collect civil monetary penalties, and enforce compliance with this article or any requirement or appropriate request of the department made pursuant to this article.

§ 22-11A-123. Priority of federal program.

This article shall no longer have any force or effect and shall not be enforceable after the department determines that there has been an enactment of a United States government program for collecting and disseminating health care facility acquired infection data which mandates, at a minimum, the reporting, collection, and dissemination of the same categories of data required in this article.

§ 22-11A-124. Construction.

This article shall be construed or interpreted as being in addition to other laws on the subjects covered by this article.

Chapter 11B. Exchange of Immunization Status Data, §§ 22-11B-1 through 22-11B-4.

§ 22-11B-1. Health care providers upon request required to give immunization status of patients.

(a) Notwithstanding any of the confidentiality provisions in Chapter 11A of this title, or any other provisions of law, every public and private health care provider shall, upon request of the persons or entities herein identified, provide information concerning the immunization status of any patient in accordance with rules promulgated by the State Board of Health to the following persons and entities:

- (1) Other public and private health care providers.
- (2) Health care insurers of all descriptions.
- (3) The Alabama Medicaid Agency.
- (4) Individuals and organizations with a need to verify the immunization status of persons in their care, custody, or enrollment, including but not limited to, the chief executive officer, or a designee of the officer, of a public or private day care center, school, or postsecondary educational institution.

(b) The authorization granted pursuant to this chapter shall be exercised solely for the purpose of implementing and operating proper immunization programs as determined by the State Board of Health and for updating or verifying the immunization status of individuals in the care, custody, or enrollment of the person requesting or accessing the information pursuant to 42 C.F.R., Section 431.302, Subpart F, safeguarding information pertaining to Medicaid recipients.

§ 22-11B-2. Immunization registry.

Pursuant to and in furtherance of the purposes of this chapter, the State Board of Health is authorized to create and maintain an immunization registry. The immunization registry is the central collection of data and reports concerning a vaccine dose or doses administered to a person by a provider. The nature of the immunization information contained in this registry shall be determined by rule of the State Board of Health and shall be obtained from clinic records, billing data and information, and vital or any other records owned and controlled by the State Board of Health and the Alabama Medicaid Agency. Medical insurers and public and private providers are authorized and encouraged to provide information to the registry.

§ 22-11B-3. Medicaid recipients deemed to have given consent to information release with receipt of services.

Medicaid recipients shall be deemed to have given their consent to the release by the State Medicaid Agency of information to the State Board of Health or any other health care provider by virtue of their receipt of Medicaid covered services.

§ 22-11B-4. Limited immunity of person or entity providing information.

All persons, firms, corporations, or other public or private entities and all officers, agents, servants, or employees who provide information for exchange in good faith pursuant to this chapter shall be immune from civil and criminal liability for those actions and no cause of action shall be created by their acts or omissions hereunder.

Chapter 11C. Alabama Head and Spinal Cord Injury Registry Act, §§ 22-11C-1 through 22-11C-12.

§ 22-11C-1. Short title.

This chapter shall be known and may be cited as the "Alabama Head and Spinal Cord Injury Registry Act."

§ 22-11C-2. Legislative intent.

It is the intent of the Legislature to ensure the referral of persons who have traumatic brain and/or spinal cord injuries to a coordinated rehabilitation program developed and administered by other state agencies, to ascertain information relative to the occurrence of head injuries resulting in moderate to severe traumatic brain injuries or spinal cord injuries, to identify prevention programs to prevent these disabling conditions, and to recommend to the Legislature, state agencies, and other interested organizations steps to prevent and better treat these conditions.

§ 22-11C-3. Definitions.

For purposes of this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise.

(1) **TRAUMATIC BRAIN INJURY or HEAD INJURY.** Hereinafter, referred to as "head injury." An occurrence of injury to the head that is documented in a medical record, with one or more of the following conditions attributed to head injury:

- a. Observed or self-reported decreased level of consciousness.
- b. Amnesia.
- c. Skull fracture.
- d. Objective neurological or neuropsychological abnormality.
- e. Diagnosed intracranial lesion.
- f. As an occurrence of death resulting from trauma, with head injury listed on the death certificate, autopsy report, or medical examiner's report in the sequence of conditions that resulted in death.

This definition applies to an acquired injury to the brain. This term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to near drowning.

(2) **SPINAL CORD INJURY.** The occurrence of an acute traumatic lesion of neural elements in the spinal canal (spinal cord and Cauda equina), resulting in temporary or permanent sensory deficit, motor deficit, or bowel or bladder dysfunction.

§ 22-11C-4. Alabama Statewide Head and Spinal Cord Injury Registry.

The State Health Officer may establish, contingent on the availability of funding, within the Department of Public Health the Alabama Statewide Head and Spinal Cord Injury Registry for the purpose of providing accurate and up-to-date information about head and spinal cord injuries in Alabama and facilitating the evaluation and improvement of head and spinal cord injuries prevention, diagnosis, therapy, rehabilitation, and referral to coordinated, rehabilitation programs administered by other state agencies. The purpose of these referrals shall be to ensure that these programs shall provide eligible persons the opportunity to obtain the necessary rehabilitative services enabling them to be referred to a vocational rehabilitation program or to return to an

appropriate level of functioning in their community. The State Committee of Public Health shall adopt rules necessary to effect the purposes of this chapter, including the data to be reported, and the effective date after which reporting shall be required.

§ 22-11C-5. Reporting injuries; access to records.

(a) Each case of confirmed head or spinal cord injury shall be reported within 90 days of admission or diagnosis in the manner prescribed by rule. Reports are to be submitted on a monthly basis.

(b) Any further demographic, diagnostic, treatment, or follow-up information shall be provided upon request by the State Health Officer concerning any person now or formerly diagnosed as having or having had a head or spinal cord injury. The State Health Officer or his or her authorized representative shall be permitted access to all records, including death certificates, of persons identified with head or spinal cord injuries.

§ 22-11C-6. Notice of available state assistance; referrals.

(a) The Department of Public Health shall establish procedures, after a report has been received for any person with a head or spinal cord injury, to notify the individual or the most immediate available family members of the availability of assistance from the state, the services available, and the eligibility requirements.

(b) The Department of Public Health shall refer persons who have head or spinal cord injuries to other state agencies to assure that rehabilitative services, if desired, are obtained by that person.

§ 22-11C-7. Confidentiality; disclosure of information.

(a) All information reported pursuant to this chapter shall be confidential and privileged.

(b) The State Health Officer shall take strict measures to ensure that all identifying information is kept confidential, except as otherwise provided in this chapter.

(c) Head and spinal cord injury information may be provided to researchers or research institutions, or both, in connection with head and/or spinal cord injury morbidity and mortality studies upon appropriate review by the State Health Officer. All identifying information regarding an individual patient, health care provider, or health care facility contained in records of interviews, written reports, and statements procured by the State Health Officer or by any other person, agency, or organization acting jointly with the State Health Officer in connection with these studies shall be confidential and privileged and shall be used solely for the purposes of the study. Nothing in this chapter shall prevent the State Health Officer from publishing statistical compilations relating to morbidity and mortality studies which do not identify individual cases or sources of information.

(d) Information collected under this chapter is not subject to disclosure under Section 36-12-40.

§ 22-11C-8. Exchange of information with other registries.

(a) The State Health Officer may enter into agreements to exchange confidential information with other head and/or spinal cord injury registries to obtain complete reports of Alabama residents diagnosed or treated in other states and to provide information to other states regarding their residents diagnosed or treated in Alabama.

(b) The State Health Officer may furnish confidential information to other states' head and/or spinal cord injury registries, federal head or spinal cord injury prevention or rehabilitation agencies, or health researchers in order to collaborate in a national head and/or spinal cord injury registry or to collaborate in head and/or spinal cord injury prevention and rehabilitation research studies.

§ 22-11C-9. Registry funding.

(a) The State Health Officer may accept grants, services, and property from the federal government, foundations, organizations, medical schools, and other entities as may be available for the purposes of fulfilling the obligations of this program.

(b) The State Health Officer shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this program.

§ 22-11C-10. Advisory Panel on Head and Spinal Cord Injury.

The State Health Officer may establish and coordinate an Advisory Panel on Head and Spinal Cord Injury which shall provide governmental and non-governmental input regarding the Head and Spinal Cord Injury Registry. The membership of the panel may include, but is not limited to, representatives from appropriate state departments and agencies, persons with head and spinal cord injuries or their family members, experts on head and spinal cord injuries, providers of head and spinal cord injury care, and representatives of state affiliates of national head and/or spinal cord injury organizations.

§ 22-11C-11. Report of findings and recommendations.

The State Health Officer, with input from the advisory panel, shall prepare a report that describes findings from the Head and Spinal Cord Injury Registry and make new recommendations for the prevention of head and spinal cord injuries and provision of rehabilitative services for persons with head and spinal cord injuries and transmit the report to the Legislature and make the report available to the public. These findings shall be presented to an annual meeting of experts in the field of head and spinal cord injury.

§ 22-11C-12. Liability under chapter.

(a) No person shall have any claim or cause of action against the State of Alabama, or its political subdivisions, or any individual arising out of any acts or omissions which occurred under the provisions of this chapter, if the state, political subdivisions, or individual is in compliance with this chapter.

(b) No person shall have any claim or cause of action against any person, or the employer or employee of any person, who participates in good faith in the reporting or receiving, or both, of head or spinal cord registry data or data for head or spinal cord injury morbidity or mortality studies in accordance with this chapter.

(c) No license of a health care facility or health care provider may be denied, suspended, or revoked for the good faith disclosure of confidential or privileged information in the reporting of head or spinal cord injury registry data or data for head or spinal cord injury morbidity or mortality studies in accordance with this chapter.

(d) No license of a health care facility or health care provider may be denied, suspended, or revoked for the failure to disclose confidential or privileged information in the reporting of head or spinal cord injury registry data or data for head or spinal cord injury morbidity or mortality studies.

(e) Nothing in this chapter shall be construed to apply to the authorized disclosure of confidential or privileged information when that disclosure is due to gross negligence or wanton or willful misconduct.

Chapter 11D. Statewide Trauma Advisory Council, §§ 22-11D-1 through 22-11D-9.

§ 22-11D-1. Legislative findings.

The Legislature finds that trauma is one of many severe health problems in the State of Alabama and a major cause of death and long-term disability. It is in the best interest of the citizens of Alabama to establish an efficient and well-coordinated statewide trauma system and to provide for other systems of care as the needs are recognized and funding becomes available to reduce costs and incidences of inappropriate or inadequate emergency medical services.

§ 22-11D-2. Definitions.

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

(1) BOARD. The State Board of Health.

- (2) **COMMUNICATIONS SYSTEM.** A radio and land line network complying with the board's rules and which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in the trauma and health system.
- (3) **COUNCIL.** The Statewide Trauma and Health System Advisory Council.
- (4) **DEPARTMENT.** The Alabama Department of Public Health.
- (5) **DESIGNATION.** A formal determination by the department that a hospital is capable of providing designated trauma or other specific health care as authorized by this chapter.
- (6) **EMERGENCY MEDICAL SERVICE.** The organization responding to a perceived individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.
- (7) **HEALTH CARE CENTER.** A hospital that voluntarily participates in a statewide health system and that has been designated as a health care center pursuant to the rules of the board.
- (8) **REGIONAL COUNCILS.** The regional trauma advisory councils.
- (9) **TRAUMA CENTER.** A hospital that voluntarily participates in the statewide trauma system and that has been designated as a trauma center pursuant to the rules of the board.

§ 22-11D-3. Establishment and operation of statewide trauma system.

- (a) The board, in consultation with, and having solicited the advice of the council, shall establish and maintain a statewide trauma system that shall include centralized dispatch for participating trauma centers and emergency medical services.
- (b) The statewide trauma system shall become operational within 12 months after the State Health Officer certifies to the Governor in writing that the department has sufficient funds to finance its development, implementation, and operation.
- (c) The board, in consultation with and having solicited the advice of the council, may establish and maintain other coordinated statewide systems of emergency medical and hospital care for other illnesses, such as stroke. Other statewide coordinated health care systems may be implemented by the board as funds become available to the board.

§ 22-11D-4. Verification and certification of trauma center status.

- (a) With the advice of and after approval of the council, the board may adopt rules for verification and certification of trauma or health care center status which assign level designations based on resources available within the facility. Rules shall be based upon national guidelines, including, but not limited to, those established by the American College of Surgeons, the Joint Commission of Accreditation of Health Care Organizations, in Hospital and Pre-hospital Resources for Optimal Care of the Injured Patient, and any published appendices thereto. Rules specific to rural and urban areas shall be developed and adopted by rule of the board.
- (b) Any medical facility that desires to be a designated trauma or other health care center shall

request a designation from the department whereby the medical facility agrees to maintain a level of commitment and resources sufficient to meet the responsibilities and standards required by the rules promulgated pursuant to this chapter. The board shall determine by rule the manner and form of such requests and the standards for review of such requests. Any medical facility that meets such standards shall be certified by the department and shall be included in the trauma or other health system. The department may revoke, suspend, or modify a designation if it determines that the medical facility is substantially out of compliance with standards and it has refused or been unable to comply after a reasonable period of time has elapsed. Any medical facility may challenge the board's designation, denial, revocation, suspension, or modification of its trauma center or other health care centers designation pursuant to the contested case provisions of the Alabama Administrative Procedure Act and rules of the board.

(c) No medical facility shall hold itself out to the public as a trauma or other health care center unless it is designated as such by the department.

§ 22-11D-5. Establishment of council; composition; meetings.

(a) There is established the Statewide Trauma and Health Care Center Advisory Council to assist in developing regulations and standards necessary to implement this chapter and to serve as consultants to the board on matters related to the statewide trauma system and other health care centers.

(b) The council shall consist of 11 members and be constituted in the following manner:

(1) Four representatives of hospitals, who shall be appointed by the Board of Trustees of the Alabama Hospital Association. Two of the appointees shall be from hospitals located in urban areas and two shall be from hospitals located in rural areas of the state. At least two of the appointees shall be from hospitals that will be designated as trauma centers after the statewide trauma system is established.

(2) Four representatives who shall be licensed physicians, appointed by the Medical Association of the State of Alabama.

(3) One representative of the board who shall be the Medical Director of the EMS and Trauma Division of the department, or his or her designee.

(4) One member who shall be a licensed emergency medical technician, who shall be appointed by the State Health Officer.

(5) The State Health Officer, who shall serve as the chair.

(c) All members of the council shall be appointed for a term of four years, except initial members shall be appointed to terms of from one to four years and shall serve such staggered terms so that members appointed by the Alabama Hospital Association and Medical Association of the State of Alabama may be appointed subsequently each year. The membership of the council shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Vacancies shall be filled in the manner provided for the original appointments. Persons

appointed to fill vacancies shall serve the unexpired portions of the terms.

(d) The council shall meet at least twice a year, but may meet more frequently upon the call of the chair. The council may meet by electronic means and shall establish rules of procedure for its meetings.

(e) The council may appoint subcommittees and workgroups. Subcommittees shall consist of council members and workgroups may consist of non-council members.

(f) With the consent of the majority of the members, the chair shall set requirements for proxy representation, voting, and the establishment of a quorum.

(g) Members shall serve without compensation, but shall be entitled to reimbursement for expenses incurred in the performance of their duties at the same rate as state employees.

(h) The members shall represent the demographic composition of the state to the extent possible.

§ 22-11D-6. Statewide trauma registry.

(a) The department shall establish a statewide trauma registry and may establish other registries to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury and other health care illnesses, such as stroke. The registries shall be used to improve the availability and delivery of pre-hospital or out-of-hospital care and hospital trauma or other health care services. Specific data elements of the registries shall be defined by rule of the department. Every health care facility that is designated by the department as a trauma or health care center shall furnish data to the registries. All other health care facilities shall furnish trauma or other health data as required by rule of the department.

(b) All data collected pursuant to this section shall be held confidential pursuant to state and federal laws, rules, and policies.

§ 22-11D-7. Designation of trauma care regions; regional trauma advisory councils.

(a) The board shall designate, by rule, trauma care regions, so that all parts of the state are within such regions. The regional designations shall be made on the basis of efficiency of delivery of needed trauma care.

(b) The board may establish regional trauma advisory councils as needed. Regional trauma advisory councils shall advise, consult with, and make recommendations to the council on suggested regional modifications to the statewide trauma system that will improve patient care and accommodate specific regional needs. Each regional trauma advisory council shall provide data required by the department or the council to assess the effectiveness of the statewide trauma system.

(c) Each regional trauma advisory council shall have a minimum of 10 members. The membership of regional trauma advisory councils shall be appointed in the same manner as the council is appointed and shall be composed of representatives of the same groups. Additional members may be appointed pursuant to rules promulgated by the board. The chair of each regional trauma advisory council shall be elected by the members to serve for four years. The members shall represent the demographic composition of the region served, as far as practicable.

(d) Regional trauma advisory council members shall be entitled to reimbursement for expenses incurred in the performance of their duties at the same rate as state employees.

(e) All other governance requirements of the regional trauma advisory councils shall be established by rule of the board.

(f) The board may designate the trauma care regions as the regions for planning and coordination of emergency medical and hospital care for other illnesses. The trauma advisory councils shall advise, consult with, and make recommendations on coordination of systems of care by health care centers for other illnesses as may be determined necessary by the board.

§ 22-11D-8. Rules and regulations.

In accordance with the Alabama Administrative Procedure Act, the board, with the advice and after approval of the council, shall promulgate rules to implement and administer this chapter. Rules promulgated by the board may include, but are not limited to, the following:

(1) Criteria to ensure that severely injured people are promptly transported and treated at trauma centers appropriate to the severity of the injury. Minimum criteria shall address emergency medical service trauma triage and transportation guidelines as approved under the board's emergency medical services rules, designation of health care facilities as trauma centers, interhospital transfers, and a trauma system governance structure.

(2) Standards for verification of trauma center status which assign level designations based on resources available within the facility. Standards shall be based upon national guidelines, including, but not limited to, those established by the American College of Surgeons, entitled Hospital and Pre-hospital Resources for Optimal Care of the Injured Patient, and any published appendices thereto.

(3) Communication systems used by participating trauma centers and emergency medical services.

(4) Verification and adjustment of trauma center status.

(5) Specifications for centralized dispatch.

(6) Dividing the state into emergency management services regions to ensure that all parts of the state are within a region. The regional designations shall be made on the basis of efficiency of delivery of needed trauma care.

(7) Establishing regional trauma advisory councils and designating their roles and responsibilities.

- (8) Designating levels of trauma centers.
- (9) Specifying activation requirements for air ambulances conducting scene flights. The board shall not regulate in any manner the activation or operations of fixed-wing providers that do not conduct scene flights.
- (10) Quality assurance requirements and evaluation methodologies.
- (11) Statewide trauma registry data elements and data collection.
- (12) The board, with the advice and approval of the council, may designate other illnesses, such as stroke, which require coordination of emergency medical hospital care and may develop other statewide programs and registries modeled after the statewide trauma program.

§ 22-11D-9. Statewide Trauma System Fund.

- (a) The Statewide Trauma System Fund is created. The department shall distribute funding allocated to the department for the purpose of creating, administering, maintaining, or enhancing the statewide trauma system. The department may apply for, receive, and accept gifts and other payments, including property and services, for the fund from any governmental or other public or private entity or person and may utilize the fund for activities related to the design, administration, operation, maintenance, or enhancement of the statewide trauma system.
- (b) The methodology of distribution of funds and allocation of funds shall be established by the council and subsequently adopted by the board, pursuant to the Administrative Procedure Act. Guidelines and parameters for distribution and allocation of funds is the sole prerogative of the council. Fund allocation to trauma centers shall be based upon the designated level of trauma care and the number of qualified patients directed through the trauma centers, as defined by the rules of the board.
- (c) Nothing in this chapter shall limit a patient's right to choose the physician, hospital, trauma center, health care center, facility, or other provider of health care services, subject to any limitations, requirements, or mechanisms prescribed in any federal law or law of the State of Alabama.
- (d) Nothing in this chapter shall limit a hospital from being designated as a trauma center or any other designated health care center.

Chapter 12. Quarantine Laws and Regulations, §§ 22-12-1 through 22-1-30.

§ 22-12-1. Enforcement of quarantine.

Quarantine shall be enforced by the state, by counties and by incorporated cities and towns in accordance with the provisions of this chapter.

§ 22-12-2. State quarantine authority paramount.

The quarantine authority of the state shall be paramount to that of any county, city or town therein.

§ 22-12-3. Exercise of rights and duties by public health committees and officers.

Whenever in this chapter rights are granted to, or duties imposed upon, the State Board of Health or a county board of health, such rights and such duties may be exercised or executed by the committees of public health or health officers, respectively, of said boards as their legal and accredited agents.

§ 22-12-4. Proclamation of quarantine by Governor.

The Governor, whenever he deems it necessary, or the State Board of Health, shall proclaim quarantine, and when proclaimed, said Board of Health shall enforce such quarantine under such regulations as may, from time to time, be prescribed.

§ 22-12-5. Amendment of regulations and changes of territory.

When proclamation of quarantine has been issued by the Governor, the State Health Officer may, subject to the approval of the State Board of Health, amend the regulations originally adopted and may add to, or take from, the territory under quarantine, provided he reports to the Governor all amendments and changes made, together with the reasons therefor.

§ 22-12-6. Investigations; quarantine pending investigations.

The State Health Officer, or any representative designated by him, may go into any place in this state for the purpose of making such investigations as shall determine the necessity for quarantine. Quarantine may be established, pending such investigation, upon authentic information of the existence of a quarantinable disease at any place from which such disease is likely to invade the state, or any portion thereof.

§ 22-12-7. Refusal of investigation by authorities outside state.

Should permission for such investigation into the nature of the disease as is provided for in this chapter be refused by the authorities of any place outside of this state, such refusal will constitute ground for declaring quarantine against such place.

§ 22-12-8. Failure of vessel master, seaman or passenger to answer inquiries. Repealed.

§ 22-12-9. Duty of vessel master ordered to perform quarantine.

The master of any vessel, ordered to perform quarantine, must deliver, to the officer appointed to see it performed, his bill of health and manifest, logbook and journal; if he fails to do, or to repair, in proper time after notice, to the quarantine ground or departs thence without authority, he must, on conviction, be fined not less than \$200.00.

§ 22-12-10. Unauthorized removal of vessel from quarantine.

Any master or other person in charge of a vessel in quarantine who shall remove or take, or who shall aid or procure to be removed or taken, such vessel from quarantine before she is given pratique is guilty of a misdemeanor and must, on conviction, be punished accordingly.

§ 22-12-11. Violation of regulations as to arriving vessels.

Any person who violates the regulations prescribed by the corporate authorities of any town or city or by the county commissioner of any county in relation to vessels arriving in the harbor or in the vicinity of such town or city, after notice thereof has been given for five days in some newspaper printed in such town or city or, when there is none, by notice posted up at some public place therein for the same length of time, must, on conviction, be fined not less than \$50.00.

§ 22-12-12. Proclamation of quarantine in county, city, or town.

Upon the recommendation of the board of health of a county, and subject to the approval of the State Board of Health, quarantine may be proclaimed for a county by the probate judge thereof or, in case of his inability to act, then, by the presiding officer of the county commission and for an incorporated city or town by the mayor or chief executive officer thereof. In case of emergency, quarantine may be proclaimed by said officers without such recommendations, subject, however, to approval, modification or withdrawal by the board of health of the county.

§ 22-12-13. Enforcement of local quarantine.

When quarantine has been proclaimed for a county, incorporated city or town in accordance with the provisions of this chapter, its enforcement shall be entrusted to the health officer of the county, city or town, respectively, the administration of any one or all of whom shall be subject to the approval of the board of health of the county.

§ 22-12-14. Quarantine of infected portions of county -- Establishment.

When a contagious or infectious disease of quarantinable nature exists in a part of a county, the remainder of the county, and any incorporated city or town therein, may establish quarantine against the infected portion or portions of the county in accordance with the following provisions:

(1) If a majority of the committee of public health, acting for the board of health of the county, reside in the uninfected portion of the county, such majority shall have the power of the full committee, as defined in the Sections 22-12-12 and 22-12-13; or

(2) If, however, a majority of the said committee reside in the infected portion of the county, then said committee can no longer act, and in that event, the uninfected portion of the county may establish quarantine as follows:

a. The judge of probate, the presiding officer or any two members of the county commission if they, or either, reside in the uninfected portion of the county, may issue, in the order named and upon the recommendation of the county health officer in case he resides in the uninfected portion of the county or, in default of such residence or on account of his absence from the county, then, without such recommendation, a proclamation of quarantine against the infected portions of the county, subject to approval or modification by the State Board of Health; and

b. Likewise, the mayor or chief executive officer of any incorporated city or town in the uninfected portion of the county may issue, on the recommendation of the health officer of his city or town or, in the absence of such officer, then, without such recommendation, a proclamation of quarantine against the infected portion of the county, subject to approval or modification by the State Board of Health.

§ 22-12-15. Quarantine of infected portions of county -- Enforcement.

A proclamation of quarantine issued in accordance with the provisions of Section 22-12-14 by the judge of probate, the presiding officer or any two members of the county commission for the protection of a portion of a county shall be enforced by the health officer of the county, provided he resides in the uninfected portion of the county, but in case he does not so reside, or in the event of his absence or disability, then such proclamation shall be enforced in such way as the officer issuing the same may direct. A proclamation of quarantine issued by the mayor or chief executive officer of any incorporated city or town in accordance with the provisions of Section 22-12-14 shall be enforced by the health officer of the city or town and, in case of his absence or disability, then, in such way as the officer issuing the proclamation may direct.

§ 22-12-16. Expense of enforcing local quarantine.

The expense of enforcing any quarantine for a county, or for a portion thereof, as provided for in Sections 22-12-12 through 22-12-15, shall be defrayed by the county commission of the county; that incurred in conducting a quarantine for an incorporated city or town shall be defrayed by the authorities of the city or town declaring quarantine.

§ 22-12-17. Report of local quarantine to state.

Every quarantine declared or established by the authority of any county, incorporated city or town in this state, together with the regulations prescribed thereunder, shall forthwith be reported to the State Health Officer by the health officer of the county, city or town establishing or conducting such quarantine.

§ 22-12-18. Quarantine of person coming from infected place.

Any person, coming into a city or town by land from a place infected with a contagious disease, may be compelled to perform quarantine by the health officer and restrained from traveling until discharged; and any person thus restrained, traveling before he is discharged must, on conviction, be fined not less than \$100.00.

§ 22-12-19. Establishment of place of detention.

The authorities of any incorporated city or town may establish a place of detention for persons who may come from territory under quarantine by such incorporated city or town; but if the place selected is without the limits of the town or city, the assent of the county commission in which such place is located must be obtained.

§ 22-12-20. Attempted escapes and escapes from detention.

Should a person who has been legally placed in detention by a county health officer or quarantine officer attempt to make his escape, such person may be forcibly detained or, should such person make his escape, complaint, on oath, may be made before the judge of probate or a judge of the circuit, district or municipal court of the county or municipality where the escape or attempted escape occurs, by the county health officer or quarantine officer, whereupon such judge of probate or the judge of the circuit, district or municipal court to which such complaint was made, shall issue a warrant authorizing a sheriff, bonded constable or other lawful officer to arrest such person and return him to detention.

§ 22-12-21. Supervision of public conveyances affected by quarantine; refusal of freight, etc.

During the existence of quarantine, state or local, the supervision of trains, buses, aircraft and watercraft affected by such quarantine shall be placed under the State Board of Health; and the quarantine authorities of any county, incorporated city, or town traversed by such roads or which such aircraft or watercraft may enter may decline to receive freight, mail or express matter from a place infected with a quarantinable disease, of which refusal the said authorities must give the State Health Officer immediate notice.

§ 22-12-22. Transportation of person or thing in violation of quarantine.

Any person, conductor, captain, agent or manager, operating either for himself or for a corporation a railroad, watercraft or other conveyance for the transportation of passengers or freight, who shall knowingly transport any person or thing in violation of the provisions of this chapter, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than \$100.00 nor more than \$500.00 for each offense.

§ 22-12-23. Free rides on public transports for quarantine officers.

(a) Written authority to act as quarantine officer for this state, or for any county, incorporated city or town therein, conducting a quarantine approved by the executive officer of the State Board of Health, shall entitle the holder thereof to board any railroad train, passenger or freight, bus or watercraft in this state and ride thereon, free of cost, to such place or places as the discharge of his duties may demand.

(b) Any conductor of a railroad train, passenger or freight, or captain or other officer of a watercraft in this state who refuses to allow a quarantine officer to ride on train or watercraft, free of charge, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than \$50.00 nor more than \$100.00 for each offense.

§ 22-12-24. Passing of quarantine lines by state quarantine officers and guards.

All state quarantine officers and guards, upon presentation of such credentials and compliance with such regulations as may be prescribed by the State Board of Health, shall be permitted to pass all quarantine lines established by county, city or town authority.

§ 22-12-25. Interference with state quarantine officer or guard. Repealed.

§ 22-12-26. Arrests without warrants.

Any legal quarantine officer or guard may, without warrant, arrest a person who attempts to violate a quarantine regulation and carry such person either to a designated place of detention or before an officer having jurisdiction of such offense.

§ 22-12-27. Resisting arrest by quarantine officer or guard. Repealed.

§ 22-12-28. Intimidation by quarantine officer. Repealed.

§ 22-12-29. Affidavits by persons desiring to enter or remain in certain places.

(a) Any person who makes affidavit before a quarantine officer or guard, engaged in enforcing quarantine for the protection of a place which said person wishes to enter, and who furnishes

such other evidence as may be prescribed by the State Board of Health that he has not, since the appearance of a quarantinable disease then existing, been in any place against which quarantine has been legally proclaimed shall be permitted to enter, or remain in, the place to which he desires to go. Any person who has been in a place then under quarantine, by the authority of the state or by that of a county, city or town with the approval of the State Board of Health, and who has since complied with the requirements as to detention and disinfection, one or both, prescribed or approved by the State Board of Health and who shall make affidavit thereto and furnish such other evidence thereof as said board may prescribe or demand shall be permitted to enter or remain in any place in this state.

(b) An quarantine officer or guard or other person who violates the provisions of this section shall be guilty of a misdemeanor and, on conviction, shall be fined not less than \$50.00 nor more than \$100.00 for each offense.

§ 22-12-30. False swearing. Repealed.

Chapter 12A. Perinatal Health Care, §§ 22-12A-1 through 22-12A-6.

§ 22-12A-1. Short title.

This chapter may be cited as the Alabama Perinatal Health Act.

§ 22-12A-2. Legislative intent; "perinatal" defined.

(a) It is the legislative intent to effect a program in this state of:

- (1) Perinatal care in order to reduce infant mortality and handicapping conditions;
- (2) Administering such policy by supporting quality perinatal care at the most appropriate level in the closest proximity to the patients' residences and based on the levels of care concept of regionalization; and
- (3) Encouraging the closest cooperation between various state and local agencies and private health care services in providing high quality, low cost prevention oriented perinatal care, including optional educational programs.

(b) For the purposes of this chapter, the word "perinatal" shall include that period from conception to one year post delivery.

§ 22-12A-3. Plan to reduce infant mortality and handicapping conditions; procedure, contents, etc.

The Bureau of Maternal and Child Health under the direction of the State Board of Health shall, in coordination with the State Health Planning and Development Agency, the State Health Coordinating Council, the Alabama Council on Maternal and Infant Health and the regional and State Perinatal Advisory Committees, annually prepare a plan, consistent with the legislative

intent of Section 22-12A-2, to reduce infant mortality and handicapping conditions to be presented to legislative health and finance committees prior to each regular session of the Legislature. Such a plan shall include: primary care, hospital and prenatal; secondary and tertiary levels of care both in hospital and on an out-patient basis; transportation of patients for medical services and care and follow-up and evaluation of infants through the first year of life; and optional educational programs, including pupils in schools at appropriate ages, for good perinatal care covered pursuant to the provisions of this chapter. All recommendations for expenditure of funds shall be in accord with provisions of this plan.

§ 22-12A-4. Bureau of Maternal and Child Health to develop priorities, guidelines, etc.

The Bureau of Maternal and Child Health under the direction of the State Board of Health, and the State Perinatal Advisory Committee representing the regional perinatal advisory committees, shall develop priorities, guidelines and administrative procedures for the expenditures of funds therefor. Such priorities, guidelines and procedures shall be subject to the approval of the State Board of Health.

§ 22-12A-5. Bureau to present report to legislative committee; public health funds not to be used.

The Bureau of Maternal and Child Health under the direction of the State Board of Health shall annually present a progress report dealing with infant mortality and handicapping conditions to the Legislative Health and Finance Committees prior to each regular session of the Legislature. No funds of the State Department of Public Health shall be used for the cost of any reports or any function of any of the committees named in Section 22-12A-3.

§ 22-12A-6. Use of funds generally.

Available funds will be expended in each geographic area based on provisions within the plan developed in accordance with Section 22-12A-3. Funds when available will be used to support medical care and transportation for women and infants at high risk for infant mortality or major handicapping conditions who are unable to pay for appropriate care. Funds will only be used to provide prenatal care, transportation, hospital care for high risk mothers and infants, outpatient care in the first year of life and educational services to improve such care, including optional educational programs, for pupils in schools at appropriate ages but subject to review and approval by the local school boards involved on an annual basis.

Chapter 12B. Mothers and Babies Indigent Care Trust Fund, §§ 22-12B-1 through 22-12B-4.

§ 22-12B-1. Established; purpose.

There is hereby established the Alabama Mothers and Babies Indigent Care Trust Fund in the State Treasury for the purpose of providing for expansion of medical services available to needy pregnant women and children under the Medicaid Program through implementation of Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (Pub.L. 99-509) and for other expansions of the Medicaid Program which are or become feasible.

§ 22-12B-2. Board established; composition; meetings; powers.

There is hereby established the Alabama Mothers and Babies Indigent Care Trust Board to administer said fund. The board shall consist of the Governor, who shall serve as ex officio chairman, the commissioner of the Alabama Medicaid Agency, the Finance Director and the State Health Officer. The board shall meet as necessary to carry out its duties, upon three days' notice to all board members. The board shall have the power to transfer moneys from the trust fund to the Alabama Medicaid Agency to carry out the purposes, intent and provisions of this chapter. The Medicaid Agency may accept unconditional and unrestricted transfers of such moneys. The existence or availability of this trust fund shall not reduce appropriations from the State General Fund.

§ 22-12B-3. Sources of funding.

The source of funding for moneys to be received by the Alabama Mothers and Babies Indigent Care Trust Fund shall include, without limitation, grants, appropriations, contributions, and donations. For the purposes of this chapter, political subdivisions may appropriate moneys directly to the trust fund. Any such grants, appropriations, contributions, and donations are hereby appropriated and allocated to the Alabama Mothers and Babies Indigent Care Trust Fund Board, at the time of the receipt of the grant, contribution or donation, or at the effective date of the legislation making the appropriation.

§ 22-12B-4. Unobligated fund balance shall automatically carry forward into succeeding fiscal year.

Any unobligated balance in the Alabama Mothers and Babies Indigent Care Trust Fund shall not revert to the General Fund at the end of any state fiscal year but shall be automatically carried forward into each succeeding state fiscal year in said trust fund. The moneys in such fund shall be disbursed under the authority of the Alabama Mothers and Babies Indigent Care Trust Fund Board and shall be used exclusively on behalf of persons eligible under the Alabama Medicaid Program.

Chapter 12C. Administration of Women, Infants, and Children Program. §§ 22-12C-1 to 22-12C-9.

§ 22-12C-1. Definitions.

For the purpose of this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

- (1) LOCAL AGENCY. A private, nonprofit health agency that provides program services in a designated area by written agreement with the State Board of Health.
- (2) PARTICIPANT. A certified pregnant, postpartum, or breastfeeding woman, infant, or a child who is receiving supplemental food or a food instrument under the WIC Program.
- (3) PERSON. Any individual, partnership, limited partnership, corporation, association, firm, trust, estate, or any other legal entity.
- (4) STATE BOARD OF HEALTH. The State Department of Public Health.
- (5) VENDORS. The individual, partnership, limited partnership, or corporation authorized by the State Board of Health.
- (6) WIC PROGRAM. The United States Department of Agriculture Food and Nutrition Service Special Supplemental Food Program for Women, Infants, and Children.

§ 22-12C-2. Adoption of rules; application of Alabama Administrative Procedure Act.

(a) The State Board of Health may promulgate and adopt rules it deems necessary to carry out its responsibilities under this chapter and under relevant federal laws and regulations pursuant to the Alabama Administrative Procedure Act (§ 41-22-1, et seq.). The rules shall have the force and effect of law and shall include, but not be limited to, an administrative appeal process for vendors subject to sanctions under this chapter and the rules promulgated pursuant to this chapter.

(b) The Alabama Administrative Procedure Act shall apply to all administrative rules and procedures of the board under this chapter, except that in case of conflict between the Alabama

Administrative Procedure Act and this chapter, this chapter shall control. The Alabama Administrative Procedure Act shall not apply to the adoption of any rule required by federal law in which the board is precluded from exercising any discretion.

§ 22-12C-3. Procedures for investigations, sanctions, penalties and contract terminations.

The State Board of Health may establish procedures for investigations, sanctions, penalties, and contract terminations for private nonprofit local agencies, WIC Program food vendors, suppliers, distributors, wholesalers, manufacturers, or participants in accordance with relevant federal regulations.

§ 22-12C-4. Collection of erroneously paid moneys; collection costs recoverable.

(a) The State Board of Health may recover moneys erroneously paid to private nonprofit local agencies, WIC Program food vendors, suppliers, distributors, wholesalers, manufacturers, or participants.

(b) The board may file an action in any district or circuit court to collect the sum upon refusal to pay by any entity or individual stated in subsection (a). The board is also authorized to collect the costs of court plus reasonable attorneys' fees in the collection of these costs.

§ 22-12C-5. Probation or civil monetary penalties for food vendors; mitigation or settlement of adverse action.

(a) The State Board of Health may establish procedures to administer probation or civil monetary penalties, or both, to WIC Program food vendors. If probation is imposed, the vendor shall be informed that any violation of the WIC Program during the probationary period shall result in the implementation of the original proposed sanction. A civil monetary penalty shall be determined by the vendor's average monthly redemption of WIC Program food instruments for the 12-month period ending with the month immediately preceding that month during which the vendor was charged with the violation. The average monthly redemption figure will be multiplied by 5 percent. The product of this calculation shall be multiplied by the number of months for which the vendor would have been disqualified under the sanctions for which the vendor was charged. Consideration shall also be given as to the ability of the vendor to pay. The total civil monetary penalty shall not exceed \$10,000 for any vendor.

(b) The board, through its authorized representative including the WIC Program Director, the administrative hearing officer, or other persons as designated by the State Health Officer may mitigate or settle any adverse action under this chapter that it considers advantageous to the WIC Program prior to, at, or subsequent to an administrative hearing under the Alabama Administrative Procedure Act.

§ 22-12C-6. Designated account for monetary penalties or overcharges collected; expenditure of sums.

(a) A civil monetary penalty or overcharge collected by the State Board of Health shall be deposited in a dedicated account designated by the board to be used in the administration of the WIC Program.

(b) A civil penalty or overcharge collected under this chapter shall not revert to the State General Fund, but shall remain in the account designated under subsection (a) and is continuously appropriated to the State Board of Health; however the expenditure of said sums so appropriated shall be budgeted and allotted pursuant to the Budget Management Act and Article 4 of Chapter 4 of Title 41.

§ 22-12C-7. Fraud or abuse as a misdemeanor; fraud defined.

(a) Any person who obtains WIC Program benefits for himself or herself or for another by fraud or abuse or anyone who otherwise defrauds or abuses the WIC Program shall be guilty of a Class A misdemeanor, and, upon conviction, shall be punished as prescribed by law. Fraud or abuse is defined as:

- (1) Fraudulently reporting of income to receive benefits.
- (2) Receiving benefits for services from two or more clinics at the same time.
- (3) Selling, trading, or giving away supplies, medications, food, or food instruments issued by the program.
- (4) Accepting cash from vendors.
- (5) Using food instruments as payment of any debt.
- (6) Unauthorized altering of food instruments.
- (7) Redeeming food instruments reported lost, stolen, or destroyed.
- (8) Purchasing non-food items with food instruments.
- (9) Returning WIC Program foods for credit or cash.
- (10) Providing cash or credit in place of authorized foods.
- (11) Substitution of non-food items for listed foods.
- (12) Providing less foods than is specified on a food instrument and requesting full payment for the specified amount.
- (13) Charging WIC Program participants more for foods than other customers are charged.
- (14) Receiving, accepting, buying, taking by way of trade or barter, or otherwise unlawfully possessing WIC Program food instruments or WIC Program foods.

(b) A second or subsequent conviction of fraud or abuse of the WIC Program shall be a Class B felony, and, upon conviction, shall be punished as prescribed by law.

§ 22-12C-8. Appeal of adverse action; conflict with federal law.

A decision of the State Board of Health imposing any adverse action may be appealed pursuant to the Alabama Administrative Procedure Act. If there is a conflict between the provisions relating to penalties and the conduct of administrative hearings under this chapter and federal law, the federal law shall prevail.

§ 22-12C-9. Cumulation of penalties.

The administrative, civil, and criminal remedies and penalties in this chapter are cumulative, and the use by the State Board of Health of one remedy shall not preclude the use by the board of any other remedy based upon the same incident or occurrence.

Chapter 12D. Office of Women's Health, §§ 22-12D-1 through 22-12D-5.

§ 22-12D-1. Office established; purposes.

(a) The Office of Women's Health is established within the Alabama Department of Public Health for the following purposes:

- (1) To educate the public and be an advocate for women's health by requesting that the State Department of Public Health, either on its own or in partnership with other entities, establish appropriate forums, programs, or initiatives designed to educate the public regarding women's health, with an emphasis on preventive health and healthy lifestyles.
- (2) To assist the State Health Officer in identifying, coordinating, and establishing priorities for programs, services, and resources the state should provide for women's health issues and concerns relating to the reproductive, menopausal, and postmenopausal phases of a woman's life, with an emphasis on postmenopausal health.
- (3) To serve as a clearinghouse and resource for information regarding women's health data, strategies, services, and programs that address women's health issues, including, but not limited to, all of the following:
 - a. Diseases that significantly impact women, including heart disease, cancer, hypertension, diabetes, and osteoporosis.
 - b. Mental health.
 - c. Substance abuse.
 - d. Sexually transmitted diseases.
 - e. Sexual assault and domestic violence.
- (4) To collect, classify, and analyze relevant research information and data concerning women's health conducted or compiled by either of the following:
 - a. The State Department of Public Health.
 - b. Other entities in collaboration with the State Department of Public Health.
- (5) To provide interested persons with information regarding the research results, except as prohibited by law.

(6) To develop and recommend funding and program activities for educating the public on women's health initiatives and information, including the following:

- a. Health needs throughout an Alabama woman's life.
- b. Diseases that significantly affect Alabama women, including heart disease, cancer, and osteoporosis.
- c. Access to health care for Alabama women.
- d. Poverty and women's health in Alabama.
- e. The leading causes of morbidity and mortality for Alabama women.
- f. Special health concerns of minority women.

(7) To seek funding from private or governmental entities to carry out the purposes of this chapter.

(8) To prepare materials for publication and dissemination to the public on women's health.

(9) To conduct public educational forums in Alabama to raise public awareness and to educate citizens about women's health programs, issues, and services.

(10) To coordinate the activities and programs of the Office of Women's Health with other entities that focus on women's health or women's issues.

(11) To provide that the State Health Officer, within his or her annual report to the Governor and the Legislature, shall include information regarding the successes of the programs of the Office of Women's Health, priorities and services needed for women's health in Alabama, and areas for improvement.

(b) The Office of Women's Health will not advocate, promote or otherwise advance abortion or abortifacients.

§ 22-12D-2. Financial contributions.

The Alabama Department of Public Health may seek and accept financial contributions from corporations, limited liability corporations, partnerships, individuals, and other private entities for use by the Office of Women's Health.

§ 22-12D-3. Appointment of personnel.

The State Health Officer shall appoint personnel to staff the Office of Women's Health including an individual who shall serve as the director of the office, in accordance with departmental and State Personnel Department rules and regulations.

§ 22-12D-4. Steering Committee on Women's Health.

(a) There shall be a steering committee called the Steering Committee on Women's Health that shall serve in an advisory capacity to the State Health Officer and the Director of the Office of Women's Health. The membership of the committee shall include all of the following:

- (1) Three physicians appointed by the Medical Association of the State of Alabama.

- (2) Three nurses appointed by the Alabama State Nurses Association.
- (3) Three pharmacists appointed by the Alabama Pharmaceutical Association.
- (4) Three employers appointed by the Business Council of Alabama.
- (5) Three consumers, one appointed by the Governor, one appointed by the Lieutenant Governor, and one by the Speaker of the House.
- (6) Three members appointed by the Alabama Hospital Association.
- (7) Three registered dietitians appointed by the Alabama Dietetic Association.

The members of the steering committee shall serve two-year terms of office with the exception of the initial committee on which one appointee from each group specified above shall serve a three-year term and one member from each group specified above will serve a one-year term. The steering committee shall be comprised of persons with an expertise in and knowledge of women's health issues in Alabama.

The Steering Committee shall reflect the racial, ethnic, gender, urban/rural, and economic diversity of the state.

(b) The State Health Officer shall:

- (1) Appoint a chair for the steering committee from the committee membership.
- (2) Establish the policies and procedures under which the steering committee operates.
- (3) Ensure that the steering committee will meet quarterly.

§ 22-12D-5. Funding.

The provisions of this chapter shall be carried out to the extent that funds are available.

Chapter 13. Cancer, §§ 22-13-1 through 22-13-5, 22-13-13, 22-13-30 through 22-13-35, and 22-13-50 through 22-13-55.

Article 1. General Provisions.

§ 22-13-1. Plan for care of indigents; designation of cancer units.

It shall be the duty of the State Board of Health, with the assistance of the Committee on Cancer Control of the Medical Association of the State of Alabama, to formulate a plan for the care and treatment of indigent persons suffering from cancer and to establish and designate standard requirements for the organization, equipment and conduct of cancer units or departments in general or private hospitals or private clinics of this state. The designation of cancer units shall follow the survey of the needs and facilities for treatment of cancer found available in different localities in the state.

§ 22-13-2. Financial aid for indigents. Repealed.

§ 22-13-3. Educational plan.

The State Board of Health, in collaboration with the Committee on Cancer Control of the Medical Association of the State of Alabama and other agencies, shall formulate and put into effect an educational plan for the purpose of preventing cancer throughout the State of Alabama, and for the purpose of aiding in the early diagnosis of cancer and for the purpose of informing hospitals and cancer patients of the proper treatment.

§ 22-13-4. Educational campaign.

The board shall conduct an educational campaign relative to the importance of the early diagnosis of cancer. The State Health Officer shall publish an annual statistical report reviewing accomplishments under this article. The campaign shall be conducted through the churches, the schools, and civic organizations, the print and electronic media, platform speaking, and any other available means of publicity.

§ 22-13-5. Annual program for early diagnosis of cancer.

The State Board of Health may, in its discretion, provide for such an annual program for the early diagnosis of cancer for residents of this state as, in its judgment, is practicable.

§ 22-13-13. Payment of expenses.

The expenses incurred in, and the cost of carrying out, the provisions of this article shall be paid out of the appropriation made to the State Health Department for that purpose.

Article 2. Alabama Statewide Cancer Registry.

§ 22-13-30. Short title.

This article shall be known and may be cited as the "Alabama Statewide Cancer Registry Act."

§ 22-13-31. Registry established; reporting of confirmed cases.

(a) There is hereby established within the Department of Public Health the Alabama Statewide Cancer Registry for the purpose of providing accurate and up-to-date information about cancer

or benign brain-related tumors in Alabama and facilitating the evaluation and improvement of cancer or benign brain-related tumor prevention, screening, diagnosis, therapy, rehabilitation, and community care activities for the citizens of Alabama. The State Committee of Public Health shall adopt rules necessary to effect the purposes of this article, including the data to be reported, and the effective date after which reporting shall be required. For the purposes of this article, cancer means all malignant neoplasms, regardless of the tissue of origin, including malignant lymphoma, Hodgkin's disease, and leukemia, but excluding basal cell and squamous cell carcinoma of the skin and carcinoma in situ of the cervix.

(b) All cases of confirmed cancer or benign brain-related tumor diagnosed or treated in the state are to be reported to the State Health Department. For the purposes of this article, confirmed cancer or benign brain-related tumor means the best evidence available for determining the nature of the neoplasms.

(c) The State Health Officer shall establish a training program to include instruction on the manner in which data are to be reported and shall be available to personnel of all reporting sources. A quality control program for cancer data shall be instituted to ensure the quality of data submitted.

§ 22-13-32. Monthly reports; further information to be provided upon request.

(a) Each case of confirmed cancer or benign brain-related tumor shall be reported within 180 days of admission or diagnosis in the manner prescribed by rule. Reports are to be submitted on a monthly basis.

(b) Any further demographic, diagnostic, treatment, or follow-up information shall be provided upon request by the State Health Officer concerning any person now or formerly receiving services, or diagnosed as having or having had a malignant neoplasm or benign brain-related tumor. The State Health Officer or his or her authorized representative shall be permitted access to all records, including death certificates, which would identify confirmed cases of cancer or benign brain-related tumor or would establish characteristics of the cancer or benign brain-related tumor, treatment of the cancer or benign brain-related tumor, or medical status of any identified cancer or benign brain-related tumor patient.

§ 22-13-33. Information to be confidential.

(a) All information reported pursuant to this article shall be confidential and privileged.

(b) The State Health Officer shall take strict measures to ensure that all identifying information is kept confidential, except as otherwise provided in this article.

(c) Cancer or benign brain-related tumor information may be provided to researchers or research institutions, or both, in connection with cancer or benign brain-related tumor morbidity and mortality studies upon appropriate review by the State Health Officer. All identifying information regarding an individual patient, health care provider, or health care facility contained in records of interviews, written reports, and statements procured by the State Health Officer or by any other person, agency, or organization acting jointly with the State Health Officer in connection with these studies shall be confidential and privileged and shall be used solely for the purposes of the study. Nothing in this article shall prevent the State Health Officer from publishing statistical compilations relating to morbidity and mortality studies which do not identify individual cases or sources of information.

(d) Information collected under this article is not subject to disclosure under Section 36-12-40.

§ 22-13-34. State Health Officer authorized to enter into agreements to exchange confidential information with other cancer registries and to furnish confidential information to other states, cancer registries, etc.

(a) The State Health Officer may enter into agreements to exchange confidential information with other cancer registries to obtain complete reports of Alabama residents diagnosed or treated in other states and to provide information to other states regarding their residents diagnosed or treated in Alabama.

(b) The State Health Officer may furnish confidential information to other states' cancer registries, federal cancer control agencies, or health researchers in order to collaborate in a national cancer registry or to collaborate in cancer control and prevention research studies.

§ 22-13-35. Liability under article.

(a) No person shall have any claim or cause of action against the State of Alabama, or its political subdivisions, or any individual arising out of any acts or omissions which occurred under the provisions of this article, if the state, political subdivisions, or individual is in compliance with this article.

(b) No person shall have any claim or cause of action against any person, or the employer or employee of any person, who participates in good faith in the reporting or receiving, or both, of

cancer registry data or data for cancer or benign brain-related tumor morbidity or mortality studies in accordance with this article.

(c) No license of a health care facility or health care provider may be denied, suspended, or revoked for the good faith disclosure of confidential or privileged information in the reporting of cancer registry data or data for cancer or benign brain-related tumor morbidity or mortality studies in accordance with this article.

(d) No license of a health care facility or health care provider may be denied, suspended, or revoked for the failure to disclose confidential or privileged information in the reporting of cancer or benign brain-related tumor registry data or data for cancer or benign brain-related tumor morbidity or mortality studies.

(e) Nothing in this article shall be construed to apply to the unauthorized disclosure of confidential or privileged information when that disclosure is due to gross negligence or wanton or willful misconduct.

Article 3. Breast, Cervical, and Colorectal Cancer Awareness.

§ 22-13-50. (Effective January 1, 2011) Definitions.

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

- (1) BOARD. The State Board of Health.
- (2) DEPARTMENT. The Alabama Department of Public Health.

§ 22-13-51. (Effective January 1, 2011) Establishment and purpose of programs.

The department shall establish programs for breast, cervical, and colorectal cancer awareness for the following purposes:

- (1) Reducing morbidity and mortality from breast, cervical, and colorectal cancer through prevention, early detection, and treatment.
- (2) Making breast, cervical, and colorectal cancer screening services available to underserved and uninsured individuals throughout the state, especially those whose economic circumstances or geographic locations limit access to screening facilities.
- (3) Raising public awareness about breast, cervical, and colorectal cancer.

(4) Collecting, classifying, and analyzing relevant research information and data concerning breast, cervical, and colorectal cancer.

(5) Serving as a resource for information regarding breast, cervical, and colorectal cancer.

§ 22-13-52. (Effective January 1, 2011) Operation of programs; referral services.

The services provided pursuant to this article may be undertaken by private contracts or operated by the department, or both. The department may also provide referral services for the benefit of individuals for whom further examination or treatment is indicated by cancer screenings.

§ 22-13-53. (Effective January 1, 2011) Funding; federal waiver.

(a) The department shall distribute funding allocated to it for providing and administering services pursuant to this article. The department may seek any federal waiver that may be necessary to maximize funds from the federal government to implement the purposes of this article.

(b) The department may seek any federal waiver that may be necessary for activities related to the purposes of this article.

§ 22-13-54. (Effective January 1, 2011) Administration of article.

The board shall establish such rules, guidelines, policies, and protocols as may be necessary to implement and administer this article.

§ 22-13-55. (Effective January 1, 2011) Implementation of article. This article shall be implemented only to the extent that sufficient funds are made available for its implementation and administration.

Chapter 13A. Osteoporosis Prevention and Treatment Education Act, §§ 22-13A-1 through 22-13A-10.

§ 22-13A-1. Short title.

This chapter may be cited as the "Osteoporosis Prevention and Treatment Education Act of 1995."

§ 22-13A-2. Legislative findings.

(a) The Legislature finds all of the following:

- (1) Osteoporosis, a bone-thinning disease, is a major public health problem that poses a threat to the health and quality of life to as many as 25 million Americans.
- (2) The 1.5 million fractures each year that result from osteoporosis cause pain, disability, immobility and social isolation, affecting quality of life and threatening the ability of people to live independently.
- (3) Because osteoporosis progresses silently and without sensation over many years, and many cases remain undiagnosed, the first symptom of the disease is often a fracture, typically of the hip, spine, or wrist.
- (4) One of two women and one of five men will suffer an osteoporotic fracture in their lifetime.
- (5) A woman's risk of hip fracture is equal to her combined risk of breast, uterine, and ovarian cancer.
- (6) The annual direct and indirect costs of osteoporosis to the health care system are estimated to be as high as eighteen billion dollars (\$18,000,000,000) in 1993, and are expected to rise above sixty billion dollars (\$60,000,000,000) by the year 2020.
- (7) Since osteoporosis progresses silently and currently has no cure, prevention, early diagnosis, and treatment are keys to reducing the prevalence of and devastation from this disease.
- (8) Although there exists a large quantity of public information about osteoporosis, it remains inadequately disseminated and not tailored to meet the needs of specific population groups.
- (9) Most people, including physicians, health care providers, and government agencies, continue to lack knowledge in the prevention, detection, and treatment of the disease.
- (10) Experts in the field of osteoporosis believe that with greater awareness of the value of prevention among medical experts, service providers, and the public, osteoporosis will be preventable and treatable in the future, thereby reducing the costs of long-term care.
- (11) Osteoporosis is a multi-generational issue because building strong bones during youth and preserving them during adulthood may prevent fractures in later life.
- (12) Educating the public and health care community throughout the state about this potentially devastating disease is of paramount importance and is in every respect in the public interest and to the benefit of all residents of the state.

§ 22-13A-3. Purposes of chapter.

The purposes of this chapter are as follows:

- (1) To create and foster a multi-generational, statewide program to promote public awareness and knowledge about the causes of osteoporosis, personal risk factors, the value of prevention and early detection, and the options available for treatment.
- (2) To facilitate and enhance knowledge and understanding of osteoporosis by disseminating educational materials, information about research results, services, and strategies for prevention and treatment to patients, health professionals, and the public.
- (3) To utilize educational and training resources and services that have been developed by organizations with appropriate expertise and knowledge of osteoporosis and to use available technical assistance.

- (4) To evaluate existing osteoporosis services in the community and assess the need for improving the quality and accessibility of community-based services.
- (5) To provide easy access to clear, complete, and accurate osteoporosis information and referral services.
- (6) To educate and train service providers, health professionals, and physicians.
- (7) To heighten awareness about the prevention, detection, and treatment of osteoporosis among state and local health and human service officials, health educators, and policy makers.
- (8) To coordinate state programs and services to address the issue of osteoporosis.
- (9) To promote the development of support groups for osteoporosis patients and their families and caregivers.
- (10) To adequately fund these programs.
- (11) To provide lasting improvements in the delivery of osteoporosis health care, thus providing patients with an improved quality of life and society with the containment of health care costs.

§ 22-13A-4. Establishment and promotion of program; duties of officer; strategies for raising public awareness and educating consumers and professionals.

(a) The State Department of Health, hereinafter referred to as "the department," shall establish, promote, and maintain an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers, educate and train health professionals, teachers, and human service providers, and for other purposes.

(b) For purposes of administering this chapter, the State Health Officer shall do all of the following:

- (1) Provide sufficient staff to implement the Osteoporosis Prevention and Treatment Education Program.
- (2) Provide appropriate training for staff of the Osteoporosis Prevention and Treatment Education Program.
- (3) Identify the appropriate entities to carry out the program.
- (4) Base the program on the most up-to-date scientific information and findings.
- (5) Work to improve the capacity of community-based services available to osteoporosis patients.
- (6) Work with governmental offices, community and business leaders, community organizations, health care and human service providers, and national osteoporosis organizations to coordinate efforts and maximize state resources in the areas of prevention, education, and treatment of osteoporosis.
- (7) Identify, and when appropriate, replicate or use successful osteoporosis programs and procure related materials and services from organizations with appropriate expertise and knowledge of osteoporosis.

(c) The department shall use, but is not limited to, the following strategies for raising public

awareness on the causes and nature of osteoporosis, personal risk factors, value of prevention and early detection, and options for diagnosing and treating the disease:

- (1) An outreach campaign utilizing print, radio, and television public service announcements, advertisements, posters, and other materials.
- (2) Community forums.
- (3) Health information and risk factor assessment at public events.
- (4) Targeting at-risk populations.
- (5) Providing reliable information to policy makers.
- (6) Distributing information through county health departments, schools, area agencies on aging, employer wellness programs, physicians, hospitals and health maintenance organizations, women's groups, non-profit organizations, community-based organizations, and departmental regional offices.

(d) The department shall use, but is not limited to, the following strategies for educating consumers about risk factors, diet, and exercise, diagnostic procedures and their indications for use, risks, and benefits of drug therapies currently approved by the U.S. Food and Drug Administration, environmental safety and injury prevention, and the availability of diagnostic, treatment, and rehabilitation services:

- (1) Identify and obtain educational materials including brochures and videotapes which translate accurately the latest scientific information on osteoporosis in easy-to-understand terms.
- (2) Build a statewide capacity to provide information and referral on all aspects of osteoporosis, including educational materials and counseling.
- (3) Establish state linkage with an existing toll-free hotline for consumers.
- (4) Facilitate the development and maintenance of osteoporosis support groups.
- (5) Conduct workshops and seminars for lay audiences.

(e) The department shall use, but is not limited to, the following strategies for educating physicians and health professionals and training community service providers on the most up-to-date, accurate scientific and medical information on osteoporosis prevention, diagnosis, and treatment, therapeutic decision-making, including guidelines for detecting and treating the disease in special populations, risks and benefits of medications, and research advances:

- (1) Identify and obtain education materials for the professional which translates the latest scientific and medical information into clinical applications.
- (2) Raise awareness among physicians and health and human services professionals as to the importance of osteoporosis prevention, early detection, treatment, and rehabilitation.
- (3) Identify and use available curricula for training health and human service providers and community leaders on osteoporosis prevention, detection, and treatment.
- (4) Provide workshops and seminars for in-depth professional development in the field of the care and management of the patient with osteoporosis.
- (5) Conduct a statewide conference on osteoporosis at appropriate intervals.

§ 22-13A-5. Needs assessment; list of services and providers.

(a) The department shall conduct a needs assessment to identify any or all of the following:

- (1) Research being conducted within the state.
- (2) Available technical assistance and educational materials and programs nationwide.
- (3) The level of public and professional awareness about osteoporosis.
- (4) The needs of osteoporosis patients, their families, and caregivers.
- (5) Needs of health care providers, including physicians, nurses, managed care organizations, and other health care providers.
- (6) The services available to the osteoporosis patient.
- (7) Existence of osteoporosis treatment programs.
- (8) Existence of osteoporosis support groups.
- (9) Existence of rehabilitation services.
- (10) The number and location of bone density testing equipment.

(b) Based on the needs assessment, the department shall develop and maintain a list of osteoporosis-related services and osteoporosis health care providers with specialization in services to prevent, diagnose, and treat osteoporosis. The list shall be disseminated with a description of diagnostic testing procedures, appropriate indications for their use, drug therapies currently approved by the United States Food and Drug Administration, and a cautionary statement about the current status of osteoporosis research, prevention, and treatment. Such a statement shall also indicate that the department does not license, certify, or in any way approve osteoporosis programs or centers in the state.

§ 22-13A-6. Interagency Council on Osteoporosis.

(a) The department shall establish an Interagency Council on Osteoporosis. The State Health Officer, or his or her designee, shall chair the interagency council. The council shall have representatives from appropriate state departments and agencies, including, but not limited to, the entities with responsibility for aging, health care reform implementation, education, public welfare, and programs for women.

(b) The council shall be responsible for all of the following:

- (1) Coordinate osteoporosis programs conducted by or through the department.
- (2) Establish a mechanism for sharing information on osteoporosis among all officials and employees involved in carrying out osteoporosis-related programs.
- (3) Review and coordinate the most promising areas of education, prevention, and treatment concerning osteoporosis.
- (4) Assist the department and other offices in developing and coordinating plans for education and health promotion on osteoporosis.

- (5) Establish mechanisms to use the results of research concerning osteoporosis in the development of relevant policies and programs.
- (6) Prepare a report that describes educational initiatives on osteoporosis sponsored by the state and makes recommendations for new educational initiatives on osteoporosis, and transmit the report to the Legislature and make the report available to the public.

§ 22-13A-7. Advisory Panel on Osteoporosis.

The Interagency Council on Osteoporosis shall establish and coordinate an Advisory Panel on Osteoporosis which shall provide non-governmental input regarding the Osteoporosis Prevention and Treatment Education Program. The membership of the panel shall include, but is not limited to, persons with osteoporosis, women's health organizations, public health educators, osteoporosis experts, providers of osteoporosis health care, persons knowledgeable in health promotion and education, and representatives of national osteoporosis organizations or their state or regional affiliates.

§ 22-13A-8. Department authorized to replicate programs and enter into contracts with organizations with expertise.

(a) The department may replicate and use successful osteoporosis programs and enter into contracts and purchase materials or services, or both, from organizations with appropriate expertise and knowledge of osteoporosis for services and materials which may include any of the following:

- (1) Educational information and materials on the causes, prevention, detection, treatment, and management of osteoporosis.
- (2) Training of staff.
- (3) Physician and health care professional education and training, and clinical conferences.
- (4) Conference organization and staffing.
- (5) Regional office development and staffing.
- (6) Nominations for advisory panels.
- (7) Support group development.
- (8) Consultation.
- (9) Resource library facilities.
- (10) Training home health aides and nursing home personnel.
- (11) Training teachers.

(b) The department may enter into an agreement to work with a national organization with expertise in osteoporosis to establish and staff offices of the organization in the state to implement parts of the osteoporosis program.

§ 22-13A-9. State Health Officer authorized to accept grants, services, and property from entities; federal waivers.

(a) The State Health Officer may accept grants, services, and property from the federal government, foundations, organizations, medical schools, and other entities as may be available for the purposes of fulfilling the obligations of this program.

(b) The State Health Officer shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this program.

§ 22-13A-10. Implementation of chapter only to extent funds made available.

The provisions of this chapter shall be implemented only to the extent sufficient funds are made available for implementation and administration.

Chapter 14. Radiation, §§ 22-14-1 through 22-14-16, 22-14-21, 21-14-22, and 22-14-30 through 22-14-35.

Article 1. Regulation of Sources of Ionizing Radiation.

§ 22-14-1. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **BY-PRODUCT MATERIAL.** Any radioactive material, except special nuclear material, yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) **IONIZING RADIATION.** Gamma rays and X rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not sound or radio waves or visible, infrared or ultraviolet light.

(3) **LICENSE -- GENERAL AND SPECIFIC:**

a. **General License.** A license effective, pursuant to regulations promulgated by the State Radiation Control Agency, without the filing of an application, to transfer, acquire, own, possess or use radiation producing machines or quantities of, or devices or equipment utilizing by-product, source, special nuclear materials or other radioactive material occurring naturally or produced artificially.

b. **Specific License.** A license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess radiation producing machines or quantities of, or devices or equipment utilizing by-product, source, special nuclear materials or other radioactive material occurring naturally or produced artificially.

(4) PERSON. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto.

(5) SOURCE MATERIAL.

a. Uranium, thorium or any other material which the Governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or

b. Ores containing one or more of the foregoing materials in such concentration as the Governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(6) SPECIAL NUCLEAR MATERIAL.

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235 and any other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or

b. Any material artificially enriched by any of the foregoing, but does not include source material.

§ 22-14-2. Declaration of policy.

It is the policy of the State of Alabama in furtherance of its responsibility to protect the public health and safety:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for:

a. Compatibility with the standards and regulatory programs of the federal government;

b. A single, effective system of regulation within the state; and

c. A system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

§ 22-14-3. Purpose of article.

It is the purpose of this article to effectuate the policies set forth in Section 22-14-2 by providing for:

(1) A program of effective regulation of sources of ionizing radiation and machines and devices producing ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and to facilitate intergovernmental cooperation

with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source and special nuclear materials; and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

§ 22-14-4. State Radiation Control Agency; director and powers and duties thereof.

(a) The State Board of Health is hereby designated as the State Radiation Control Agency, hereinafter referred to as the agency.

(b) The State Health Officer shall be director of the agency, hereinafter referred to as the director, who shall perform the functions vested in the agency pursuant to the provisions of this article.

(c) In accordance with the laws of the state, the agency may employ, compensate and prescribe the powers and duties of such personnel as may be necessary to carry out the provisions of this article.

(d) The agency shall, for the protection of the public health and safety:

(1) Develop and conduct programs for evaluation of hazards associated with use of sources of ionizing radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of by-product, source and special nuclear materials;

(3) Formulate, adopt, promulgate and repeal codes, rules and regulations relating to control of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the federal government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under Section 22-14-6;

(5) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(7) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to control of sources of ionizing radiation; and

(8) Collect and disseminate information relating to control of sources of ionizing radiation, including:

a. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

- b. Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto;
- c. Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon; and
- d. Maintenance of a file of registrants possessing X-ray machines or other machines and devices producing ionizing radiation.

§ 22-14-5. Radiation Advisory Board of Health.

(a) There shall be established a Radiation Advisory Board of Health consisting of 10 members appointed by the Governor. The Governor shall appoint one member to the Radiation Advisory Board from a list of three nominees in each of the following fields:

- (1) Radiology.
- (2) Medicine.
- (3) Radiation or health physics.
- (4) Applied sciences. These nominees are to be submitted to the Governor by the State Committee of Public Health.

One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Business Council of Alabama, or its successor. One member of the Radiation Advisory Board shall be appointed from the University of Alabama from a list of three nominees having knowledge in the field of radiation submitted by the President of the University of Alabama. One member of the Radiation Advisory Board shall be appointed from Auburn University from a list of three nominees having knowledge in the field of radiation submitted by the President of Auburn University. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the President of the Alabama Dental Association. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Alabama Board of Chiropractic Examiners. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Alabama Veterinary Medical Association for an initial term of four years and thereafter the term shall be six years. Members of the board shall serve for terms of six years each, except that of the first board appointed, three members shall serve for two years, three members shall serve for four years and three members shall serve for six years, as the Governor may prescribe. The members shall receive no salary for services but may be reimbursed for expenses incurred in connection with attendance at board meetings or for authorized business of the board pursuant to Article 2 of Chapter 7 of Title 36. The State Health Officer shall serve as chairman of the board, and the board shall meet at his or her request.

(b) The board shall:

- (1) Review and evaluate policies and programs of the state relating to ionizing radiation and advise the agency of its opinions and findings.

(2) Advise the State Radiation Control Agency on any matter submitted to said advisory board by said agency and to propose, oppose, recommend, or disapprove in an advisory capacity any matter that may come before the agency.

§ 22-14-6. Licensing or registration of persons dealing with radioactive materials.

(a) The agency shall provide, by rule or regulation, for general or specific licensing of persons to receive, possess or transfer by-product, source, special nuclear materials, devices or equipment utilizing such materials or any other radioactive materials occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension or revocation of licenses and shall require that each applicant for licensure be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government.

(b) The agency is authorized to require registration and inspection of persons dealing with ionizing radiation which does not require a specific license and may require compliance with specific safety standards to be promulgated by the agency.

(c) The agency is authorized to exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the agency makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Any report of investigation or inspection or any information concerning trade secrets or secret industrial processes obtained under this article shall not be disclosed or opened to public inspection by the agency.

(e) Rules and regulations promulgated pursuant to this chapter may provide for recognition of other state or federal licenses as the agency may deem desirable, subject to such registration requirements as the agency may prescribe.

(f) It shall be unlawful for any person to use, manufacture, produce, knowingly transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless licensed by or registered with the agency in accordance with the provisions of this article and the rules and regulations issued thereunder.

§ 22-14-7. Right of entry and inspection.

The agency or its duly authorized representatives shall have the power to enter, at all reasonable times, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article, and rules and regulations issued thereunder, and the owner, occupant or person in charge of such property shall permit such entry and inspection, except that entry into areas under the jurisdiction of the federal government shall

be effected only with the concurrence of the federal government or its duly designated representative.

§ 22-14-8. Records and reports.

(a) The agency shall require each person who acquires, possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer or disposal and such other records as the agency may require, subject to exemptions as may be provided by rules or regulations.

(b) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the agency. Copies of these records and those required to be kept by subsection (a) of this section shall be submitted to the agency on request.

(c) The agency shall adopt reasonable regulations, compatible with those of the United States Nuclear Regulatory Commission, or any successor thereto, pertaining to reports of exposure of personnel. Such regulations shall require that reports of excess exposure be made to the individual exposed and to the agency and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

(d) The provisions of this article shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

§ 22-14-9. Agreements with federal government; effect thereof on federal license.

(a) The Governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(b) Any person who, on the effective date of an agreement under subsection (a) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this article, which shall expire either 90 days after receipt from the agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

§ 22-14-10. Cooperative agreements for inspections, etc.; training programs.

(a) The agency is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies whereby this state will perform, on a cooperative

basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(b) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this article.

§ 22-14-11. Administrative action and judicial review.

(a) In any proceeding under this article:

(1) For the issuance or modification of rules and regulations relating to control or sources of ionizing radiation;

(2) For granting, suspending, revoking or amending any license; or

(3) For determining compliance with rules and regulations of the agency, the agency shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to such proceeding.

(b) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this article, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the agency shall be afforded a hearing within 30 days. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within 30 days after such hearing.

(c) Any final order entered in any proceeding under subsections (a) and (b) of this section shall be subject to judicial review by the Circuit Court of Montgomery County in the manner prescribed for taking appeals from orders of the Alabama Public Service Commission as provided in Division 3 of Article 2 of Chapter 1 of Title 37 of this code.

§ 22-14-12. Orders enjoining or directing compliance.

Whenever, in the judgment of the agency, any person has engaged in, or is about to engage in, any acts or practices which constitute, or will constitute, a violation of any provision of this article, or any rule, regulation or order issued thereunder, and at the request of the agency, the Attorney General, or the district attorney under his direction, may make application to the circuit court for an order enjoining such acts or practices or for an order directing compliance, and upon a showing by the agency that such person has engaged, or is about to engage, in any such acts or practices, a permanent or preliminary injunction, temporary restraining order or other order may

be granted.

§ 22-14-13. Impounding of ionizing radiation sources.

The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this article, or any rules and regulations issued thereunder.

§ 22-14-14. Penalty for violation of article or rules, regulations or orders; notice of possible liability for civil penalty; civil action by Attorney General; considerations affecting amount of civil penalty; maximum penalty on small businesses; payment of penalty.

(a) Any person who willfully violates any of the provisions of this article or rules, regulations or orders of the agency in effect pursuant thereto shall, upon conviction thereof, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail or by a sentence to hard labor for the county not exceeding 12 months, or by both fine and imprisonment or hard labor.

(b) Any person who

(1) Violates any licensing provision of Section 22-14-4 or Section 22-14- 6 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or

(2) Commits any violation for which a license may be revoked under Section 22-14-11, shall be subject to a civil penalty to be imposed by the State Radiation Control Agency not to exceed \$10,000.00 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The State Radiation Control Agency shall have the power to compromise, mitigate, or remit such penalties.

(c) Whenever the State Radiation Control Agency has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing:

(1) Setting forth the date(s), facts, and nature of each act or omission with which the person is charged,

(2) Specifically identifying the particular provision or provisions of the section, rule, or regulation, order, or license involved in the violation, and

(3) Advising of each penalty which the State Radiation Control Agency proposes to impose and its amount.

Such written notice shall be sent by registered mail by the State Radiation Control Agency to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within a reasonable period as the State Radiation Control Agency shall by

regulation provide, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the State Radiation Control Agency, if any, the penalty may be collected by civil action.

(d) Upon the request of the director of the State Radiation Control Agency, the Attorney General is authorized to institute a civil action to collect a civil penalty imposed pursuant to this section. The Attorney General shall have the power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(e) In determining the amount of civil penalty, the State Radiation Control Agency shall issue rules, regulations, or orders which consider:

- (1) The class or types of licenses or vendors,
- (2) The economic effect on the person,
- (3) The severity of the violation,
- (4) The compliance history of the person, and
- (5) The person's responsiveness with corrective actions.

In addition to the above, for those persons who qualify as a small business pursuant to the laws relating to small business administration loans and nonprofit institutions, the maximum civil penalty stated in subsection (b) above shall be \$1,000.00.

(f) All civil penalties, less any costs to the Attorney General's office, shall be paid into the General Fund.

§ 22-14-15. Effect of article on local ordinances.

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to by-product, source, special nuclear materials, other radioactive materials occurring naturally or produced artificially or machine-produced radiation, shall not be superseded by this article if such ordinances or regulations are, and continue to be, consistent with the provisions of this article, amendments thereto and rules and regulations thereunder; but the authority of the agency under this article shall be paramount to that of any county, city or town.

§ 22-14-16. Non-consent of state to acquisition of land by federal government for disposal of nuclear waste.

Notwithstanding any law, order or regulation to the contrary, the State of Alabama does not consent to the acquisition by any agency, department or instrumentality of the United States of America by purchase, condemnation or otherwise of any land, building or other site within the State of Alabama for use of storing, depositing or dumping any nuclear spent fuel or any other

radioactive material or waste, except for that nuclear spent fuel or radioactive material or waste that is generated or used in Alabama.

Article 1A. . Regulation and Certification of Volume Reduction of Low-Level Radioactive Wastes.

§ 22-14-20. Adoption of rules requiring generators of low-level radioactive waste to implement best management practices as condition of access to disposal facilities.

The State Radiation Control Agency shall develop and adopt rules which require generator of low-level radioactive waste to implement best management practices, including prevention, minimization, reduction, segregation, and hold-for-decay storage, as a condition of access to a low-level radioactive waste disposal facility licensed by the State Radiation Control Agency or by the appropriate authority of a state which has compacted with Alabama to dispose of low-level radioactive waste generated in Alabama.

§ 22-14-21. Certification to another state or facility of compliance by facility with rules adopted under § 22-14-20.

The State Radiation Control Agency shall determine and certify to another state or a facility, if requested by that state or facility, that a facility either does or does not comply with the rules issued pursuant to Section 22-14-20 based upon data, reports, and/or other information available to the agency.

§ 22-14-22. Certification of facilities licensed only by federal government; request for inspection; inspection fee; failure to pay fee.

The State Radiation Control Agency may issue a certification for facilities licensed only by the federal government if it has sufficient data, reports, and/or other information to determine whether such a facility is complying with the rule specified in Section 22-14-20. Such facility may request the inspection by the staff of the State Radiation Control Agency of those activities related to the volume reduction of low-level radioactive waste. Such a facility shall pay a fee equal to 75 percent of the appropriate United States Nuclear Regulatory Commission's average cost per professional staff hour based upon the professional staff time spent in determining that a facility does or does not comply with the criteria adopted pursuant to Section 22-14- 20. Failure to pay such inspection fee shall permit the State Radiation Control Agency to revoke or rescind any certifications issued. All such fees are to be paid into the Radiation Safety Fund.

Article 2. . Employee Background Investigations.

§ 22-14-30. Inquiry into employee's criminal history by licensed nuclear facilities; "vital areas" defined.

Any person, firm or corporation which operates, constructs or maintains a nuclear powered electric generating facility within the state licensed by the United States Nuclear Regulatory Commission, except an agency of the United States government, shall conduct an inquiry into the criminal history record of any person employed or who has made application for employment at such facility.

The criminal history record inquiry shall be used to establish the suitability of such person to work within or have access to any vital area of such facility. "Vital areas" shall be defined by the United States Nuclear Regulatory Commission or any other federal agency having authority to license or regulate nuclear powered electric generating facilities.

§ 22-14-31. Fingerprints; search of criminal records by department; fees.

Any person, firm or corporation referred to in Section 22-14-30 shall submit to the Alabama Department of Public Safety two sets of classifiable fingerprints of each person for whom a criminal history record inquiry is required. Fingerprints shall be submitted upon cards of such type as the department may require.

The department shall search its criminal history files or the criminal history files of any other state agency to which it has access and return the results of its records search to the submitting employer. The director shall set and collect a reasonable fee for such service. Said fee shall be paid into the Department of Public Safety Operating Fund.

§ 22-14-32. Submission of fingerprint cards to F.B.I.

The Department of Public Safety shall submit one set of the classifiable fingerprint cards of such employee to the identification division of the Federal Bureau of Investigation with a request that the bureau search its criminal history files to ascertain if such employee has a criminal history and furnish any identifiable information on such employee to the department.

§ 22-14-33. Liability of department.

The Department of Public Safety or its employees shall not be liable for any action taken against any person by such employers as a result of receiving or using such criminal history records obtained from the department.

§ 22-14-34. Equivalent background investigations sufficient.

Any person employed by a nuclear powered electric generating facility which requires clearance or background investigation equivalent to the requirements set forth herein shall be exempt from the provisions of this article.

§ 22-14-35. Costs of implementing article.

All costs of implementing this article are to be borne by any person, firm or corporation which operates, constructs or maintains a nuclear powered electric generating facility within the state licensed by the United States Nuclear Regulatory Commission on whose behalf these inquiries are made.

Chapter 15. Tuberculosis and Other Lung Diseases. Repealed.

Chapter 15A. Alabama Clean Indoor Air Act, §§ 22-15A-1 through 22-15A-10.

§ 22-15A-1. Short title.

This chapter shall be known and may be cited as the "Alabama Clean Indoor Air Act."

§ 22-15A-2. Legislative findings.

The Legislature finds as follows:

(1) Numerous studies have found that tobacco smoke may be a major contributor to indoor air pollution and that breathing secondhand smoke may be a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

(2) Health hazards induced by breathing secondhand smoke may include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchospasm.

§ 22-15A-3. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

(1) **BAR AND LOUNGE.** Any establishment which is primarily devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

- (2) CHILD CARE FACILITY. Any facility caring for children.
- (3) DEPARTMENT. The Alabama Department of Public Health.
- (4) EMPLOYER. Any person, partnership, association, corporation, or nonprofit entity that employs five or more persons, including the legislative, executive, and judicial branches of state government; and any county, city, town, or village or any other political subdivision of the state; any public authority, commission, agency, or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.
- (5) GOVERNMENT BUILDING. Any building owned or operated by the state, including the legislative, executive, and judicial branches of state government; any county, city, town, or village or any other political subdivision of the state; any public authority, commission, agency, or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.
- (6) PUBLIC CONVEYANCE. A bus, taxi, train, trolley, boat, and any other means of public transit.
- (7) PUBLIC MEETING. Any meeting open to the public unless held in a private residence.
- (8) PUBLIC PLACE. Any enclosed area to which the public is permitted, including, but not limited to, auditoriums, elevators, hospitals, nursing homes, libraries, courtrooms, jury waiting rooms and deliberation rooms, theatres, museums, common areas of retirement homes, restaurants, laundromats, health facilities, educational facilities, shopping malls, government buildings, sports and recreational facilities, places of employment, airports, banks, retail stores, and service establishments. A private residence is not a "public place."
- (9) SERVICE LINE. Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (10) SMOKING. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.
- (11) SMOKING AREA. Any designated area meeting the requirements of Section 22-15A-7.

§ 22-15A-4. Prohibition against smoking in public places; exceptions.

(a) No person shall smoke in a public place or at a public meeting except as otherwise provided in this subsection and in Section 22-15A-7. This prohibition does not apply in any of the following places:

- (1) Bars and lounges.
- (2) Retail tobacco stores and tobacco businesses.
- (3) Limousines used under private hire by an individual or corporation.
- (4) Hotel and motel rooms rented to guests, except for those rooms designated by the hotels and motels as "no smoking" rooms.

(b) Smoking by patients in a chemical dependency treatment program or mental health program may be allowed in a separated well-ventilated area pursuant to a policy established by the administrator of the program that identifies circumstances in which prohibiting smoking would interfere with the treatment of persons recovering from chemical dependency or mental illness.

§ 22-15A-5. Written smoking policies by employers; designation of nonsmoking areas.

(a) By December 1, 2003, each employer having an enclosed place of employment may adopt, implement, make known, and maintain a written smoking policy which shall contain at a minimum all of the following requirements:

(1) Any employee in a place of employment shall have the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer.

(2) Smoking shall be prohibited in all common work areas in a place of employment, unless a majority of the workers who work in that area agree that a smoking area will be designated.

(b) The smoking policy shall be communicated to all employees within three weeks of its adoption. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(c) Notwithstanding any other provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

§ 22-15A-6. Designation of smoking areas; requirements; nonsmoking policies.

(a) Pursuant to this section, the person in charge of a public place may designate an area for the use of smokers. Notwithstanding the foregoing, a smoking area may not be designated and no person may smoke in any of the following unless the area is enclosed and well ventilated:

(1) Child care facilities.

(2) Hospitals, health care clinics, doctors' offices, physical therapy facilities, and dentists' offices.

(3) Elevators.

(4) Buses, taxicabs, and other means of public conveyance.

(5) Government buildings, except private offices.

(6) Restrooms.

(7) Service lines.

(8) Public areas of aquariums, galleries, libraries, and museums.

(9) Lobbies, hallways, and other common areas in apartment buildings, senior citizen residences, nursing homes, and other multiple-unit residential facilities.

(10) Polling places.

(11) Schools or other school facilities or enclosed school sponsored events for grades K-12.

(12) Retail establishments, excluding restaurants, except areas in retail establishments not open to the public.

(13) Lobbies, hallways, and other common areas in multiple-unit commercial facilities.

(b) If a smoking area is designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke, and no more than one-fourth of the total square

footage in any public place within a single enclosed area shall be reserved and designated for smokers unless clientele dictates otherwise. No area designated as a smoking area shall contain common facilities which are expected to be used by the public.

(c) Nothing in this section shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility.

(d) Notwithstanding any other provision of this section or this chapter, if any restaurant is deemed by its owner as being too small to have a designated smoking area, it shall be left up to the discretion of the owner if the facility will be a "smoking" or a "nonsmoking" facility.

§ 22-15A-7. Posting of "No Smoking" and "Smoking Area" signs; violations of chapter.

(a) A "No Smoking" sign or signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across, shall be prominently posted and properly maintained where smoking is prohibited by this chapter, by the owner, operator, manager, or other person in charge of the facility. "Smoking Area" signs shall also be posted as appropriate in public places.

(b) The person(s) in charge of a public place who observes a person in possession of a lighted tobacco product in apparent violation of this chapter shall inform that person that smoking is not permitted in that area by law.

§ 22-15A-8. Enforcement of chapter; reporting violations.

(a) The department, in cooperation with other agencies, shall enforce this chapter and to implement enforcement shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying procedures by which appeals may be taken by aggrieved parties.

(b) Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department. The State Fire Marshal shall report to the department observed violations of Section 22-15A-5 or Section 22-15A-6 found during its periodic inspections conducted pursuant to its regulatory authority. The department or division, upon notification of observed violations of Section 22-15A-5 or Section 22-15A-6, shall issue to the proprietor or other person in charge of the public place a notice to comply with Section 22-15A-5 or Section 22-15A-6, or both. If such person fails to comply within 30 days after receipt of such notice, the department or the division shall assess a civil penalty against him or her not to exceed fifty dollars (\$50) for the first violation, not to exceed one hundred dollars (\$100) for the second violation, and not to exceed two hundred dollars (\$200) for each subsequent violation. The imposition of a civil penalty shall be in accordance with the Alabama Administrative

Procedure Act. If a person refuses to comply with this chapter, after having been assessed a penalty pursuant to this section, the department or the division may file a complaint in the circuit court of the county in which such public place is located to require compliance.

(c) All fine moneys collected pursuant to this section shall be deposited into the State General Fund.

§ 22-15A-9. Penalties.

Any person who violates Section 22-15A-4 commits a violation, punishable by a fine of twenty-five dollars (\$25) for each violation. Jurisdiction shall be with the appropriate district or municipal court. A charge of a violation shall be treated in the same manner as a traffic citation. Any law enforcement officer may issue a citation pursuant to this section.

§ 22-15A-10. Local laws, ordinances, or regulations.

Nothing in this chapter shall be construed to restrict the power of any county, city, town, or village to adopt and enforce local laws, ordinances, or regulations that comply with at least the minimum applicable standards set forth in this chapter.

Chapter 16. Venereal Diseases. Repealed.

Chapter 17. Barber, Manicure, or Beauty Shops, §§ 22-17-1 through 22-17-11.

§ 22-17-1. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) BARBER. Any person who shaves or trims the beard or cuts or dresses the hair of any other person for pay, including barber's apprentices and shop boys.
- (2) MANAGER. Any person having, for the time being, control of the premises and of persons working or employed therein.

§ 22-17-2. Applicability of chapter.

Any place or establishment in which any one or more of the following named services is regularly performed, for pay, shall be subject to the provisions of this chapter:

- (1) Shaving;

- (2) Beard trimming;
- (3) Cutting, dressing, arranging, curling, waving, shampooing, singeing, bleaching or dyeing of the hair;
- (4) Application of massages, cosmetics, antiseptics, tonics, lotions or creams to the skin or scalp; or
- (5) Manicuring, polishing, tinting or buffing the nails.

Places in which such services are performed, for pay, shall, for purposes of enforcement of this chapter, be known as barber, manicure or beauty shops.

§ 22-17-3. Duty of manager as to maintenance of shop and equipment.

Every manager of a barber, manicure or beauty shop shall keep the said shop, and all furniture, tools, appliances and other equipment used therein, at all times in a clean and hygienic condition. The use of soiled, greasy or visibly unclean tools, appliances, combs, brushes, etc., or towels which have not been laundered since last used is hereby prohibited.

§ 22-17-4. Water connections and waste disposal.

The owner and manager of every barber, manicure and beauty shop shall provide for regular use in the said shop hot and cold water connections and sewer connections complying with the ordinances of the municipalities in which they are situated; provided, that in communities and localities in which public water supplies under pressure and public sewers are not available, an adequate supply of hot water and waste disposal satisfactory to the county health officer shall be provided.

§ 22-17-5. Cleansing of hands.

Every barber, manicurist and cosmetologist shall cleanse his or her hands thoroughly before serving each patron.

§ 22-17-6. Headrests.

The headrest of every barber or beauty shop chair shall be covered with a clean towel or clean new paper before any patron is served.

§ 22-17-7. Use of certain materials prohibited.

The use of alum or other caustic material, except in powdered or liquid form, to stop the flow of blood and the use of a powder puff or brush, a sponge or a finger bowl, unless it is designed and used for single service, is hereby prohibited.

§ 22-17-8. Service by persons having skin or venereal disease.

No operator of a barber, manicure or beauty shop shall permit any person suffering from a communicable skin disease or venereal disease to serve patrons in the said shop. Barbering, manicuring or beauty culture by any person suffering from a communicable skin disease or venereal disease is hereby prohibited.

§ 22-17-9. Service of persons having inflamed, etc., skin.

No barber, manicurist or cosmetologist shall serve any person whose skin is inflamed, scabby or contains pus unless tools, equipment, etc., for his or her individual use are provided.

§ 22-17-10. Treatment of skin diseases or infections prohibited.

The treatment of any skin disease or infection by a barber, manicurist or cosmetologist is hereby prohibited.

§ 22-17-11. Use of shop or parlor as dormitory.

No person shall use a barbershop or beauty parlor as a dormitory, nor shall any operator of a barber shop or beauty parlor permit said establishment to be so used.

Chapter 17A. Regulation of Tattooing, Branding, and Body Piercing, §§22-17A-1 through 22-17A-8.

§ 22-17A-1. Definitions.

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

- (1) BODY PIERCING. The perforation of human tissue other than ear for a nonmedical purpose.
- (2) BRANDING. A permanent mark made on human tissue by burning with a hot iron or other instrument.
- (3) DEPARTMENT. State Department of Public Health.
- (4) MINOR. An individual under 18 years of age who is not emancipated. An emancipated minor is or has been married or has by court order otherwise been legally freed from the care, custody, and control of his or her parents.
- (5) TATTOO. An indelible mark made upon the body of another individual by the insertion of a pigment in or under the skin or an indelible design upon the body of another individual by production of scars other than by branding.
- (6) TATTOO FACILITY. The geographic location at which an individual does one or more of the following for compensation:

- a. Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.
- b. Places an indelible design upon the body of another individual by production of scars.
- c. Performs body piercing.

§ 22-17A-2. Parental consent required for minors; intoxicated, etc., individuals.

(a) An individual shall not tattoo, brand, or perform body piercing on another individual or a minor unless the individual obtains the prior written informed consent of the parent or legal guardian of the minor. The parent or legal guardian of the minor shall execute the written informed consent required under this subsection in the presence of the individual performing the tattooing, branding, or body piercing on the minor or in the presence of an employee or agent of that individual.

(b) A person shall not tattoo, brand, or perform body piercing on another individual if the other individual is under the influence of intoxicating liquor or a controlled substance.

§ 22-17A-3. Tattoo facility license.

(a) A person shall not tattoo, brand, or perform body piercing on another individual unless each of the following conditions is met:

- (1) The tattooing, branding, or body piercing occurs at a tattoo facility licensed under this chapter.
- (2) The individual receiving the tattoo, branding, or body piercing is 18 years of age or older.

(b) The owner or operator of a tattoo facility may apply to the department for a tattoo facility license under this chapter on a form provided by the department, and at the time of application shall pay to the department the appropriate fee under subsection (c). If the department determines that the application is complete and the tattoo facility proposed or operated by the applicant meets the requirements of this chapter and the rules promulgated pursuant to this chapter, the department shall issue a license to the applicant for the operation of that tattoo facility. The license shall be effective for a time period prescribed by rule of the department.

(c) Subject to Section 22-17A-7, the owner or operator of a tattoo facility shall pay one of the following fees at the time of application for a facility license:

- (1) Initial annual license \$250.
- (2) One-year renewal of an annual license \$200.
- (3) Temporary license to operate a tattoo facility at a fixed location for not more than a two-week period \$50.

§ 22-17A-4. Inspection of tattoo facility.

- (a) Before issuing a license to an applicant under this chapter, the department shall inspect the premises of the tattoo facility that is the subject of the application.
- (b) The department shall periodically inspect each tattoo facility licensed under this chapter to ensure compliance.
- (c) The department shall issue a license under this chapter to a specific person for a tattoo facility at a specific location and the license issued shall be nontransferable.

§ 22-17A-5. Renewal of license.

The owner or operator of a tattoo facility licensed under this chapter shall apply to the department for renewal of the license under this chapter not less than 30 days before the license expires. Upon payment of the renewal fee prescribed by subsection (c) of Section 22-17A-3, the department shall renew the license if the applicant is in compliance with this chapter and the rules promulgated pursuant to this chapter.

§ 22-17A-6. Requirements for operation of tattoo facility.

A person who owns or operates a licensed tattoo facility shall do each of the following:

- (1) Display the license in a conspicuous place within the customer service area of the tattoo facility.
- (2) Ensure that an individual engaged in tattooing in the tattoo facility wears disposable gloves approved by the department when tattooing, branding, or body piercing, or when cleaning instruments used in tattooing, branding, or body piercing.
- (3) Maintain a permanent record of each individual who has been tattooed, branded, or who has had body piercing performed at a tattoo facility, and make the records available for inspection by the department or local county health department. The record shall include, at a minimum, the individual's name, address, age, and signature, the date, the design, and location of the tattooing, branding, or body piercing, and the name of the individual performing the tattooing, branding, or body piercing.
- (4) Provide each customer with a written information sheet approved by the department that provides instructions on tattoo site, branding site, and body piercing site care, which shall include a recommendation that a person seek medical attention if the tattoo site, branding site, or body piercing site becomes infected or painful, or if the person develops a fever soon after being tattooed, being branded, or having body piercing performed.
- (5) Within 24 hours of becoming aware that an individual tattooed, branded, or body pierced at the tattoo facility is infected with a communicable disease, notify the department or a local county health department.

§ 22-17A-7. Powers and duties of department.

(a) The department shall perform each of the following duties:

- (1) Enforce this chapter and the rules promulgated under this chapter.
- (2) Promulgate rules necessary to implement this chapter, including, but not limited to, rules governing each of the following:
 - a. Tattoo facility design and construction.
 - b. Tattoo, branding, and body piercing equipment standards, including, but not limited to, cleaning and sterilization requirements.
 - c. Tattoo dye standards.
 - d. Inspection of tattoo facilities.
 - e. Tattoo facility license renewal.

(b) The department may exercise any of the following powers:

- (1) Appoint an advisory committee to assist the department in rule development.
- (2) After notice and an opportunity for a hearing, suspend, revoke, or deny a license or license renewal for a violation of this chapter or a rule promulgated pursuant to this chapter.

(c) Local county health departments may enforce this chapter and all rules promulgated pursuant to this chapter.

(d) In addition to any other enforcement action authorized by law, a person alleging a violation of this chapter may bring a civil action for appropriate injunctive relief.

§ 22-17A-8. Penalties.

A person who violates this chapter or a rule promulgated under this chapter shall be guilty of a Class C misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than one hundred dollars (\$100), or both, for each violation.

Chapter 18. Ambulances, §§ 22-18-1 through 22-18-44.

Article 1. Training, Qualification and Licensing.

§ 22-18-1. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) ADVANCED EMERGENCY MEDICAL TECHNICIAN. Any person 18 years of age or older who satisfies all of the following:

a. Has successfully completed the advanced emergency medical technician course of instruction, or its equivalent, as approved by the State Board of Health.

b. Has passed the state Advanced EMT examination, as well as having met the requirements for becoming a licensed emergency medical technician.

c. Has been granted a license by the State Board of Health.

(2) ADVANCED LIFE SUPPORT (ALS). The treatment of potentially life-threatening medical emergencies through the use of invasive medical techniques specified as advanced life support techniques by the Board of Health, which ordinarily would be performed or provided by licensed physicians, but which may be performed emergency medical service personnel during emergencies under constraints specified by rule of the board.

(3) AIR AMBULANCE. An aircraft that is intended to be used for and is maintained or operated for transportation to a medical care facility of persons who are sick or injured. For the purposes of this chapter, fixed-wing aircraft that do not conduct scene flights shall not be considered air ambulances.

(4) BASIC LIFE SUPPORT (BLS). Prehospital care involving non-invasive life support measures as specified by the board.

(5) BOARD or BOARD OF HEALTH. The State Board of Health.

(6) DEPARTMENT. The Alabama Department of Public Health.

(7) EMERGENCY MEDICAL SERVICES (EMS). A system of coordinated response to provide prehospital emergency aid and medical assistance from primary response to definitive care, involving personnel trained in the rescue, stabilization, transportation, and treatment of sick or injured persons.

(8) EMERGENCY MEDICAL SERVICES PERSONNEL (EMSP). The collective term used to refer to licensed emergency medical technicians, emergency medical technicians intermediate, advanced emergency medical technicians, paramedics, and any level of licensure as recognized by the National Highway Traffic Safety Administration for individuals who provide emergency medical services or who initiate immediate lifesaving care.

(9) EMERGENCY MEDICAL TECHNICIAN(EMT). Any person 18 years of age or older who:

a. has successfully completed the basic emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health;

b. passed the state EMT examination; and

c. has been granted a license by the Board of Health.

(10) GROUND AMBULANCE. A motor vehicle that is intended to be used for and is maintained or operated for transportation to a medical care facility of persons who are sick or injured.

(11) **LICENSED EMERGENCY MEDICAL TECHNICIAN-INTERMEDIATE.** Any person 18 years of age or older who prior to December 31, 2002:

- a. has successfully completed the intermediate emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health;
- b. passed the state EMT Intermediate examination, as well as having met the requirements for becoming a licensed emergency medical technician; and
- c. has been granted a license by the Board of Health.

(12) **NON-TRANSPORT VEHICLE.** A vehicle operated with the intent to provide BLS or ALS stabilization on scene, but not intended to transport a patient to a medical care facility.

(13) **PARAMEDIC.** Any person 18 years of age or older who has successfully completed the paramedic course of instruction, or its equivalent, as approved by the Board of Health, and passed the state EMT-paramedic examination, and who has been granted a license by the Board of Health.

(14) **PATIENT.** An individual who receives or requests medical care, or for whom medical care is requested, because the individual is sick or injured.

(15) **PHYSICIAN.** An individual licensed to practice medicine by the Medical Licensure Commission of Alabama.

(16) **PROVIDER SERVICE.** An organization, whether public or private, which provides transport or non-transport emergency medical services.

(17) **SCENE FLIGHT.** The flight of an air ambulance to the physical location of a sick or injured person.

(18) **TRANSPORT VEHICLE.** An air or ground ambulance.

§ 22-18-2. Exceptions to applicability of chapter.

The provisions of this article shall not apply to volunteer rescue squads that are members of the Alabama Association of Rescue Squads, Inc. and which furnish BLS ambulance service to the public; nor shall the provisions of this chapter apply to businesses or companies which only provide free ambulance service to their employees who require medical attention on business or company grounds; nor shall the provisions of this chapter apply to or govern ambulances owned by a county, a municipality or any other political subdivision of the state.

§ 22-18-3. Rules and regulations as to training, licensing, etc., of ambulance drivers and emergency medical technicians and operation, licensing, etc., of vehicles.

(a) In the manner provided in this section, the Board of Health, with advice and recommendation of the advisory board, shall establish and publish reasonable rules and regulations for the training, qualification, scope of privilege, and licensing of EMSP, and provider services, and for the operation, design, equipment and licensing of air and ground ambulances. In adopting rules and regulations, the Board of Health shall follow the provisions of the Alabama Administrative Procedure Act, and shall, in all cases, hold one or more public hearings prior to adoption, amendment, or rescission of any rule or regulation. At such hearing, any interested person, firm or corporation or any member of the public may be heard. Any person, firm or corporation

affected by any regulation, amendment or rescission hereof may appeal consideration thereof to the Circuit Court of Montgomery County pursuant to the provisions of the Administrative Procedure Act.

(b) Regulations adopted under this section shall become effective as provided in the Administrative Procedure Act. From any judgment of the Circuit Court in any case appealed to it, an appeal shall be made pursuant to the Administrative Procedure Act.

§ 22-18-4. Fees of licenses; licensure of emergency medical technicians; ambulances and persons directing and driving ambulances to be licensed.

(a) In addition to all other licenses or fees now payable, the Board of Health shall, as prerequisite for issuing a license under the provisions of this article and rules and regulations promulgated pursuant thereto, charge a fee of \$10.00 for each license valid for a period of 24 months issued to the EMSP and a fee of \$25.00 for each license issued to any provider service operating an air or ground ambulance. Each license issued to a provider service shall be valid for a period not to exceed 12 calendar months. The same fee shall be charged for renewal of a license as is fixed in this subsection for the original license. No additional fee shall be collected when an EMSP becomes eligible for reclassification of his or her license to a higher level.

(b) All fees collected under this chapter shall be retained in a separate fund by the Board of Health for the purpose of enforcing this chapter and shall be disbursed as other funds of the state are disbursed; provided, that no fee or permit charge authorized under this chapter shall be charged or collected for the issuing of a permit to a volunteer rescue squad, as defined in Section 32-11-1, for providing ambulance service on a gratuitous basis, or any member who volunteers his service, unless licensure is requested by the squad, company or individual, whereupon, a fee will be charged.

(c) Any person desiring EMSP licensure shall complete an approved EMSP course as defined by regulations of the Board of Health, successfully pass the appropriate level licensure examination as determined by the Board of Health, and submit an application to the board. An approved EMSP course for any level shall be a course conforming to the curriculum for that level approved by the United States Department of Transportation, or approved by any other federal agency as may, in the future, take jurisdiction over EMSP training curriculum development. A curriculum may be required to be supplemented with additional modules if the modules are optional modules approved by the United States Department of Transportation, or its successor as specified above, and the optional modules are prescribed by rule by the board pursuant to the Alabama Administrative Procedure Act.

(d) No air or ground ambulance shall be operated for ambulance purposes and no individual shall fly, drive, operate, attend or permit same to be operated for the purpose of transporting a patient from any point within the State of Alabama to any other point within the State of Alabama unless such ambulance is duly licensed by the Board of Health. The Board of Health may prescribe exceptions to this requirement consistent with the interests of public health. Any ground

ambulance shall at all times be driven by a person holding a valid driver's license and who has passed the Emergency Vehicle Operator Course approved by the Board of Health, or the Apparatus Operator's Course taught by the Alabama Fire College.

§ 22-18-5. Advisory board.

(a) There shall be an advisory board of 25 members to assist in the establishment of rules, regulations and standards necessary to carry out the provisions of this article. The board shall meet at least once each year and at the call of the State Health Officer. The State Health Officer shall be an ex officio member of the advisory board. The advisory board shall elect one from its membership to serve as chair for a two-year term. The chair shall not serve consecutive terms.

(b) Composition of the advisory board shall be:

- (1) One member designated by the Alabama Ambulance Association.
- (2) One member designated by the Alabama Association of Rescue Squads.
- (3) One member designated by the Alabama Hospital Association.
- (4) One member designated by the State Committee on Trauma, American College of Surgeons.
- (5) One member designated by the Medical Association of the State of Alabama.
- (6) One member designated by the Director of Public Safety.
- (7) One member designated by the Director of the State Department of Transportation.
- (8) One member designated by the Department of Economic and Community Affairs, Highway Traffic and Safety Program.
- (9) State Health Officer, as ex officio member with voting privileges.
- (10) One member who shall be a paramedic firefighter designated by the Professional Firefighters Association of Alabama.
- (11) One member who shall be an EMT firefighter designated by the Alabama Association of Volunteer Fire Departments.
- (12) One member designated by the Alabama Association of Fire Chiefs.
- (13) Two members designated by the Alabama Council on EMS to represent the designated regional EMS agencies.
- (14) One member designated by the State Committee of Public Health.
- (15) One member designated by the Alabama Chapter of the American College of Emergency Physicians.
- (16) One member designated by the Alabama Chapter of the American Academy of Pediatrics.
- (17) One member from a state approved paramedic training school designated by the Alabama Emergency Medical Services Education Committee.
- (18) One member who shall be an EMT designated by the professional EMT association if a professional EMT association is designated by the Board of Health or pursuant to other procedure established by law.
- (19) One member designated by the Alabama Chapter of the Emergency Nurses Association.
- (20) One member designated by the Alabama League of Municipalities.
- (21) One member designated by the Association of County Commissions of Alabama.

- (22) One member designated by the Alabama Emergency Management Council.
- (23) One member designated by the Alabama State Nurses' Association.
- (24) One member designated by the Alabama Firefighters Association.
- (25) One member designated by the Alabama Society of Hospital Pharmacists.

(c) Each representative shall serve for a period of four years or until his successor is appointed, whichever is sooner.

(d) Each ex officio member's term will be indefinite. In the case of vacancy, the new appointee shall serve for the remainder of the unexpired term. Any vacancy shall be filled by the original organization selecting said member. Members of the advisory board shall serve without compensation but shall be entitled to reimbursement for expenses incurred in the performance of the duties of their office as provided in Article 2 of Chapter 7 of Title 36 of this code.

(e) With the consent of the majority of the members of the advisory board, the chair shall set requirements for proxy representation, voting, and the establishment of a quorum.

§ 22-18-6. Class A misdemeanor for certain acts; persons providing emergency medical care must be licensed or exempted from licensure; scope of privilege for levels of licensure; control of emergency scene; denial, suspension, revocation of license or certificate for certain acts.

(a) It shall be a Class A misdemeanor for any person, firm, company, corporation, organization, facility, or agency to do any of the following:

(1) Deliberately hinder, obstruct, or interfere with an officer, inspector, or duly authorized agent of the board while in the performance of official duties.

(2) Deliberately hinder, obstruct, or interfere with any physician, licensed nurse, licensed emergency personnel EMSP, or emergency personnel exempt from licensure under the provisions of this article while that person is providing emergency care to a third person or while that person is assisting at the scene of an emergency, directing traffic at the scene of an emergency, or managing or helping to manage the scene of an emergency.

(3) Violate subsections (c) or (d) of this section.

(4) Offer, provide, or perform, without a license or certificate to do so, an emergency medical service or other function which, under the provisions of this article or the rules adopted pursuant thereto, may not be performed without a license or certificate issued by the Board of Health. No person shall be subject to criminal liability pursuant to this section in the event he or she renders first aid or emergency care at the scene of an injury caused by a motor vehicle crash or by some other incident, or at the scene of a mass casualty or disaster if:

a. The first aid or emergency care is rendered gratuitously and in good faith; and

b. The first aid or emergency care is not rendered in the course of a business, program, or system which regularly engages in the provision of emergency medical care.

(b) Nothing in this subsection shall be construed to repeal, abridge, or modify Section 6-5-332 or any other good Samaritan statute.

(c) No person shall regularly engage in providing emergency medical care at the scene of emergencies unless he or she is licensed as EMSP as defined in this article, or unless he or she is exempted from licensure pursuant to the provisions of this article. Notwithstanding the foregoing, nothing in this article shall be construed to prohibit any physician or nurse licensed in Alabama from performing any act within his or her scope of practice. No person shall hold himself or herself out to be EMSP, unless he or she is licensed as such as defined in this chapter. EMSP licensed in other jurisdictions may identify themselves as holding such licensure.

(d) The board shall by rule establish the scope of privilege for each level of EMSP licensure. No person shall exceed the scope of privilege granted to his or her level of licensure.

(e) Control of an emergency scene may be taken by EMSP if the personnel arrive at the scene of an emergency prior to the arrival of law enforcement personnel, and if managing the emergency scene will not interfere with other emergency medical care duties. Emergency scene control shall include the authority to direct traffic. A driver of a motor vehicle entering an emergency scene or entering a roadway adjacent to an emergency scene shall use caution, shall maintain proper control of the motor vehicle, and shall obey the directions of law enforcement personnel and emergency personnel at the scene. Any person violating this subsection shall be guilty of a violation.

(f) The board may, following the contested case provisions of the Administrative Procedure Act, suspend or revoke the license or certificate of EMSP at any level, or a provider service, or it may refuse to grant a license or certificate to any person or entity at any time that any of the following is determined with respect to the holder or applicant:

- (1) Does not meet or no longer meets the prescribed qualifications.
- (2) Is guilty of misconduct as defined by the board's rules or otherwise commits a violation of this act or any rules promulgated thereunder.
- (3) Has failed to maintain the required level of continuing education units or any equivalent therefor defined in the board's rules.
- (4) Has provided care to a patient or patients under his or her care which falls short of the standard of care which ordinarily would be expected to be provided by similarly situated EMSP in Alabama, and has thereby jeopardized the life, health, or safety of a patient or patients.
- (5) Has sexually or physically abused a patient under his or her care.
- (6) Has submitted a license or test application, a report of continuing education requirements, a run report, a patient care record, EMSP student record, clinical rotation record, intent to train form, self-study document, fluid and drug application, physician medication order form, or any other document which is material to the duties and qualifications of EMSP or those of a student in an EMSP training program and which is fraudulent or knowingly false in any respect.

- (7) Has committed fraud in the performance of his or her duties or in connection with any matter related to emergency medical services.
- (8) Has been convicted of a crime involving moral turpitude, or a crime in which the victim is an EMSP provider service or an EMS patient, unless the board determines that the fact of the conviction would not likely interfere with the performance of EMS duties.
- (9) Has performed any act requiring licensure or certification under state EMS statutes, without possession of the requisite licensure or certification.
- (10) Has performed any act which exceeds the scope of license or privilege granted to the holder.

§ 22-18-7. Article cumulative; powers of municipalities.

This article is cumulative and shall not be construed as limiting any power or authority of any municipality to set standards equal to, or above, state standards as provided in this chapter.

§ 22-18-8. Reimbursement by new employer for training expenses.

In those instances in which EMSP of any municipality, county, fire district, or the state are employed by the State of Alabama, any county, fire district, or another municipality, within 24 months after completing the training requirements mandated by this chapter, or by rules adopted by the board, the total expense of the training, including, but not limited to, salary paid during training, transportation costs paid to the trainee for travel to and from the training facility, room, board, tuition, and any other related training expenses, shall be reimbursed to the municipality, county, fire district, or the state which paid for the training. The municipality, county, fire district, or the state which paid for the training shall submit an itemized sworn statement to the new employer of the EMSP, shall demand payment thereof, and may enforce collection of the obligation through civil remedies and procedures. The "EMSP" shall have the same meaning as in Section 22-18-1.

Article 2. . Alabama Emergency Medical Services Education Commission.

§ 22-18-20. Commission created.

There is hereby created the Alabama Emergency Medical Services Education Commission. Membership on the Alabama Emergency Medical Services Education Commission shall be as follows:

- (1) The State Health Officer, or his or her designee, who shall serve as chair.
- (2) The State Superintendent of Education, or his or her designee.
- (3) Three members appointed by the Governor.
- (4) Two members appointed by the Lieutenant Governor or the President of the Senate.
- (5) Two members appointed by the Speaker of the House of Representatives.

§ 22-18-21. Travel and per diem expenses.

Members of the commission shall not receive compensation for their services, but shall be allowed travel and per diem expenses at the same rate paid to state employees, to be paid from funds of the Alabama Department of Public Health.

§ 22-18-22. Times and places of meetings.

The commission shall meet at the times and places as it shall establish, or at the call of the chair after not less than five working days notice to all members. In no event shall the commission meet less frequently than twice each fiscal year.

§ 22-18-23. Expenditure of appropriated funds; grants.

(a) The commission shall expend the funds that are appropriated for such purpose by the Legislature by making grants to state junior colleges, state technical colleges, and other public institutions of higher learning for the purposes of providing emergency medical services education.

(b) To be eligible for a grant from the commission, an institution shall be certified by the Alabama Department of Public Health as having an emergency medical services primary education program whose graduates are eligible to be examined for state licensure as emergency medical technicians at the EMT-basic, EMT-intermediate, or EMT-paramedic level or a combination thereof.

(c) Grants from the commission shall contain such conditions that in the view of the commission are necessary to assure that grant funds are expended for emergency medical services education purposes. The commission may require audited financial statements as a condition of grant acceptance.

Article 3. Emergency Medical Services.

§ 22-18-40. State Emergency Medical Control Committee.

(a) The board shall be assisted in formulating rules and policy pertaining to emergency medical services by the State Emergency Medical Control Committee (SEMCC). Members of the SEMCC shall serve without compensation but shall be entitled to reimbursement for expenses incurred in the performance of the duties of their office at the same rate paid state employees. The chair of SEMCC may establish subcommittees of SEMCC comprised of representatives from ambulance, fire, rescue, and other EMS groups, as needed.

(b) The SEMCC shall be composed as follows:

- (1) The medical directors of each regional EMS agency designated by the board as ex officio members with voting privileges.
 - (2) One member who shall be appointed by the Alabama Chapter of the American College of Emergency Physicians.
 - (3) One member who shall be appointed by the State Committee on Trauma of the American College of Surgeons.
 - (4) One member who shall be appointed by the Alabama Chapter of the American Academy of Pediatrics.
 - (5) The State EMS Medical Director, as an ex officio member with voting privileges, who shall serve as its chair.
 - (6) The State Trauma Consultant if a physician is designated as such by the Board of Health or pursuant to other procedure established by law as an ex officio member with voting privileges.
 - (7) One member who shall be an Alabama physician appointed by the Alabama Chapter of the Association of Air Medical Services.
 - (8) The Chair of the State EMS Advisory Board, as ex officio member with no voting privileges.
 - (9) One member who shall be appointed by the Alabama Hospital Association.
- (c) Each representative shall serve for a period of four years or until his or her successor is appointed, whichever is sooner.
- (d) Any vacancy shall be filled by the organization selecting the vacating member. In case of a vacancy, the new appointee shall serve the remainder of the unexpired term.
- (e) Each ex officio member's term is indefinite.
- (f) With the consent of a majority of the members, the chair shall set requirements for proxy representation, voting, and the establishment of a quorum.
- (g) The membership of the SEMCC shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

§ 22-18-41. Advanced life support techniques; procurement, carriage, and use of medical materiel; performance of services.

- (a) The board may by rule designate certain procedures as "advanced life support techniques," which may be performed by EMSP during emergencies, such as situations where the life, health, or safety of a prehospital patient is in immediate jeopardy. The board may prescribe by rule the qualifications and certification necessary for personnel performing advanced life support techniques, and the specific conditions under which the techniques may be performed by EMSP. Notwithstanding any statutory provision to the contrary, EMSP who possess the necessary qualifications and certification prescribed by the board shall not be deemed to have engaged in the unlawful practice of medicine when performing advanced life support techniques in accordance with the constraints established by the board.

(b) Fluids and drugs may be carried only by ambulance properly licensed provider service. A licensed provider service may purchase necessary drugs and fluids from any reliable source, including wholesalers, distributors, and hospitals. Provider services shall purchase, maintain, and administer fluids and drugs in accordance with regulations promulgated by the board.

(c) EMSP may perform services only pursuant to the protocols approved by the board. EMSP may accept orders to perform advanced life support techniques only from medical direction physicians who have completed medical direction training prescribed by the board and holds a current medical direction number.

§ 22-18-42. Regulation of certain kinds of care and personnel; purchase of drugs and fluids.

This chapter shall govern and it shall authorize the Board of Health to regulate only emergency medical care provided outside of hospitals, EMSP who provide care outside of hospitals, provider services ground ambulances, air ambulances, ALS non-transport services, the training of EMSP who provide care outside of hospitals, and orders given for emergency medical care to be provided outside of hospitals. Notwithstanding any provision of law to the contrary, authorized drugs and fluids for emergency medical care and services may be purchased from any reliable source, including wholesalers, distributors, and hospitals. To the extent medical care and nursing care provided within hospitals is governed by other provisions of law, those provisions of law shall not be construed to have been repealed, amended, abridged, or otherwise altered by this chapter.

§ 22-18-43. Board of Health shall follow Administrative Procedure Act.

In carrying out its duties and responsibilities under this chapter, the board shall follow the Administrative Procedure Act.

§ 22-18-44. Applicability of chapter and rules of board to volunteer fire departments.

Neither the provisions of this chapter nor rules of the board adopted thereunder shall apply to volunteer fire departments which are not regularly engaged in the provision of emergency medical care and which offer only Basic Life Support response and do not transport. Volunteer fire departments which regularly provide emergency medical care shall be subject to this chapter, except when entitled to an exemption pursuant to Section 22-18-2. Provided, however, that this chapter and regulations adopted thereunder shall govern only the EMS functions of volunteer fire departments and shall not apply to their firefighting functions or other functions. A volunteer fire department shall have in place a system for the emergency treatment or transport of motor vehicle crash victims, or other trauma victims or emergency patients to be deemed to be regularly engaged in the provision of emergency medical care. A volunteer fire department which merely offers cardiopulmonary resuscitation and other first aid and rescue in the course of

firefighting and related operations shall not be deemed for that reason alone to be regularly engaged in the provision of emergency medical care.

Chapter 19. Dead Bodies, §§ 22-19-1 through 22-19-144.

Article 1. . General Provisions.

§ 22-19-1. Regulation of transportation of dead bodies.

The State Board of Health shall prescribe the rules and regulations under which the bodies of deceased persons may be brought into, or transported through, the state and, also, the rules and regulations under which such bodies may be transported from one point to another point in the same county or from one county to another in this state; but the said State Board of Health may, in its discretion, forbid the conveyance of the bodies of persons who have died of infectious, contagious or communicable diseases into, or through, this state or from one county to another in this state. This section shall not be so construed as to prevent county boards of health from regulating the transportation of the bodies of deceased persons within their respective county limits; but cities and towns are prohibited from enacting ordinances regulating the removal from the city or town of the bodies of deceased persons or the issuance of removal permits for removing such remains from the city or town to a point outside the county.

§ 22-19-2. Body removed from state to be embalmed or cremated; exception.

It shall be unlawful for any person, firm or corporation to take, carry, transport or remove from within the confines of this state any dead human body unless said body has been embalmed or cremated. Any person, firm or corporation who violates this section shall be guilty of a misdemeanor and shall be, upon conviction, punished as prescribed by law. Nothing in this section, however, shall be construed to prohibit exportation of an unembalmed dead human body which has been disposed of for the purpose of advancement of medical science, or for the replacement of diseased or worn out parts of other humans or for the rehabilitation of human parts or other organs, in accordance with the provisions of Article 3 of this chapter.

§ 22-19-3. Burial or removal permits for dead bodies; certificates of birth or death.

Any person, for himself or as an officer, agent or employee of any other person or of any corporation or partnership, who shall:

- (1) Inter, cremate or otherwise finally dispose of a dead human body or permit the same to be done or remove such body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or
- (2) Refuse or fail to furnish correctly any information in his possession or furnish false information affecting any certificate or record required by the health laws of this state; or

- (3) Willfully alter, otherwise than is provided by law, or falsify any certificate of birth or death or any record established by the health laws of this state; or
- (4) Being required by the health laws of this state to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, fail, neglect or refuse to perform such duty in the manner required by the health laws of this state; or
- (5) Being a local registrar, deputy registrar, or subregistrar, fail, neglect, or refuse to perform his duty as required by the health laws of this state, and by the instructions and directions of the state registrar thereunder; shall be guilty of a misdemeanor and, upon conviction, shall for the first offense be fined not less than \$5.00 nor more than \$50.00, and for each subsequent offense not less than \$10.00 nor more than \$100.00, or be imprisoned in the county jail not more than 60 days, or be both fined and imprisoned, in the discretion of the court.

§ 22-19-4. Ministers at funerals to ascertain if burial permit has been secured.

Every minister of the gospel or other person conducting religious services at a funeral shall inquire whether or not a burial or removal permit has been secured for the disposition of the body. Should it be found that a burial permit has not been secured, the undertaker or person in charge of the funeral shall be notified by said minister of the law governing the issuance of burial permits.

§ 22-19-5. Use of approved identification system.

- (a) Each funeral establishment taking possession of a dead human body shall maintain an identification system approved by the Alabama Board of Funeral Service. The identification system may include any dignified method, including, but not limited to, an arm band or a wrist band, that will ensure the ability to identify the body from the time of taking possession of the body until the body is transferred to another entity or until final disposition.
- (b) A funeral establishment that maintains the required identification system approved by the Alabama Board of Funeral Service shall not be liable for misidentification that occurred prior to taking possession of the body or misidentification that occurs after the body has been transferred from the funeral establishment to another entity.

Article 2. Distribution of Unclaimed Bodies for Scientific Study.

§ 22-19-20. State of Alabama Anatomical Board -- Composition; secretary.

The State Health Officer, the Dean of the School of Medicine and the Head of the Department of Anatomy of the University of Alabama in Birmingham and the deans and heads of the departments of anatomy of other medical schools which may hereafter become incorporated under the laws of this state shall be constituted as a board for the distribution and delivery of dead bodies, known as "State of Alabama Anatomical Board." The professor of anatomy in the

medical school of the University of Alabama, in Birmingham, shall serve as secretary.

§ 22-19-21. State of Alabama Anatomical Board -- Powers; records.

The said board shall have full power to establish rules and regulations for its government and to appoint and remove its officers and shall keep full and complete minutes of its transactions. Records shall also be kept under its direction of all bodies received and distributed by said board and of the persons or institutions to whom the same may be distributed, which minutes and records shall be open, at all times, to the inspection of each member of said board and of any district attorney of any district court in this state.

§ 22-19-22. Notice of possession of bodies required to be buried at public expense; delivery to board; authorization to solicit dead bodies from counties.

All public officers of this state and their assistants and all officers and their deputies of every county, city, town or other municipality and of every prison, penitentiary, morgue and public hospital in this state having charge or control over any dead human body or bodies, not dead from any contagious or infectious disease and required to be buried at public expense, are required to notify the said Anatomical Board, or such person or persons as may from time to time be designated in writing by said board or its duly authorized officers, whenever any such body or bodies come into their possession, charge or control and shall, without fee or reward, deliver such body or bodies and suffer said board and its duly authorized agents, who may comply with the provisions of this article, to take and remove all such bodies to be used only within this state solely for the advancement of medical science. The State of Alabama Anatomical Board is expressly authorized to solicit dead bodies, for the purposes of scientific studies, from appropriate authorities within the jurisdiction of each county governing body.

§ 22-19-23. When bodies not to be delivered to board.

No notice shall be given, nor shall any such body or bodies be delivered, if any person shall satisfy the authorities in charge of said body or bodies that he or she is of any degree of kin or is related by marriage to, or socially or otherwise connected with and interested in, the deceased and shall claim the said body or bodies for burial. In that event, it or they shall be at once surrendered to such person for interment or shall be buried at public expense at the request of such claimant, if a relative by blood or a connection by marriage, provided he or she is financially unable to supply such body or bodies with burial. Such notice shall not be given, or such body be delivered, if the deceased person was a traveler who died suddenly, in which case the dead body shall be buried.

§ 22-19-24. Holding period; notice of death.

Such body or bodies shall, in each and every instance, be held and kept by the person or persons having charge or control of it or them at least 24 hours after death before being delivered to said

board, or its agent or agents, during which period notice of the death of such person or persons shall be posted at the courthouse door of the county in which said body or bodies are held.

§ 22-19-25. Distribution of bodies to schools.

The said board, or its duly authorized agent, may take and receive such bodies so delivered as provided in this article and shall, upon receiving them, distribute them among schools, duly authorized by said board, for lectures and demonstrations by said schools, the number assigned to each to be based upon the number of bona fide students in each dissecting or operative surgery class, which number of students shall be reported by the said schools to the board at such times as it may direct.

§ 22-19-26. Preservation of bodies for 60 days by schools pending claims therefore.

Said schools, upon receiving them, and before any use is made of them, and without unnecessary mutilation or dissection shall cause them to be properly embalmed and carefully preserved and kept for a period of 60 days from the day of their reception and shall deliver them properly prepared for burial to any person mentioned and described in Section 22-19-23, who shall claim such body for burial, within or before the expiration of said period of 60 days, and satisfy the officers of said school that he or she is such a person as is, under said Section 22-19-23, entitled to said body. If, at the expiration of said 60 days, said body or bodies have not been claimed for burial in the manner and by the person or persons described in this article, said bodies shall then be used for the purposes specified in this article by said schools.

§ 22-19-27. Disposal of bodies after use by schools.

When said bodies have been so used and are no longer needed or serviceable for objects mentioned in this article, they shall be decently interred, cremated or otherwise properly disposed of by the said schools.

§ 22-19-28. Carriers for conveyance of bodies; receipts for bodies.

The said board may employ a carrier or carriers for the conveyance of said bodies, which shall be enclosed in a suitable encasement and carefully deposited free from public observation. Said carrier or carriers shall obtain receipts by name or, if the person be unknown, by a description for such body delivered by him and shall deposit said receipts with the secretary of said board, who shall record and preserve the same.

§ 22-19-29. Payment of expenses for delivery or distribution of bodies.

Neither the state, nor any county or municipality nor any officer, agent or servant thereof shall be at any expense by reason of delivery or distribution of any such body or bodies, but all expenses thereof shall be paid by those receiving the body or bodies in such a manner as may be specified

or fixed by said board.

§ 22-19-30. Penalty for violation of article.

Any person having duties enjoined upon him by the provisions of this article or other health laws of this state relating to the distribution of unclaimed dead bodies for scientific study who shall neglect, refuse or omit to perform the same as therein required must, on conviction, be fined not less than \$100.00 nor more than \$500.00 and may be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

Article 3. . Uniform Anatomical Gift Act of 1969.

§ 22-19-40. Short title.

(a) This article may be cited as the Alabama Uniform Anatomical Gift Act of 1969.

(b) This article shall only apply to gifts made prior to January 1, 2004.

§ 22-19-41. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) BANK or STORAGE FACILITY. A facility licensed, accredited or approved under the laws of any state for the storage of human bodies, or parts thereof.
- (2) DECEDENT. A deceased individual and includes a stillborn infant or fetus.
- (3) DONOR. An individual who makes a gift of all, or part of, his body.
- (4) HOSPITAL. A hospital licensed under the laws of the State of Alabama, or any subdivision thereof, or under the laws and regulations of the United States government, or any agency thereof.
- (5) PART. Organs, tissues, eyes, bones, arteries, blood or other fluids and any other portions of a human body.
- (6) PERSON. An individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association or any other legal entity.
- (7) PHYSICIAN or SURGEON. A physician or surgeon licensed or authorized to practice under the laws of any state.

§ 22-19-42. Who may donate all, or part of, body; rights of donees.

(a) Any individual of sound mind and 18 years of age or older may give all, or any part of, his body for any purposes specified in Section 22-19-43, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not

available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all, or any part of, the decedent's body for any purpose specified in Section 22-19-43:

- (1) The spouse;
- (2) An adult son or daughter;
- (3) Either parent;
- (4) An adult brother or sister;
- (5) A guardian of the person of the deceased at the time of his death; or
- (6) Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or of a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) of this section may make the gift after or immediately before death.

(d) A gift of all, or part of, a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others, except as provided by subsection (d) of Section 22-19-47.

§ 22-19-43. Institutions or persons who may become donees; purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies, or parts thereof, for the purposes stated:

- (1) Any hospital, surgeon or physician for medical or dental education, research, advancement or medical or dental science, therapy or transplantation;
- (2) Any accredited medical or dental school or college or university for education, research, advancement of medical or dental science or therapy;
- (3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or
- (4) Any specified individual for therapy or transplantation needed by him.

§ 22-19-44. Modes of executing gift.

(a) A gift of all or part of the body under subsection (a) of Section 22-19-42 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection (a) of Section 22-19-42 may also be made

by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses, who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence and in the presence of two witnesses, who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made either to a specified donee or without naming a donee. If the donee is not named, the attending physician may accept as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may, in the absence of any expressed indication that the donor desired otherwise, accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) The donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may comply or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in subsection (b) of Section 22-19-42 shall be made by a document signed by him or made by his telegraphic, recorded telephonic or other recorded message.

§ 22-19-45. Delivery or deposit of gift document.

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon, or after, the donor's death, the person in possession shall produce the document for examination.

§ 22-19-46. Amendment or revocation of gift.

(a) If the will, card or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

- (1) The execution and delivery to the donee of a signed statement;
- (2) An oral statement made in the presence of two persons and communicated to the donee;
- (3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or
- (4) A signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) of this section or by destruction, cancellation or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

§ 22-19-47. Powers, duties and liabilities upon death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody or the remainder of the body vests in the surviving spouse, next of kin or other persons under obligations to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this article or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this article are subject to the laws of this state prescribing powers and duties with respect to autopsies.

Article 3A. Alabama Uniform Anatomical Gift Act of 2004. §§ 22-19-50 to 22-19-59.7, Repealed.

Article 4. . Anatomical Gifts by Holders of Drivers' Licenses or Nondriver Identification Cards.

Division 1. . Anatomical Gifts by Sworn Affidavit.

§ 22-19-60. Gift made by execution of affidavit to be filed with Department of Public Safety; notice of intent and specific gift to be noted on driver's license or nondriver identification card; when gift effective; execution and acknowledgment of affidavit; effect of expiration, revocation, renewal, etc., of license or card.

(a) A gift of all or part of the body may be made by the holder of a valid Alabama driver's license or nondriver identification card by the execution of a sworn affidavit to be filed with the

Department of Public Safety.

(b) Notice of intent to make a gift shall be noted on the driver's license or nondriver identification card of the donor in a manner to be determined by the Department of Public Safety and there shall also be noted thereon the specific gift of the donor in accordance with the following legend:

E--Eye

K--Kidney

H--Heart

Li--Liver

L--Lungs

A--All (everything)

(c) The gift shall become effective on the death of the donor without any formal requirements of delivery.

(d) The affidavit shall be signed by the holder of the driver's license or nondriver identification card in the presence of two witnesses who shall acknowledge the affidavit in the presence of the donor.

(e) The gift shall become invalidated upon the expiration, cancellation, revocation or suspension of a driver's license or nondriver identification card.

(f) The gift shall not become invalidated if the driver's license or nondriver identification card is properly renewed before the expiration date.

(g) The amendatory provisions of subsection (b) of this section shall commence on the date of renewal of the driver's license or nondriver identification card of the donor.

§ 22-19-61. Immunity from civil liability of officers and employees of Department of Public Safety.

The officers and employees of the Department of Public Safety shall be immune from any civil liability for any acts or omissions in carrying out the provisions of this division.

Division 2. . Anatomical Gifts by Application for Driver's License or Nondriver's Identification.

§ 22-19-70. Inclusion of question regarding organ donation as part of driver's license or nondriver identification card application system; notation of affirmative response on license or card.

No later than January 1, 1998, the Department of Public Safety shall redesign the driver's license and nondriver identification card application system to process requests for information regarding consent of the individual to organ or tissue donation. The following question in the following substantial form shall be asked of each applicant at point of issuance or renewal site:

"Do you wish to have the organ donor designation printed on your driver's license?"

Only an affirmative response of an individual shall be noted on the front of the driver's license or nondriver identification card which shall clearly indicate the intent of the individual to donate his or her organs and tissue by the printing of the words "ORGAN DONOR" on the front of the license or card.

§ 22-19-71. Distribution of informational brochure; promotion of organ and tissue donation by Director of Public Safety.

A brochure provided by the federally certified Alabama Organ Procurement Organization that is a member of and abides by the rules and regulations of United Network for Organ Sharing explaining the method of expressing an intent to make an anatomical gift shall be given to each applicant or licensee at the time of application for a new driver's license or nondriver identification card. The brochure shall advise the applicant or licensee that he or she is under no compulsion to designate organ donation status on his or her driver's license or nondriver identification card and that he or she may wish to consult with family, friends, or clergy before doing so. The Director of Public Safety may undertake additional efforts, including education and awareness activities, to promote organ and tissue donation.

§ 22-19-72. Sticker or decal indicating desire to be organ donor.

The Director of the Department of Public Safety shall designate a space on each driver's license and nondriver identification card issued where the licensee may place a sticker or decal to indicate in appropriate language that the owner of the license or card desires to be an organ donor. The Director of Public Safety shall specify a uniform sticker or decal for the purposes of this section and the sticker or decal shall be contained in the informational brochure provided for in Section 22-19-71. An organ donor sticker or decal may also be provided by any person, hospital, school medical group, or association interested in assisting in implementing organ donation designation, but the organ donor sticker shall meet the specifications as the director may provide by rule or regulation.

§ 22-19-73. Statistical and demographic information on organ donor designations.

The Department of Public Safety shall quarterly electronically transfer statistical and demographic information including, but not limited to, the name, most recent address, and date of birth, if available, of any person who has a current driver's license or nondriver identification card and who has designated that he or she wishes to be an organ donor to the federally certified Alabama Organ Procurement Organization that is a member of and abides by the rules and regulations of the United Network for Organ Sharing. This information shall be copied by the department quarterly and electronically transferred to eye and tissue procuring organizations in Alabama operating under the oversight of the United States Food and Drug Administration and accredited by the respective national accrediting body, including, but not limited to, the Eye Bank Association of America and the American Association of Tissue Banks. Each recipient entity shall be responsible for all costs associated with the implementation of the electronic transfer of donor information and all transfers of donor information pursuant to this section.

§ 22-19-74. Driver's license, nondriver identification card, etc., to accompany individual to hospital in event of accident or trauma; return of driver's license or nondriver identification card in event of death.

Police and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to insure that the driver's license or nondriver identification card, donor card, or other document of gift and medical alert bracelet, if any, of the individual involved in the accident or trauma accompanies the individual to the hospital or other health care facility. If the individual dies, the hospital or other health care facility shall, within five days or as soon as practicable, return the driver's license or nondriver identification card to the Department of Public Safety accompanied by a form prescribed by the department.

Article 5. . Taking of Blood and Urine Samples from Certain Dead Bodies.

§ 22-19-80. Authority of coroners, deputy coroners, State Toxicologist and law enforcement officers; purpose of taking samples.

(a) Each duly elected or appointed coroner in the State of Alabama is authorized to withdraw and retain or direct the withdrawal and retention of blood and/or urine from the dead body of a person who died unattended by a physician, or who died under suspicious circumstances, or where there is reasonable cause to believe the person died from unnatural and/or unlawful causes.

(b) Each duly elected or appointed deputy coroner shall have the same authority to withdraw and retain or direct the withdrawal and retention of a blood and/or urine sample when acting for the coroner.

(c) The State Toxicologist and his designated or appointed assistants are authorized to withdraw and retain or direct the withdrawal and retention of blood and/or urine from the dead body of a person who died unattended by a physician, or who died under suspicious circumstances, or where there is reasonable cause to believe the person died from unnatural and/or unlawful causes.

(d) A law enforcement officer investigating a fatal motor vehicle accident is authorized to direct the withdrawal and retention of blood and/or urine from the body of any such fatality.

(e) The purpose of any withdrawal and retention of blood and/or urine shall be for analyses or studies to assist in determining the cause, manner and circumstances of death, including a chemical or other test or tests for drugs and/or poisons.

§ 22-19-81. Persons who may be directed to withdraw samples.

Only a physician, registered nurse, duly licensed clinical laboratory technologist, clinical laboratory technician, mortician, licensed embalmer or licensed practicing embalmer may be directed by a coroner, deputy coroner, a law enforcement officer or the State Toxicologist or his designated or appointed assistants to withdraw blood and/or urine for the purpose or purposes cited in Section 22-19-80.

§ 22-19-82. Exemption from civil and criminal liability.

(a) No coroner, deputy coroner, the State Toxicologist and his designated or appointed assistants, mortician, licensed embalmer, physician, registered nurse, duly licensed clinical laboratory technologist or clinical laboratory technician or employers of the aforementioned persons shall incur any civil or criminal liability as a result of the proper withdrawal or securing or retention of a blood and/or urine specimen as provided by this article.

(b) The State Toxicologist and his designated or appointed assistants shall incur no civil or criminal liability as a result of the proper analyses or studies of blood and/or urine specimens withdrawn and retained as provided in this article.

Article 6. Eye Tissue Procurement.

§ 22-19-100. Training of eye bank employees in eye tissue procurement.

The Alabama Eye Bank is authorized to train employees of the eye bank in principles and procedures of sterile eye tissue procurement pursuant to the Uniform Anatomical Gift Act and according to the medical standards of the Eye Bank Association of America.

§ 22-19-101. Certification of qualifications, proficiency, etc.

The Medical Director and the Executive Director of the Alabama Eye Bank shall certify that no employee shall be allowed to perform eye tissue procurement unless the employee possesses the necessary educational qualifications, standards of proficiency, and fitness.

§ 22-19-102. Establishment of standards, procedures, etc.

The Medical Director and the Executive Director of the Alabama Eye Bank are authorized to establish and promulgate the standards, measures, procedures, and recommendations necessary to assure the employee hereunder possesses the knowledge and technical skill to perform donor eye tissue procurement acceptable as good ophthalmologic procedure according to the medical standards of the Eye Bank Association of America.

§ 22-19-103. Employees to comply with Alabama Uniform Anatomical Gift Act; no liability.

Any employee of the Alabama Eye Bank who is trained in donor eye tissue procurement under this article shall comply with the provisions of the Alabama Uniform Anatomical Gift Act. Such eye bank technician acting in accordance with the terms of this article shall not have any liability either civil or criminal for such eye tissue procurement.

§ 22-19-104. Article cumulative.

This article does not supersede, modify, or amend prior acts, specifically Sections 34-13-150 through 34-13-152.

Article 7. Acquisition and Transportation of Donor Organs, Bones and Tissues.

§ 22-19-120. Legislative intent.

(a) The acquisition and transportation and transplantation of donor organs, bones and tissues is becoming more common place as new scientific and technological developments find better ways to conquer the human body's rejection of such transplanted organs, bones and tissues. In its concern that donee recipients be provided the best possible quality assurance that such donated organs, bones and tissues, retrieved in Alabama are free from any contagious or communicable disease or defect, the Legislature intends to establish in this article a framework for the development of appropriate standards of care and quality assurance for the acquisition and/or transportation of organs, bones and tissues retrieved in Alabama.

(b) It is also the intent of this article to recognize and utilize the quality assurance already developed in Alabama by the Department of Surgery of the School of Medicine, at the University of Alabama at Birmingham Medical Center by authorizing the Chairman of the Department of Surgery to establish and promulgate the standards of proficiency and fitness and

measures and procedures necessary to assure that persons involved in organ acquisition and/or transportation of organs retrieved in Alabama possess and provide the necessary knowledge and technical skills to acquire and/or transport organs, bones and tissues within acceptable levels of quality assurance.

(c) It is also the intent of this article to provide sanctions against persons who fail to adhere to and follow such established policies and procedures and standards for quality assurance in the acquisition and/or transportation in Alabama of donor organs, bones, and tissues retrieved in Alabama.

§ 22-19-121. Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) CHAIRMAN. The Chairman of the Department of Surgery, School of Medicine, at the University of Alabama at Birmingham.

(2) PERSON. Any person, firm, partnership, association, joint venture, or corporation, and any combination of persons herein specified, but "person" shall not include the United States or any agency or instrumentality thereof, except in the case of voluntary submission to the policies and procedures and standards for quality assurance established by this article and by the "chairman".

(3) QUALITY ASSURANCE. The policies and procedures and standards of quality for the acquisition and/or transportation of donated organs, bones, and tissue retrieved in Alabama.

(4) ORGAN. Any human organ, human bone or human tissue, or any other part or portions of the human body, retrieved in Alabama except that the term "organ" shall not include blood, blood products, or eyes or corneas of the eye for the purposes established by this article.

(5) SERVICE. Any service pertaining to the acquisition and/or transporting of organs, bones, or tissues retrieved in Alabama.

§ 22-19-122. Promulgation of proficiency standards and quality assurance measures; certification to acquire and transport organs, etc.; updating of quality assurance standards.

(a) The Chairman of the Department of Surgery of the School of Medicine at the University of Alabama at Birmingham is authorized to establish and promulgate the standards of proficiency and fitness and measures and procedures for quality assurance in the acquiring and/or transporting of organs, bones, and tissues retrieved in Alabama.

(b) The Chairman of the Department of Surgery of the School of Medicine at the University of Alabama at Birmingham shall certify when a person shall be allowed to acquire and/or transport any organ, bone or tissue retrieved in Alabama. The chairman shall not certify any person to acquire and/or transport any organ, bone or tissue to be retrieved in Alabama until such person possesses and demonstrates to the chairman the necessary knowledge and technical skills to

comply with the established standards of proficiency and fitness.

(c) After the chairman establishes and promulgates the initial standards of quality assurance, any proposed subsequent updating, except to meet federal standards, are to be circulated for comment only, to any institution in Alabama then performing organ transplants. The chairman shall still have the final and sole decision to establish and promulgate whatever is appropriate for updating the standards of quality assurance.

§ 22-19-123. Adherence to quality assurance standards.

Any person providing any service pertaining to the acquisition and/or transportation of donor organs, bones and tissues retrieved in Alabama, shall strictly adhere to and follow the established quality assurance standards of proficiency and fitness and measures and procedures as established and promulgated by the chairman.

§ 22-19-124. Sanctions for violations of article.

Any person providing services in violation of the established policies and procedures and standards for quality assurance, as established and promulgated by the chairman, shall not receive reimbursement for such services. This provision applies to all reimbursement programs administered by the State of Alabama. Recommendations, by the chairman, will be made to other reimbursing agencies that reimbursement be denied.

§ 22-19-125. Immunity of persons complying with article and Alabama Uniform Anatomical Gift Act.

Any person who, in good faith, follows the policies and procedures and standards as established by the chairman for quality assurance, and complies with the provisions of the Alabama Uniform Anatomical Gift Act, shall not have any liability, either civil or criminal, for such acquiring, and/or transporting any organs, bones, or tissues retrieved in Alabama.

§ 22-19-126. Construction with other laws; state standards to be consistent with federal standards.

(a) The provisions of this article are cumulative and insofar as possible, they shall be construed in *pari materia* with other laws relating to the public health and anatomical gifts.

(b) At such time that standards of quality assurance for the acquisition and/or transporting and/or transplanting of donated organs, bones and tissues are adopted by the federal government, said Alabama standards of quality assurance shall be consistent with the appropriate federal regulations.

Article 8. Lifesaving Organ Procurement Act.

§ 22-19-140. Legislative intent.

(a) The Legislature of Alabama is acutely aware of the serious shortage of organs needed for transplantation. In its concern with this shortage of organs, the Legislature intends to establish in this article, a mechanism for the requesting of donor organs of any person who has died in a hospital and has not made an anatomical gift to take effect upon death.

(b) The Legislature of Alabama believes the citizens of Alabama are compassionate and loving, and, in the appropriate circumstances, will respond to the request for organs for transplantation in that such a gift is, many times, literally, a "gift of life".

(c) It is also the intent of the Legislature of Alabama to encourage organ donation in Alabama by establishing "The Lifesaving Organ Procurement Act of 1986."

§ 22-19-141. Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) ORGAN. Organs, tissues, eyes, bones, arteries, blood or other fluids and any other part or portions of a human body.

(2) ATTENDING PHYSICIAN. The physician selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

§ 22-19-142. Request for consent to an anatomical gift; request not required where anatomical gift would not be suitable for use.

(a) When death occurs in a hospital to a patient who has not made an anatomical gift to take effect upon death, the hospital administrator, or designated representative, shall request the person described in Section 22- 19-42(b), in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication by the decedent or one in a prior class, to consent to the gift of organs of the decedent's body as an anatomical gift.

(b) Where such request is made, pursuant to this section, the request and its disposition shall be noted in the patient's medical record.

(c) Where, based upon medical criteria, such request would not yield an anatomical gift which would be suitable for use, there is an authorized exception to the request required by this section.

(d) Where, based upon the attending physician's special and peculiar knowledge of the decedent and/or the circumstances surrounding the death of the patient, the attending physician, in his/her

sole judgment, may determine that a request shall not be made for an anatomical gift, such determination shall be noted in the patient's medical record. Such a determination and noting in the patient's medical record shall be an exception to the request required by this section.

§ 22-19-143. Immunity of persons complying with article.

Any person who acts in good faith in accord with the terms of this article or with the anatomical gift laws of this state, or another state, or a foreign country shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

§ 22-19-144. Construction with other laws.

The provisions of this article are cumulative and, insofar as possible, they shall be construed in pari materia with other laws relating to the public health and anatomical gifts.

Article 9. Revised Uniform Anatomical Gift Act.

§ 22-19-160. Short title.

This article may be cited as the Revised Uniform Anatomical Gift Act.

§ 22-19-161. Definitions.

In this article:

- (1) "Adult" means an individual who is at least 18 years of age.
- (2) "Agent" means an individual:
 - (A) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or
 - (B) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
- (4) "Coroner" means an elected or appointed official who determines, with the assistance of other forensic scientists and investigators, the cause, manner, and circumstances surrounding death.

- (5) “Decedent” means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this article, a fetus.
- (6) “Disinterested witness” means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under [Section 22-19-170](#).
- (7) “District attorney” means a constitutional officer elected by the qualified electors of those counties in each judicial circuit.
- (8) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.
- (9) “Donor” means an individual whose body or part is the subject of an anatomical gift.
- (10) “Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (11) “Driver's license” means a license or permit issued by the Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.
- (12) “Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
- (13) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.
- (14) “Hospital” means a facility licensed, accredited, or approved as a hospital under the provisions of Article 2, Chapter 21, Title 22 or a facility operated as a hospital by the United States government.
- (15) “Identification card” means an identification card issued by the Department of Public Safety.
- (16) “Know” means to have actual knowledge.
- (17) “Local public health official” means a physician acting in the capacity as an area health officer, local health officer, or county health officer.

(18) “Medical examiner” means a licensed physician who determines the cause, manner, and circumstances surrounding death with other forensic scientists and investigators.

(19) “Minor” means an individual who is under 18 years of age.

(20) “Organ procurement organization” means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(21) “Parent” means a parent whose parental rights have not been terminated.

(22) “Part” means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(23) “Pathologist” means a licensed physician who is certified in anatomic or anatomic and clinical pathology by the American Board of Pathology or employed by the Alabama Department of Forensic Sciences.

(24) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(25) “Physician” means an individual licensed by the Medical Licensure Commission of Alabama and authorized to practice medicine and surgery or osteopathy and surgery.

(26) “Procurement organizations” means an eye bank, organ procurement organization, and/or tissue bank.

(27) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(28) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(29) “Recipient” means an individual into whose body a decedent's part has been or is intended to be transplanted.

(30) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(31) “Refusal” means a record created under [Section 22-19-166](#) that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(32) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(33) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(34) “Surgeon's assistant” means an individual licensed and certified as a surgeon's assistant by the State Board of Medical Examiners to remove or process a part.

(35) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(36) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(37) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(38) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(39) “Will” means a disposition of real and personal property to take effect after the death of a testator.

§ 22-19-162. Applicability.

This article applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

§ 22-19-163. Who may make anatomical gift before donor's death.

Subject to [Section 22-19-167](#), an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in [Section 22-19-164](#) by:

- (1) the donor, if the donor is an adult or if the donor is a minor and is:
 - (A) emancipated; or
 - (B) authorized under state law to apply for a driver's license because the donor is at least 16 years of age;
- (2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) a parent of the donor, if the donor is an unemancipated minor; or
- (4) the donor's guardian.

§ 22-19-164. Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift:

- (1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
- (2) in a will;
- (3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
- (4) as provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under [Section 22-19-163](#) may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

- (1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
- (2) state that it has been signed and witnessed as provided in subdivision (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

§ 22-19-165. Amending or revoking anatomical gift before donor's death.

(a) Subject to [Section 22-19-167](#), a donor or other person authorized to make an anatomical gift under [Section 22-19-163](#) may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1).

(c) Subject to [Section 22-19-167](#), a donor or other person authorized to make an anatomical gift under [Section 22-19-163](#) may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

§ 22-19-166. Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that it has been signed and witnessed as provided in subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to [Section 22-19-164](#) that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 22-19-167(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

§ 22-19-167. Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under [Section 22-19-164](#) or an amendment to an anatomical gift of the donor's body or part under [Section 22-19-165](#).

(b) A donor's revocation of an anatomical gift of the donor's body or part under [Section 22-19-165](#) is not a refusal and does not bar another person specified in [Section 22-19-163](#) or [22-19-168](#) from making an anatomical gift of the donor's body or part under [Section 22-19-164](#) or [22-19-169](#).

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under [Section 22-19-164](#) or an amendment to an anatomical gift of the donor's body or part under [Section 22-19-165](#), another person may not make, amend, or revoke the gift of the donor's body or part under [Section 22-19-169](#).

(d) A revocation of an anatomical gift of a donor's body or part under [Section 22-19-165](#) by a person other than the donor does not bar another person from making an anatomical gift of the body or part under [Section 22-19-164](#) or [22-19-169](#).

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under [Section 22-19-163](#), an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under [Section 22-19-163](#), an anatomical gift of a part for one or more of the purposes set forth in [Section 22-19-163](#) is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under [Section 22-19-164](#) or [22-19-169](#).

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

§ 22-19-168. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) and unless barred by [Section 22-19-166](#) or [22-19-167](#), an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under [Section 22-19-163\(2\)](#) immediately before the decedent's death;

(2) the spouse of the decedent;

- (3) adult children of the decedent;
 - (4) parents of the decedent;
 - (5) adult siblings of the decedent;
 - (6) adult grandchildren of the decedent;
 - (7) grandparents of the decedent;
 - (8) an adult who exhibited special care and concern for the decedent;
 - (9) the persons who were acting as the guardians of the person of the decedent at the time of death; and
 - (10) any other person having the authority to dispose of the decedent's body.
- (b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under [Section 22-19-170](#) knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
- (c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

§ 22-19-169. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

- (a) A person authorized to make an anatomical gift under [Section 22-19-168](#) may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.
- (b) Subject to subsection (c), an anatomical gift by a person authorized under [Section 22-19-168](#) may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under [Section 22-19-168](#) may be:
- (1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician, surgeon, surgeon's assistant, certified procurement transplant coordinator (certified by the Alabama Organ Center), tissue recovery technician (certified by the Alabama Organ Center), or technician certified by the Eye Bank after completing training according to the medical standards of the Eye Bank Association of America to carry out the appropriate procedures knows of the revocation.

§ 22-19-170. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under [Section 22-19-164](#) or [22-19-169](#) or if the person knows that the decedent made a refusal under [Section 22-19-166](#) that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2), nothing in this article affects the allocation of organs for transplantation or therapy.

§ 22-19-171. Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) if no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

§ 22-19-172. Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under [Section 22-19-170](#).

§ 22-19-173. Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy,

research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this article, at any time after a donor's death, the person to which a part passes under [Section 22-19-170](#) may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this article, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in [Section 22-19-168](#) having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to [Sections 22-19-170\(i\)](#) and [22-19-182](#), the rights of the person to which a part passes under [Section 22-19-170](#) are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under [Section 22-19-170](#), upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) The removal will be by a physician, surgeon, surgeon's assistant, tissue recovery technician certified by the Alabama Organ Center after completing the training of the Alabama Organ Center according to the medical standards of the American Association of Tissue Banks, or a certified procurement transplant coordinator certified by completing the training of the Alabama Organ Center and the American Board of Transplant Coordinators; but in the case of eyes, a technician certified by the Alabama Eye Bank after completing training according to the medical standards of the Eye Bank Association of America may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

§ 22-19-174. Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

§ 22-19-175. Sale or purchase of parts prohibited.

(a) Except as otherwise provided in subsection (b), a person, that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a Class C felony.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

§ 22-19-176. Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a Class C felony.

§ 22-19-177. Immunity.

(a) In the absence of wantonness or willful misconduct, a person that acts in accordance with this article or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) In the absence of wantonness or willful misconduct, neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this article, a person may rely upon representations of an individual listed in [Section 22-19-168\(a\)\(2\)](#), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

§ 22-19-178. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) this article;

- (2) the laws of the state or country where it was executed; or
- (3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.
- (b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.
- (c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

§ 22-19-179. Donor registry.

- (a) The Department of Public Safety may establish or contract for the establishment of a donor registry.
- (b) The Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.
- (c) A donor registry must:
 - (1) allow a donor or other person authorized under [Section 22-19-163](#) to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;
 - (2) be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and
 - (3) be accessible for purposes of subdivisions (1) and (2) seven days a week on a 24-hour basis.
- (d) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.
- (e) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (c) and (d).

§ 22-19-180. Effect of anatomical gift on advance health care directive.

(a) In this section:

- (1) “Advance health care directive” means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
 - (2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
 - (3) “Health care decision” means any decision regarding the health care of the prospective donor.
- (b) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or directive, or, if none, or the agent is not reasonably available, another person authorized by law other than this article to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under [Section 22-19-168](#). Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

§ 22-19-181. Cooperation between coroner, medical examiner, and procurement organization.

(a) A coroner or medical examiner or district attorney or local public health official or a designee shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education when it has been determined that the recovery will not interfere with a death investigation. The organ procurement organization, tissue bank, and eye bank will make every reasonable effort to seek approval and release from the coroner or medical examiner or district attorney or designee prior to proceeding with consent approaches to the authorized parties as described in this article. The request for release process will begin with the coroner or designee, who may defer to the medical examiner or designee, who may subsequently defer to the district attorney or designee. At the time of coroner or medical examiner or district attorney notification, the organ procurement

organization, tissue bank, or eye bank will share the decedent's donor designation, if known. Despite the best efforts of the organ procurement organization, tissue bank, and eye bank, the topic of donation may be initiated on behalf of the family, a donor record, or any member of the health care team. In the event that jurisdiction is declined by the coroner or designee or medical examiner or designee and/or district attorney or designee, the organ procurement organization, tissue bank, and/or eye bank may proceed with the consent process from the authorized parties as described in this article.

(b) If a coroner or medical examiner or district attorney or local public health official receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner or medical examiner or district attorney or local public health official and a postmortem examination is going to be performed, unless the coroner or medical examiner or district attorney or local public health official denies recovery in accordance with [Section 22-19-182](#), the coroner or medical examiner or designee will attempt to conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift and release for such part has been obtained from the coroner or medical examiner or district attorney or local public health official or a designee. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift and release for such body has been obtained by the coroner or medical examiner or district attorney or local public health official or a designee. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

(d) Protocols for cooperation will be established and utilized during cases under the jurisdiction of a coroner or medical examiner or district attorney or local public health official. These protocols should specify procedures for maximizing donation, yet support and facilitate the medicolegal investigation. These protocols will be reviewed, modified (if required), and ratified unanimously as needed or by a written request from a representative of the Jefferson County Coroner/Medical Examiner Office, the State of Alabama's Department of Forensic Sciences, the Alabama District Attorney's Association, the Alabama Coroner's Association, the Alabama Organ Center, and the Alabama Eye Bank.

§ 22-19-182. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner or medical examiner.

(a) Upon request of a procurement organization, a coroner or medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or medical examiner.

Specific operational details regarding visitation, referral methods, recovery logistics, and efforts to minimize interruptions to the operations of the coroner and/or medical examiner will be established in the protocols referenced in [Section 22-19-181\(d\)](#). Section 164.512 of the Health Information Portability and Protection Act, enacted 1996, specifies that a covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissues for the purpose of facilitating organ, eye, or tissue donation and transplantation. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release postmortem (external and/or internal) examination results to the procurement organization. A report limited to cause and manner of death and disclosures of any evidence of infection or other disease process which might preclude safe transplantation of recovered organs and/or tissue will be made available upon request at no charge to the organ procurement organization, tissue bank, or eye bank. If a full report is requested, the organ procurement organization, tissue bank, and eye bank agree to reimburse the coroner or medical examiner or district attorney's office at the currently established price in order to offset costs. The procurement organizations may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

(b) The coroner or medical examiner may conduct a medicolegal examination by reviewing all forwarded pertinent medical records, laboratory test results, x-rays, organ, tissue, eye recovery documentation, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner or medical examiner which the coroner or medical examiner determines may be relevant to the investigation. Organ, tissue, and eye donation records, including documentations of organ, tissue, or eye normalcy and radiographs (organ and tissue donors only), should be submitted to the coroner or medical examiner and/or district attorney based on agreed upon protocols with the organ procurement organization, tissue bank, and eye bank.

(c) A person that has any information requested by a coroner or medical examiner pursuant to subsection (b) shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education. Specific time periods shall be established by protocols referenced in [Section 22-19-181\(d\)](#).

(d) Cooperation between the coroner or medical examiner or district attorney or designee and the procurement organizations for the timely removal of the part of a decedent for the purpose of transplantation, therapy, research, or education shall occur for a body that is under the jurisdiction of the coroner or medical examiner regardless of whether a postmortem examination is required or to be performed for the recovery of a part for which a release from the coroner or medical examiner or district attorney or designee has been granted based on the determination that the absence of the part will not interfere with determination of cause, manner, circumstances surrounding the death, or evidence collection.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner or district attorney or designee initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death or evidence collection, the coroner or medical examiner or designee shall consult with the procurement organization or physician, surgeon, surgeon's assistant, or technician designated by the procurement organizations about the proposed recovery. Ancillary tests such as MRI, CT scan, and skeletal survey may be required by the coroner or medical examiner or pathologist prior to the determination of suitability for organ or tissue procurement. These tests shall be performed and interpreted by the appropriate physician at the request of the coroner or medical examiner or pathologist and reported in a timely fashion. All expenses for such tests shall be the responsibility of the procurement organizations regardless of the outcome. After consultation, the coroner or medical examiner or district attorney or designee may or may not permit the recovery or impose specific restrictions depending on the nature of the case and the necessity of evidence collection, at which time the organ procurement organization, tissue bank, and eye bank will abide by the decision and operate accordingly.

(f) Following the consultation under subsection (e), in the absence of mutually agreed-upon protocols to resolve conflict between the coroner or medical examiner or district attorney or designee and the organ procurement organization, if the coroner or medical examiner or district attorney or designee intends to deny recovery, the organ procurement organization may request the coroner or medical examiner or district attorney or designee to attend the organ recovery procedure for the part before making a final determination to allow the organ procurement organization to recover the part. Satisfying the request will be at the discretion of the coroner or medical examiner or district attorney or designee based on feasibility. If the request is denied, the organ procurement organization will abide by the decision not to allow procurement and operate accordingly. During the organ removal procedure, the coroner or medical examiner or designee who elected to attend may allow recovery by the procurement organization to proceed, or, if the coroner or medical examiner or district attorney or designee who elected to attend, reasonably believes that the part may be involved in determining the decedent's cause of death or manner of death or circumstances surrounding the death, deny recovery by the procurement organization.

(g) If the coroner or medical examiner or district attorney or designee denies recovery under subsection (f), the coroner or medical examiner or district attorney or designee shall provide the procurement organizations with a specific reason for not allowing recovery of the part, which will then be documented in the official records of the procurement organizations.

(h) If the coroner or medical examiner or district attorney or designee allows recovery of a part under subsection (d), (e), or (f), the procurement organization, upon request, shall cause the physician, surgeon's assistant, or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, a biopsy (liver and kidneys), photographs, and any other information and observations that would assist in the postmortem

examination. Specific offerings by the procurement organizations shall be established in specific protocols according to [Section 22-19-181\(d\)](#) and made available to the coroner or medical examiner or district attorney or designee.

(i) If a coroner, medical examiner, district attorney or designee requests to be present at a removal procedure under subsection (f), the coroner or medical examiner or district attorney or designee may request reimbursement for any additional costs and lost work time incurred in complying with subsection (f).

§ 22-19-183. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 22-19-184. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, [15 U.S.C. Section 7001 et seq.](#), but does not modify, limit or supersede Section 101(a) of that act, [15 U.S.C. Section 7001](#), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, [15 U.S.C. Section 7003\(b\)](#)

Chapter 20. Miscellaneous Health Laws, §§ 22-20-1 through 22-20-12.

§ 22-20-1. Use of common drinking cups or towels in public places prohibited.

It shall be unlawful to provide for use, or permit the use of, a common drinking cup or a common towel in any hotel, restaurant, railroad car, railroad station or other place frequented by the public.

§ 22-20-2. Prevention of infantile blindness.

Any physician, midwife, nurse or other person in attendance on a confinement case shall, within two hours after the birth of the child, use one of the following prophylactic solutions for the prevention of infantile blindness or ophthalmia neonatorum, two drops of the solution to be dropped in each eye after the eyelids have been opened:

- (1) A one percent fresh solution of nitrate of silver, or
- (2) Such other solution as may be prescribed by the State Board of Health.

§ 22-20-3. Neonatal testing for certain diseases; rules and regulations for treatment thereof.

(a) It shall be the duty of the administrative officer or other persons in charge of each institution

caring for infants 28 days or less of age, or the physician attending a newborn child or the person attending a newborn child that was not attended by a physician to cause to have administered to every such infant or child in his care a reliable test for hypothyroidism and a reliable test for phenylketonuria (PKU), such as the Guthrie test, or any other test considered equally reliable by the State Board of Health and a reliable test for sickle cell anemia, sickle cell trait, and/or abnormal hemoglobin and such other tests relating to mental retardation or other heritable diseases and conditions as are designated by the Board of Health. Provided, however, that the Board of Health shall designate only conditions that are detectable by mass screening of newborn infants. Initial mass screening tests and the recording of results shall be performed by the Public Health Laboratory at such times and in such manner as may be prescribed by the State Board of Health; confirmatory tests shall be undertaken by such laboratory facilities as are designated by the attending physician or parent; provided, that no such initial screening or confirmatory tests shall be given to any child whose parents object thereto on the grounds that such tests conflict with their religious tenets and practices. In the event a test is not given to a child on account of such objections by the parents, then no physician, nurse, laboratory technician, person administering tests, hospital, institution or other health care provider shall be liable for failure to administer the test.

(b) The State Board of Health shall promulgate such rules and regulations as it considers necessary to provide for the care and treatment of those newborn infants whose tests are determined positive, including but not limited to, advising dietary treatment for such infants. The State Board of Health shall promulgate any other rules and regulations necessary to effectuate the provisions of this section including the collection of a reasonable fee for the newborn child screening program.

§ 22-20-4. Location and extension of cemeteries.

Whenever it is proposed to locate a cemetery or to extend the boundaries of an existing cemetery, the party or parties so proposing shall make written application to the judge of probate and county commission or to the mayor and council of an incorporated city or town, according to whether said cemetery or extension of a cemetery is to be located in the jurisdiction of one or the other of these authorities, describing accurately the location and boundaries of the proposed cemetery or extension of a cemetery. Before acting upon the application, the judge of probate and county commission or the mayor and council of an incorporated city or town, as the case may be, shall refer the application to the board of health of the county for investigation from a sanitary standpoint. In making such investigation, the county board of health shall take into consideration the proximity of the proposed cemetery or extension of a cemetery to human habitations, the nature of the soil, the drainage of the ground, the danger of pollution of valuable springs and streams of water and such other conditions and surroundings as would bear upon the sanitary aspect of the situation. Having completed its investigation as promptly as can be done, the county board of health shall submit a report to the judge of probate and county commission, or to the mayor and council, as the case may be, and either approve or disapprove the application. If the latter, the board shall set forth at length its reasons for such disapproval.

Having received the report from the county board of health, the judge of probate and county commission or the mayor and council, as the case may be, shall either grant or deny the application, giving due weight in reaching either conclusion to the views expressed by the County Board of Health. Should the application be granted, the judge of probate and county commission or the mayor and council, as the case may be, shall issue to the party or parties making the application, and in such form as they may prescribe, a license to establish or extend the cemetery in question. The said license shall, upon the payment of \$.50 by the party or parties making the application, be recorded in the office of the judge of probate of the county.

§ 22-20-5. Regulations for establishments handling food and providing public accommodations.

(a) The State Committee on Public Health shall, as conditions demand, adopt and promulgate regulations for the construction, maintenance and operation of all establishments, and their immediate surroundings, in which foods or beverages intended for sale for human consumption are made, prepared, processed, displayed for sale in an unpackaged state or served and for the construction, maintenance and operation of hotels, inns, taverns, motels, tourist courts, tourist homes, trailer courts or any place where sleeping accommodations for transients, tourists or vacationists are advertised for sale, as well as regulations for the construction, maintenance and operation of exhibition-ground food concessions, poultry slaughterhouses and animal slaughterhouses, and their surroundings; except, that the authority hereby vested shall not include the authority to conduct meat and poultry slaughter and processing inspections and other inspections conducted by the Department of Agriculture and Industries pursuant to Sections 2-17-1 through 2-17-38. Copies of the said regulations shall be furnished to county health officers, who, as authorized representatives of the State Health Officer, shall enforce such regulations within their respective jurisdictions.

(b) This section shall not restrict the power of county boards of health nor of municipal corporations to adopt more stringent, emergency regulations or ordinances, respectively.

(c) Whenever the State Health Officer officially notifies the judge of probate of a county or the officials of a municipal corporation that he is in position to secure the enforcement of any, or all, of the aforesaid regulations authorized in this section in any county or municipality, such notice shall constitute official declaration of the fact that said regulations are in effect in said county and said municipality, and it shall be unlawful thereafter for the judge of probate of said county or for the city clerk of said municipality to accept payment for, or to issue, a privilege license for the operation of any establishment governed by said regulations unless the applicant for said license is in possession of a valid permit issued by the health officer for the operation of said establishment. It shall, therefore, be unlawful to operate, within any county or any incorporated municipality within the State of Alabama, wherein the aforesaid regulations have been declared to be in effect, any establishment which is governed by said regulations unless the operator of such establishment possesses a valid permit from the health officer for its operation; and further,

the health officer is hereby authorized and empowered to suspend or revoke, after the expiration of reasonable time specifically named in an official written notice to the operator, the permit for the operation of an establishment governed by the aforesaid regulations, for the flagrant or continuous violation of any provisions of said regulations.

(d) The health officer is hereby authorized and empowered to institute proceedings in the circuit court to enjoin the operation of any establishment governed by the aforesaid regulations when no more reasonable course of action will serve to protect the public health. When the operation of an establishment is ordered enjoined by the court, such order shall be enforced by the same authorities and in the same manner as are other similar court orders.

(e) The health officer is hereby authorized to enter any establishment governed by this section, at any time, for the purpose of inspection and is further authorized to score or grade such establishment and to post or publicly announce such score or grade. It shall be unlawful for anyone except the health officer to remove a posted score or grade, or for anyone to deface or falsely advertise a posted score or grade or to hinder a Health Officer or his representative in the performance of his duty.

(f) In case a county is without the services of a county health officer, or in event the county health officer requests assistance in the enforcement of the aforesaid regulations or, if in the discretion of the State Health Officer, special circumstances make it advisable to take the enforcement of the regulations authorized in this section out of the hands of the county health officer, the State Health Officer is hereby authorized to enforce the said regulations.

§ 22-20-6. Butchering, etc., of legally taken wild animals.

Any rule or regulation of the Health Department to the contrary notwithstanding, legally taken deer, turkeys and any other wild animal may be butchered, killed and/or processed at any slaughterhouse, abattoir, meat-packing and processing plant in this state.

§ 22-20-7. Inspection of dairy farms, milk-cooling stations, etc.

The State Board of Health shall inspect dairy farms, milk-cooling stations, milk-processing plants and creameries for grading the milk and cream output of such establishments. The said inspections shall be made in accordance with the rules and regulations of the State Board of Health, and the grading of the milk and milk products shall be carried out in compliance with the specifications of the United States Public Health Service standard milk ordinance.

§ 22-20-8. Depositing dead animals or nauseous substances in water supplies.

It shall be unlawful for any person to knowingly deposit any dead animal or nauseous substance in any source, standpipe or reservoir from which water is supplied to any city or town of this state or in any private well, spring, reservoir, tank, vessel or receptacle. Any person violating the

provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$500.00 and may be sentenced to hard labor for the county not exceeding one year.

§ 22-20-9. Depositing dead animals or fowl in running streams.

Any person who deposits the body of a dead animal or fowl in any running stream must, on conviction, be fined \$10.00, and one half of the fine must go to the informer.

§ 22-20-10. Duty to drain areas in construction works.

Any person, firm or corporation engaged in the construction of any railroad, public highways or other construction work in Alabama shall drain all borrow pits, cuts and fills likely to impound water which shall be dangerous to the public health. Any person, firm or corporation failing to perform the duty imposed in this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$500.00.

§ 22-20-11. Restrictions on retail sales of certain poisons.

(a) It shall be unlawful for any person to retail any poisons enumerated in Schedules "A" and "B" which are as follows, except upon the conditions named in this section:

(1) Schedule "A" -- biniodide of mercury, cyanide of potassium, carbolic acid, hydrocyanic acid, strychnine, arsenate and its preparations and all other poisonous alkaloids and their salts and the essential oil of bitter almonds.

(2) Schedule "B" -- acenite, belladonna, colchium, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, veratrum, digitalis and their pharmaceutical preparations, croton oil, chloroform, sulphate of zinc, corrosive sublimate, red precipitate, white precipitate, mineral acids and oxalic acid.

(b) Any of the poisons included in Schedule "A" may be legally sold by any registered pharmacist, but he shall, before delivering the same to the purchaser, cause an entry to be made in a book kept for that purpose, stating the date of sale, name and address of purchaser, the name of poison sold and the amount, the purpose for which it was represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities and to be preserved for at least three years.

(c) Any of the poisons named in Schedule "B" may be legally sold, but only on the condition that the person, firm or corporation selling or furnishing the same shall label on the container with the name of the drug, the word "poison" and the name and place of the seller.

(d) It shall be unlawful for any registered pharmacists to sell or deliver any poisons enumerated

in Schedule "A" and "B" unless, upon due inquiry, it is found that the purchaser is aware of its poisonous character and represents that it is to be used for legitimate purposes.

(e) The provisions of this section shall not apply to the dispensing of poison in not unusual quantities or upon the prescription of practitioners of medicine.

(f) Nothing in this section shall prohibit the sale of insecticides, fungicides or poisons used in the arts, when sold in original packages and labeled according to the law and other remedies or materials used in the control or eradication of insect pests and plant diseases.

(g) Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25.00 nor more than \$100.00. Whoever shall fail to preserve the original of any prescription, or a true copy of the same, or to produce same when lawfully required, in accordance with the provisions of this section, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$200.00.

§ 22-20-12. Advertisements concerning impotency, prostatic troubles, etc.

Any person who shall, directly or indirectly, publish, deliver or distribute, or cause to be published, delivered or distributed, in any manner, whatsoever, any advertisement concerning lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, stricture, drains, discharges, prostatic troubles, self-abuse or excessive sexual indulgences or calling attention to any medicine, article or preparation that may be used therefor, or to any person or persons from whom or any office or place at which information, treatment or advice relating to such diseases, infirmity, habit or condition may be obtained shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$10.00 nor more than \$100.00. This section shall not apply to the advertising of any patent medicine not used or recommended for the treatment of venereal diseases, nor shall it apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom, or any place at which, information, treatment or advice may be obtained, nor shall it apply to advertisements or notices issued by legally constituted health authorities in the discharge of their official duties.

Chapter 20A Source or Origin of Fish products, §§22-20A-1 through 22-20A-32.

Article 1. Source or Origin of Farm-Raised and Wild Fish.

§ 22-20A-1. Legislative findings.

The Legislature hereby finds and declares the consumer's right to know the source or origin of a food product for human consumption is paramount and essential to the health, safety, and well-being of the people of this state and nation. Providing notice to the public of whether farm-raised fish and wild fish are imported or domestic is compelling.

§ 22-20A-2. Definitions.

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

- (1) **BOARD.** The State Board of Health as defined in Section 22-2-3.
- (2) **DOMESTIC.** Any farm-raised fish or wild fish hatched, raised, harvested, or processed within the United States or a territory of the United States.
- (3) **FARM-RAISED FISH.** Includes farm-raised shellfish and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish and includes any product of which farm-raised fish is an ingredient.
- (4) **FOOD SERVICE ESTABLISHMENT.** Any place, vehicle, or vessel where food for individual portion service is prepared, stored, held, transported, served, or dispensed and includes any such place regardless of whether consumption is on- or off-premises and which is regulated by the Alabama Department of Public Health. Hospitals, as defined in Section 22-21-20, shall be excluded from the requirements of this article.
- (5) **IMPORTED.** Any farm-raised fish or wild fish that was hatched, raised, harvested, or processed outside the United States or a territory of the United States.
- (6) **SHELLFISH.** Includes crab, lobster, oyster, shrimp, crayfish, clam, and scallops in the wild and any farm-raised shellfish and includes any product of which shellfish is an ingredient.
- (7) **STATE HEALTH OFFICER.** The State Health Officer as defined in Section 22-2-8, or his or her designated representative.
- (8) **VERIFIED COMPLAINT.** An allegation of noncompliance with the provisions of this article that can be attributed to the complainant and which is signed and verified by the complainant.

(9) **WILD FISH.** Naturally born or hatchery-raised fish and shellfish harvested in the wild. The term includes a fillet, steak, nugget, and any other flesh from wild fish or shellfish and also includes any product of which wild fish is an ingredient. Net-pen aquacultural or other farm-raised fish are excluded from the definition.

§ 22-20A-3. Suppliers and food service establishments to provide required information.

(a) Any person who supplies farm-raised fish or wild fish to a food service establishment shall provide information of the country of origin of the product to the food service establishment as required by federal law. The State Health Officer, upon verified complaint and in compliance with all applicable state and federal law, shall investigate any and all reports of noncompliance with this subsection. Upon receipt of the verified complaint, a copy of the complaint shall be given to the food service establishment.

(b) If farm-raised fish or wild fish is supplied to a food service establishment and the fish or fish product is not required to be labeled with the country of origin pursuant to the requirements of federal law, the supplier of the fish or fish product or the food service establishment shall not be required to provide any additional information to comply with this article.

(c) A food service establishment serving farm-raised fish or wild fish shall place a disclaimer or notice on the menu or on a placard not smaller than 8 and one half inches by 11 inches in close proximity to the food establishment permit, in a conspicuous place specifically stating the following: “Under Alabama law, the consumer has the right to know, upon request to the food service establishment, the country of origin of farm-raised fish or wild fish.” The disclaimer or notice listed on a menu shall be listed in print as large as the listing of the product.

(d) For purposes of this section, the United States is the country of origin for farm-raised fish hatched, raised, harvested, and processed in the United States and wild fish that were harvested in waters of the United States, a territory of the United States, or a state and processed in the United States, a territory of the United States, or a state, including the waters thereof.

§ 22-20A-4. Labeling requirements.

Any labeling requirements as to farm-raised fish and wild fish offered for direct retail sale for human consumption by a food service establishment may comply with this article by stating the country of origin in lieu of the disclaimer or notice; except, that the appropriate state name or USA or United States of America, including a trade name or trademark, may be inserted in lieu thereof to accommodate similar products produced in any of the states or a territory of the United States of America.

§ 22-20A-5. Rules and regulations.

The board shall promulgate rules as may be necessary for the enforcement of this article, such rules to be promulgated according to the Administrative Procedure Act.

§ 22-20A-6. Governmental cooperation.

The board may cooperate with and enter into agreements with governmental agencies of this state or agencies of the federal government in order to carry out the purpose of this article.

§ 22-20A-7. Enforcement.

The State Health Officer may apply for and the court may grant a temporary restraining order or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond in the county where the violation occurred.

§ 22-20A-8. Violations.

(a) Any food service establishment violating this article or the rules promulgated thereunder, after notice and a hearing, shall be subject to penalties on a graduated scale in accordance with the following schedule for all violations within a 24-month period:

- (1) First offense -- Written warning.
- (2) Second offense -- One hundred dollars (\$100).
- (3) Third offense -- Two hundred fifty dollars (\$250).
- (4) Fourth offense -- Five hundred dollars (\$500).
- (5) Fifth offense -- One thousand dollars (\$1,000).

(b) Any food service establishment which unknowingly violates this article shall be held harmless against penalties from failure to disclose country of origin of any product which was mislabeled by the wholesaler or distributor.

Article 2. Country of Origin of Catfish Products.

§ 22-20A-30. Definitions.

For purposes of this article, the following terms shall have the following meanings, respectively, unless the context otherwise requires:

- (1) BOARD. The State Board of Health as defined in Section 22-2-3.
- (2) CATFISH. Any species of fish classified within the family Ictaluridae.
- (3) DEPARTMENT. The State Department of Public Health.
- (4) FOOD SERVICE ESTABLISHMENT. Any place, vehicle, or vessel where food for individual portion service is prepared, stored, held, transported, served, or dispensed and includes any such place regardless of whether consumption is on or off premises and which is regulated by the Alabama Department of Public Health.
- (5) LABEL. A legible display of written, printed, or graphic information on a placard, menu, sign, or other material that represents the product to the consumer.
- (6) PRODUCT. Any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small portions and which are exempt from this definition by rules of the State Board of Health.

§ 22-20A-31. Advertising restrictions; food service establishments to provide required information.

- (a) A food service establishment shall not advertise or label a food item as catfish unless it is fish classified within the family of Ictaluridae.
- (b) Any advertising of catfish or catfish products by food service establishments shall state the country of origin if the product was imported from a country other than the United States of America. The advertising required in this subdivision stating the country of origin of the product shall be displayed daily when the catfish or catfish products are from a country other than the United States of America.
- (c) No catfish product shall be offered for sale at a food service establishment unless consumers are notified of the name and country of origin of the product. A food service establishment shall comply with this requirement by listing the country of origin on the menu in the same location and in the same size font as the product being offered, or by using a sign or tabletop display identifying the country of origin of the catfish offered for sale. If a sign is used, it shall be a minimum of 93 square inches with characters at least one inch in size. The sign or a series of signs shall be posted on a wall in a conspicuous location or locations in plain view of all patrons. If a tabletop display is used, it shall be at least 30 square inches and be placed on each table that is used for service.

§ 22-20A-32. Violations.

(a) Any food service establishment engaged in the sale or advertising of catfish products in violation of this article shall be subject to civil penalties. The department shall impose the following civil penalties. For violations occurring within a 24-month period:

(1) A warning for the first violation.

(2) A fine of one hundred dollars (\$100) for a second violation with 24 months.

(3) A fine of two hundred fifty dollars (\$250) for the third violation within 24 months.

(4) A fine of five hundred dollars (\$500) for the fourth violation within 24 months.

(5) A fine of one thousand dollars (\$1,000) for the fifth violation within 24 months and at the discretion of the department, a suspension of the food service establishment permit.

(b) A person may appeal the assessment of a civil penalty by requesting a hearing that shall be held in accordance with the Alabama Administrative Procedure Act. Judicial review of a final action of the department shall be pursuant to Section 41-22-20.

(c) All fines and other moneys collected pursuant to this section shall be continuously appropriated to the department and used to implement and administer this article.

(d) If a civil penalty imposed by the department is not paid, the department, the Attorney General, or appropriately the district attorney may file an action to collect the civil penalty in a court of competent jurisdiction in the county in which the violation occurred. The food establishment shall be responsible to pay all costs associated with the collection of the civil penalty.

(e) Any food service establishment which unknowingly violates this article shall be held harmless against penalties from failure to disclose country of origin of any product which was mislabeled by the wholesaler or distributor.

(f) The board may promulgate rules as may be necessary for the implementation and enforcement of this article.

Chapter 21. Hospitals and Other Health Care Facilities Generally, §§ 22-21-20 through 22-21-46, 22-21-260 through 22-21-278.

Article 2. Licensing of Hospitals, Nursing Homes and Other Health Care Institutions.

§ 22-21-20. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) HOSPITALS. General and specialized hospitals, including ancillary services; independent clinical laboratories; rehabilitation centers; ambulatory surgical treatment facilities for patients not requiring hospitalization; end stage renal disease treatment and transplant centers, including free-standing hemodialysis units; abortion or reproductive health centers; hospices; health maintenance organizations; and other related health care institutions when such institution is primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury, deformity, disease, surgical or obstetrical care. Also included within the term are long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, assisted living facilities, and specialty care assisted living facilities rising to the level of intermediate care. The term "hospitals" relates to health care institutions and shall not include the private offices of physicians or dentists, whether in individual, group, professional corporation or professional association practice. This section shall not apply to county or district health departments.

(2) PERSON. The term includes individuals, partnerships, corporations, and associations.

§ 22-21-21. Purpose of article.

The purpose of this article is to promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards for the treatment and care of individuals in institutions within the purview of this article and the establishment, construction, maintenance and operation of such institutions which will promote safe and adequate treatment and care of individuals in such institutions.

§ 22-21-22. License -- Required; exceptions.

No person shall establish, conduct or maintain any hospital as defined in Section 22-21-20 without first obtaining the license provided in this article. Hospitals operated by the federal government and mental hospitals under the supervision of the board of trustees of the Alabama state hospitals shall be exempt from the provisions of this article.

§ 22-21-23. License -- Application.

Any person desiring licensing under this article shall apply to the State Board of Health therefor. The applicant shall state the name of the applicant and whether an individual, partnership, corporation or other entity, the type of institution for which a license is desired, the location thereof and the name of the person in direct supervision and charge thereof. The person in charge of such hospital must be at least 19 years of age and of reputable and responsible character. The applicant shall submit evidence of ability to comply with the minimum standards provided in this article or by regulations issued under its authority.

§ 22-21-24. License -- Fees; expiration and renewal; accreditation.

The application for a license to operate a hospital other than an assisted living facility or a specialty care assisted living facility rising to the level of intermediate care shall be accompanied by a standard fee of two hundred dollars (\$200), plus a fee of five dollars (\$5) per bed for each bed over 10 beds to be licensed in accordance with regulations promulgated under Section 22-21-28. Increase in a hospital's bed capacity during the calendar year is assessed at the standard fee of two hundred dollars (\$200) plus five dollars (\$5) each for the net gain in beds. The initial licensure fee and subsequent annual licensure renewal fee for an assisted living facility and for a specialty care assisted living facility rising to the level of intermediate care shall be two hundred dollars (\$200) plus fifteen dollars (\$15) for each bed. A license renewal application for any hospital, as defined by this article, which is not received by the expiration date in a properly completed form and accompanied by the appropriate renewal fee shall be subject to a late penalty equal to two hundred fifty dollars (\$250) or 100 percent of the renewal fee, whichever is greater. No fee shall be refunded. All fees received by the State Board of Health under the provision of this article shall be paid into the State Treasury to the credit of the State Board of Health and shall be used for carrying out the provisions of this article. A license granted under this article shall expire on December 31 of the year in which it was granted. A license certificate shall be on a form prescribed by the department, and shall be posted in a conspicuous place on the licensed premises. Licenses shall not be transferable or assignable and shall be granted only for the premises named in the application. Licenses may be renewed from year to year upon application, investigation, and payment of the required license fee, as in the case of procurement of the original license. All fees collected under this article are hereby appropriated for expenditure by the State Health Department. All hospitals which are accredited by the joint commission on accreditation of hospitals shall be deemed by the State Health Department to be licensable without further inspection or survey by the personnel of the State Department of Health. Further accreditation by the joint commission on accreditation of hospitals shall in no way relieve that hospital of the responsibility of applying for licensure and remitting the appropriate licensure fee as specified in this article.

§ 22-21-25. License -- Issuance; suspension or revocation; new applications after revocation.

(a) The State Board of Health may grant licenses for the operation of hospitals which are found to comply with the provisions of this article and any regulations lawfully promulgated by the State Board of Health.

b) The State Board of Health may suspend or revoke a license granted under this article on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto.

(2) Permitting, aiding or abetting the commission of any illegal act in the institution.

(3) Conduct or practices deemed by the State Board of Health to be detrimental to the welfare of the patients of the institution.

(c) Before any license granted under this article is suspended or revoked, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing of the complaint, which date of hearing shall be not less than 30 days from the date of the notice. The notice shall be sent by registered or certified mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(d) If a license is revoked as provided in this section, a new application for license shall be considered by the State Board of Health if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated under this article have been satisfied.

§ 22-21-26. License -- Judicial review of suspension or revocation.

Any party aggrieved by a final decision or order of the Board of Health suspending or revoking a license is entitled to a review of such decision or order by taking an appeal to the circuit court of the county in which the hospital is located or is to be located.

§ 22-21-27. Advisory board.

(a) There shall be an advisory board of 17 members to assist in the establishment of rules, regulations, and standards necessary to carry out the provisions of this article and to serve as consultants to the State Health Officer. The board shall meet at least twice each year and at the call of the State Health Officer. The members of the board shall annually elect one of its members to serve as chairman.

(b) The advisory board shall be constituted in the following manner:

- (1) Four representatives of hospitals, who shall be appointed by the Board of Trustees of the Alabama Hospital Association as follows:
 - a. One administrator of a governmental hospital.
 - b. One administrator of a nongovernmental nonprofit hospital.
 - c. One owner or administrator of a proprietary hospital.
 - d. One member of a managing board of a nonprofit hospital.
- (2) Three representatives who shall be doctors of medicine appointed by the Board of Censors of the Medical Association of the State of Alabama.
- (3) One representative who shall be a registered nurse appointed by the Executive Board of the Alabama State Nurses Association.
- (4) One representative from the State Board of Human Resources who shall be appointed by the board.
- (5) One registered pharmacist actively engaged in the practices of pharmacy in the State of Alabama, to be appointed by the Executive Committee of the Alabama Pharmacy Association.
- (6) Three members who shall be appointed by the Executive Committee of the Alabama Nursing Home Association, each of whom shall be the operator of a duly qualified licensed nursing home.
- (7) One member who shall be appointed by the Alabama Hospice Association.
- (8) Two members who shall be appointed by the Assisted Living Association of Alabama, one of whom shall be the operator of a licensed assisted living facility or licensed specialty care assisted living facility rising to the level of intermediate care with 16 or fewer beds, and one of whom shall be the operator of an assisted living facility or licensed specialty care assisted living facility rising to the level of intermediate care with more than 16 beds.
- (9) One member who shall be appointed by the Governor to represent the interests of consumers. The consumer representative shall be at least 65 years of age and shall have no financial interest in any facility licensed under this article.

Each new appointee shall serve for five years or until his or her successor is appointed, whichever is later. Any vacancy caused by a member leaving the position before the expiration of his or her term shall be filled by the organization selecting the original member. The replacement member appointed shall serve for the remainder of the unexpired term.

(c) A member of the advisory board shall not be eligible to succeed himself or herself after serving one full five-year term, but shall be eligible for reappointment if he or she has served only a portion of a five-year term or if he or she has not served immediately preceding the reappointment.

(d) Members of the advisory board shall serve without compensation, but shall be entitled to reimbursement for expenses incurred in the performance of the duties of the office at the same rate allowed state employees pursuant to general law.

§ 22-21-28. Rules and regulations.

(a) In the manner provided in this section, the State Board of Health, with the advice and after approval by the advisory board, shall have the power to make and enforce, and may modify, amend, and rescind, reasonable rules and regulations governing the operation and conduct of hospitals as defined in Section 22-21-20. All such regulations shall set uniform minimum standards applicable alike to all hospitals of like kind and purpose in view of the type of institutional care being offered there and shall be confined to setting minimum standards of sanitation and equipment found to be necessary and prohibiting conduct and practices inimical to the public interest and the public health. The board shall not have power to promulgate any regulation in conflict with law nor power to interfere with the internal government and operation of any hospital on matters of policy. The procedure for adopting, amending, or rescinding any rules authorized by this article shall conform to the Alabama Administrative Procedure Act. At any public hearing called for the purpose of soliciting public comment on proposed rules, any interested hospital or any member of the public may be heard.

(b) Any person affected by any regulation, amendment, or rescission thereof may appeal consideration thereof to the circuit court of the county of that person's residence or in which that person does business or to the Circuit Court of Montgomery County, pursuant to the Alabama Administrative Procedure Act. And upon appeal the question of the reasonableness of such regulation shall be a question of fact for the court to determine, and no presumption shall be indulged that the regulation adopted was and is a reasonable regulation.

(c) Regulations adopted under this section shall become effective as provided in the Alabama Administrative Procedure Act.

§ 22-21-29. Inspections.

(a) Every hospital licensed under this article shall be open to inspection to the extent authorized in this section by employees and agents of the State Board of Health, under rules as shall be promulgated by the board with the advice and consent of the advisory board. Employees and agents of the board shall also inspect unlicensed and suspected unlicensed facilities. Nothing in this section shall authorize the board to inspect quarters therein occupied by members of any religious group or nurses engaged in work in any hospital or places of refuge for members of religious orders for whom care is provided, but any inspection shall be limited and confined to the parts and portions of the hospital as are used for the care and treatment of the patients and the general facilities for their care and treatment. No hospital shall, by reason of this section, be relieved from any other types of inspections authorized by law.

(b) All inspections undertaken by the State Board of Health shall be conducted without prior notice to the facility and its staff. Notwithstanding the foregoing, an inspection of a hospital or other health care facility, prior to its licensure, may be scheduled in advance. An employee or contract employee of the state shall not disclose in advance the date or the time of an inspection

of a hospital or other health care facility to any person with a financial interest in any licensed health care facility, to any employee or agent of a licensed health care facility, to any consultant or contractor who performs services for or on behalf of licensed health care facilities, or to any person related by blood or marriage to an owner, employee, agent, consultant, or contractor of a licensed health care facility. For purposes of this section, the term inspection shall include periodic and follow-up compliance inspections and surveys on behalf of the State Board of Health, complaint investigations and follow-up investigations conducted by the State Board of Health, and compliance inspections and surveys, complaint investigations, and follow-up visits conducted on behalf of the United States Department of Health and Human Services, Health Care Financing Administration, or its successors. The board may prescribe by rule exceptions to the prohibition where considerations of public health or safety make advance disclosure of inspection dates or times reasonable. Disclosure in advance of inspection dates when such disclosure is required or authorized pursuant to federal law or regulation shall not be a violation of this section. Scheduling inspections of hospitals or other health care facilities by the board at regular, periodic intervals which may be predictable shall not be a violation of this section.

(c) Any employee or contract employee of the state who discloses in advance the date or time of an inspection in violation of subsection (b) shall be guilty of a Class A misdemeanor. Any person who solicits an employee or contract employee of the state to disclose in advance the date or time of an inspection in violation of subsection (b) for the purpose of disclosing the information to others shall be guilty of a Class A misdemeanor.

§ 22-21-30. Disclosure of information.

Information received by the State Board of Health through on-site inspections conducted by the state licensing agency is subject to public disclosure and may be disclosed upon written request. Information received through means other than inspection will be treated as confidential and shall not be directed publicly except in a proceeding involving the question of licensure or revocation of license.

§ 22-21-31. Practice of medicine, etc., not authorized; child placing.

Nothing in this article shall be construed as authorizing any person to engage in any manner in the practice of medicine or any other profession nor to authorize any person to engage in the business of child placing. Any child born in any such institution whose mother is unable to care for such child or any child who, for any reason, will be left destitute of parental support shall be reported to the Department of Human Resources or to any agency authorized or licensed by the Department of Human Resources to engage in child placing for such service as the child and the mother may require. In the rendering of service, representatives of the Department of Human Resources and agencies authorized or licensed by the Department of Human Resources shall have free access to visit the child and the mother concerned.

§ 22-21-32. State board not empowered to prohibit erection and operation of hospitals. Repealed.

§ 22-21-33. Penalty for violation of article, etc.

(a) Any individual, association, corporation, partnership, limited liability company, or other business entity who operates or causes to be operated a hospital of any kind as defined in this article or any regulations promulgated hereunder, without having been granted a license therefor by the State Board of Health shall be guilty of a Class B misdemeanor upon conviction, except that any individual, association, corporation, partnership, limited liability company, or other business entity who operates or causes to be operated a hospital of any kind as defined in this article or any regulations promulgated hereunder without having been granted a license therefor by the State Board of Health shall be guilty of a Class A misdemeanor upon conviction of a second or any subsequent offense. The State Board of Health, upon determination that a facility or business is operating as a hospital, within the meaning of this article or any rules promulgated hereunder, and that the facility or business does not have a current and valid license granted by the State Board of Health, may apply to the circuit court of the county in which the unlicensed facility or business is located for declaratory and injunctive relief. The proceedings shall be expedited. The sole evidentiary questions before the court in a proceeding shall be whether the facility or business that is the subject of the action meets the definition of a hospital, within the meaning of this article and any rules promulgated hereunder, and whether the facility or business has been granted a current and valid license to operate by the State Board of Health. If the State Board of Health prevails on these questions, then the court shall, upon request of the State Board of Health, forthwith grant declaratory and injunctive relief requiring the operator or operators to close the facility or business and requiring the operator or operators to move all residents or patients to appropriate placements. Any individual failing to obey an injunction to close a hospital shall be guilty of a Class A misdemeanor. Any individual, after having once been subject to such an injunction, who shall later operate or cause to be operated a hospital, as defined in this article or any regulations promulgated hereunder, without having been granted a license therefor by the State Board of Health shall be guilty of a Class A misdemeanor. The State Board of Health may, upon the advice of the Attorney General, maintain an action in the name of the state for an injunction to restrain any state, county or local governmental unit, or any division, department, board or agency thereof, or any individual, association, corporation, partnership, limited liability company, or other business entity, from operating, conducting or managing a hospital in violation of any provisions of this article, or any regulation promulgated hereunder. Evidence that a person who is a licensed health care professional is or has been operating an unlicensed hospital or knowingly is or has been an employee of an unlicensed hospital shall be grounds for license revocation by the applicable professional licensing board or boards. No county or municipality shall grant a business license to a hospital, as defined in this article, unless the facility holds a current license to operate granted by the State Board of Health. In any action to collect a fee for services brought against a resident or patient by a hospital, as defined in this article or regulations promulgated hereunder, it shall be a defense to the action to

demonstrate that the operator of the hospital did not have a current and valid license to operate pursuant to this article at the time the services in question were rendered.

(b) A licensed inpatient hospital acting through an authorized agent of the licensed inpatient hospital shall not knowingly refer to an unlicensed hospital any person who is in need of care rendered by a licensed hospital. A licensed hospice or certified home health agency acting through an authorized agent of the licensed hospice or certified home health agency shall not knowingly provide treatment or services in an unlicensed hospital to a person who is in need of care rendered by a licensed hospital. The Department of Public Health shall maintain, in electronic format and available on the Internet, a current directory of all licensed hospitals. The department, shall publish and mail to licensed inpatient hospitals, licensed hospices, and certified home health agencies every three months a listing of licensed hospitals. A determination of actual knowledge that a facility or business was unlicensed shall be supported by evidence that the unlicensed hospital had not been listed in either the printed or electronic directory during the 12 months immediately prior to the time the referral was made or treatment provided. In any action to levy a fine or revoke a license under this section, it shall be a defense to the action to demonstrate that the unlicensed inpatient hospital appeared in the list published by the department, either electronically or in print format, as a licensed inpatient hospital during the 12 months immediately prior to the time the referral was made or the treatment was provided. Any licensed inpatient hospital acting through an authorized agent of the licensed inpatient hospital that knowingly makes a referral to an unlicensed hospital of a person in need of care rendered by a licensed hospital, or any licensed hospice or any certified home health agency acting through an authorized agent of the licensed hospice or certified home health agency that knowingly provides treatment in an unlicensed hospital to a person in need of care rendered by a licensed hospital, may be subject to a civil penalty imposed by the Board of Health not to exceed one thousand five hundred dollars (\$1,500) per instance. All civil monetary penalties collected pursuant to this section or [Section 22-21-34](#) shall be paid to the Department of Human Resources and held in a dedicated fund for the sole purpose of making grants or disbursements to assist protected persons, as this term is defined in [Section 38-9-2 et seq.](#) with appropriate placement or relocation from an unlicensed facility into a licensed facility or relocation from a facility undergoing license termination, suspension, or revocation, pursuant to [Section 22-21-25](#), to an appropriate setting. The Department of Human Resources is hereby authorized to make grants or disbursements from this fund to protected persons or to individuals or public or private organizations acting on behalf of a protected person.

(c)(1) For the purposes of this section, the term “licensed inpatient hospital” shall mean a licensed acute care hospital, long-term acute care hospital, rehabilitation hospital, inpatient hospice, skilled nursing facility, intermediate care facility, assisted living facility, or specialized care assisted living facility.

(2) For the purposes of this section, the term “knowingly” shall mean actual knowledge by a licensed inpatient hospital, licensed hospice, or certified home health agency acting through an

authorized agent making a referral or providing services, that the unlicensed hospital to which the referral is made or services rendered is unlicensed within the meaning of this section.

§ 22-21-34. Assisted living facility, etc., rising to level of intermediate care.

Under the circumstances listed below, an assisted living facility or a specialty care assisted living facility rising to the level of intermediate care may be subject to a civil money penalty imposed by the Board of Health not to exceed ten thousand dollars (\$10,000) per instance. The imposition of the penalty may be appealed pursuant to the Alabama Administrative Procedure Act. All money penalties imposed pursuant to this section shall be remitted to the Department of Public Health and shall be deposited in the State General Fund. The penalties shall be deposited in the General Fund and shall not be earmarked for the Department of Public Health. Failure of an assisted living facility or a specialty care assisted living facility rising to the level of intermediate care to pay a civil money penalty within 30 days after its imposition or within 30 days after the final disposition of any appeal shall be grounds for license revocation unless arrangements for payment are made that are satisfactory to the State Board of Health. No assisted living facility or specialty care assisted living facility rising to the level of intermediate care may renew its license to operate if it has any unpaid civil money penalties which were imposed more than 30 days prior to the facility's license expiration date, except for any penalties imposed which are still subject to appeal and except for penalties for which arrangements for payment have been made that are satisfactory to the State Board of Health.

(1) A civil money penalty may be imposed for falsification of any record kept by an assisted living facility or specialty care assisted living facility rising to the level of intermediate care, including a medication administration record or any record or document submitted to the State Board of Health, by an employee or agent of the facility, where such falsification is deliberate and undertaken with intent to mislead the Board of Health, or its agents or employees, or residents, sponsors, family members, another state, county, or municipal government agency, or the public, about any matter of legal compliance, regulatory compliance, compliance with fire or life safety codes, or quality of care.

(2) A civil money penalty may be imposed as a result of a false statement made by an employee or agent of an assisted living facility or a specialty care assisted living facility rising to the level of intermediate care to an employee or agent of the State Board of Health, if the statement is made with intent to deceive or mislead the Board of Health, its agents or employees, about any matter of legal compliance, regulatory compliance, compliance with fire or life safety codes, or quality of care. A civil money penalty shall not be imposed if the facility's employee or agent makes a false statement when he or she has no reason to believe the false statement is authorized by the administrator or operator of the facility and if it is likely that the facility's employee or agent made the statement with the intent to cause damage to the facility.

Article 2A. . Review of Plans for New Construction, Addition, or Alteration of Hospitals or Health Care Facility by Board of Health.

§ 22-21-40. Approval of design and construction of project.

No licensee of the State Board of Health or Department of Public Health, applicant for licensure from the State Board of Health or Department of Public Health, or any person or entity seeking certification for reimbursement under the Social Security Act or other law of the United States for which the State Board of Health or Department of Public Health provides surveys or inspections shall commence or in any fashion engage in any new construction, additions to, or alterations of any hospital or other health care facility in the State of Alabama as defined by Section 22-21-20 and rules of the State Board of Health without first submitting to the State Board of Health plans, drawings, and specifications for the new construction, addition, or alteration, and receiving review comments from the State Board of Health. Construction shall not begin until the licensee, applicant, or submitter satisfies the State Board of Health that all comments to submittals have been integrated into revised plans, drawings, and specifications and the design is finally approved by the State Board of Health. The reviews and subsequent inspections shall be for the purpose of approval of the design and construction of the project and for verification of compliance with standard codes and rules of the State Board of Health.

§ 22-21-41. Duties of State Board of Health.

When the State Board of Health receives submittals of plans, drawings, and specifications for the construction, addition to, or alteration of health care facilities for the purposes of review and approval, the State Board of Health shall make reviews of submitted plans, drawings, and specifications and inspections or investigations of the construction as it deems necessary. In addition, the State Board of Health shall make a final inspection of the submitted project at the appropriate time. The State Board of Health shall prescribe by rule the procedure for a licensee, applicant, or submitter to pay fees required by this article and to submit plans, drawings, and specifications to the State Board of Health for preliminary review or inspection and approval or recommendation with respect to compliance with rules of the State Board of Health. In exchange for fees included in the fee schedule provided herein, the State Board of Health shall provide reviews of up to four plan submissions and one final inspection visit of the finished construction, for each project. If additional reviews or final inspections are required, an additional fee, equal to 15 percent of the total fee, shall be paid to the department for each additional submittal or inspection.

§ 22-21-42. Review and final inspection.

The State Board of Health shall send written review comments to the project architect within 60 calendar days for projects costing less than fifteen million dollars (\$15,000,000), or within 120 calendar days on projects costing over fifteen million dollars (\$15,000,000), of the State Board

of Health's receipt of each submittal. If the review is not timely made, the fee as established by Section 22-21-44 and due at drawing approval shall be waived. The State Board of Health shall perform the final inspection within 30 calendar days of the receipt of a written request for inspection from the project architect or by the date requested by the project architect, whichever shall be later. If the final inspection is not timely made, the remainder of the fee shall be waived.

§ 22-21-43. Schedule of fees.

The State Board of Health may charge fees in accordance with the following schedule based on the cost of building construction:

Construction Cost Fee (percent of construction cost)

Up to \$100,000 Greater of \$500 or 1.2%

\$100,001--\$1,000,000 Greater of \$1,200 or 0.5%

\$1,000,001--\$5,000,000 Greater of \$5,000 or 0.2%

\$5,000,001--\$15,000,000 Greater of \$10,000 or 0.1%

Over \$15,000,000 \$15,000

§ 22-21-44. Payment of fees.

An initial fee payment of five hundred dollars (\$500) shall accompany the first drawing submittal for each project. Upon written approval of the final stage drawings, 75 percent of the estimated fee, less the initial five hundred dollar (\$500) payment, shall be paid. The estimated fee shall be based on the architect's estimated cost of construction. At the final building inspection, the remainder of the fee shall be paid to the State Board of Health. This payment shall be the final fee less fees previously paid or waived. The final fee shall be based on the actual cost of construction. A copy of the contractor's latest pay request shall be furnished to the department as the evidence for actual cost. Except as specifically provided herein, no fees paid shall be refundable. The Alabama Department of Mental Health and Mental Retardation shall be exempt from all fees described herein.

§ 22-21-45. Rules and regulations; review by advisory board.

The State Board of Health shall establish rules and regulations to carry out the purpose of this article. These rules and regulations shall be reviewed and approved by the advisory board established by Section 22-21-27. The advisory board shall also be provided reports at its meetings on the fees collected and review process for those projects completed prior to the

board's meeting.

§ 22-21-46. Plan Review Fund.

There is established a separate special revenue trust fund in the State Treasury to be known as the Department of Public Health Plan Review Fund. All receipts received by the State Board of Health or the Department of Public Health for whatever purpose pursuant to this article shall be deposited in this fund. The receipts shall be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the State Health Officer or his or her designee; provided that no funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Sections 41-4-80 to 41-4-96, inclusive, and only in amounts as stipulated in the general appropriations act or other appropriation acts.

Article 9. . Control and Regulation of Development of Certain Health Care Facilities.

§ 22-21-260. Definitions.

As used in this article, the following words and terms, and the plurals thereof, shall have the meanings ascribed to them in this section, unless otherwise required by their respective context:

(1) **ACQUISITION.** Obtaining the legal equitable title to a freehold or leasehold estate or otherwise obtaining the substantial benefit of such titles or estates, whether by purchase, lease, loan or suffrage, gift, devise, legacy, settlement of a trust or means whatever, and shall include any act of acquisition. The term "acquisition" shall not mean or include any conveyance, or creation of any lien or security interest by mortgage, deed of trust, security agreement, or similar financing instrument, nor shall it mean or include any transfer of title or rights as a result of the foreclosure, or conveyance or transfer in lieu of the foreclosure, of any such mortgage, deed of trust, security agreement, or similar financing instrument, nor shall it mean or include any gift, devise, legacy, settlement of trust, or other transfer of the legal or equitable title of an interest specified hereinabove by a natural person to any member of such person's immediate family. For the purposes of this section "immediate family" shall mean the spouse of the grantor or transferor and any other person related to the grantor or transferor to the fourth degree of kindred as such degrees are computed according to law.

(2) **APPLICANT.** Any person, as defined in this section, who files an application for a certificate of need.

(2.1) **CAMPUS.** The contiguous real property, contained within a single county, which is owned or leased by a health care facility and upon which is located the buildings and any other real property used by the health care facility to provide existing institutional health services which are subject to review.

(3) **CAPITAL EXPENDITURE.** An expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by the health care facility as its own

contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which satisfies any of the following:

- a. Exceeds two million dollars (\$2,000,000) indexed annually for inflation for major medical equipment; eight hundred thousand dollars (\$800,000) for new annual operating costs indexed annually for inflation; four million dollars (\$4,000,000) indexed annually for inflation for any other capital expenditure. The index referenced in this paragraph shall be the Consumer Price Index Market Basket Professional Medical Services index as published by the U.S. Department of Labor, Bureau of Labor Statistics. The SHPDA shall publish this index information to the general public.
- b. Changes the bed capacity of the facility with respect to which such expenditure is made.
- c. Substantially changes the health services of the facility with respect to which such expenditure is made.

(4) **CONSTRUCTION.** Actual commencement, with bona fide intention of completing the construction, or completion of the construction, erection, remodeling, relocation, excavation, or fabrication of any real property constituting a facility under this article, and the term construct shall mean and include any act of construction. "Ground breaking ceremony," "receipt of bids," "receipt of quotation," or similar action that will permit unilateral termination without penalty shall not be considered construction.

(5) **FIRM COMMITMENT or OBLIGATION.** Any of the following:

- a. Any executed, enforceable, unconditional written agreement or contract not subject to unilateral cancellation for the acquisition or construction of a health care facility or purchase of equipment therefor.
- b. Actual construction of facilities peculiarly adapted to the furnishing of one or more particular services and with the bona fide intention of furnishing such service or services.
- c. Any executed, unconditional written agreement not subject to unilateral cancellation for the bona fide purpose of furnishing one or more services.

(6) **HEALTH CARE FACILITY.** General and specialized hospitals, including tuberculosis, psychiatric, long-term care, and other types of hospitals, and related facilities such as, laboratories, out-patient clinics, and central service facilities operated in connection with hospitals; skilled nursing facilities; intermediate care facilities; skilled or intermediate care units operated in veterans' nursing homes and veterans' homes, owned or operated by the State Department of Veterans' Affairs, as these terms are described in Chapter 5A (commencing with Section 31-5A-1) of Title 31, rehabilitation centers; public health centers; facilities for surgical treatment of patients not requiring hospitalization; kidney disease treatment centers, including free-standing hemodialysis units; community mental health centers and related facilities; alcohol and drug abuse facilities; facilities for the developmentally disabled; hospice service providers; and home health agencies and health maintenance organizations. The term health care facility shall not include the offices of private physicians or dentists, whether for individual or group practices and regardless of ownership, or Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts, or a veterans' nursing home or veterans' home owned or operated by the State Department of Veterans' Affairs, not to exceed 150 beds to be built in Bay Minette, Alabama, and a veterans' nursing home or veterans' home owned or operated by the State Department of Veterans' Affairs not to exceed 150 beds to

be built in Huntsville, Alabama, for which applications for federal funds under federal law are being considered by the U.S. Department of Veterans' Affairs prior to March 18, 1993.

(7) **HEALTH SERVICE AREA.** A geographical area designated by the Governor, as being appropriate for effective planning and development of health services.

(8) **HEALTH SERVICES.** Clinically related (i.e., diagnostic, curative, or rehabilitative) services, including alcohol, drug abuse, and mental health services customarily furnished on either an in-patient or out-patient basis by health care facilities, but not including the lawful practice of any profession or vocation conducted independently of a health care facility and in accordance with applicable licensing laws of this state.

(9) **INSTITUTIONAL HEALTH SERVICES.** Health services provided in or through health care facilities or health maintenance organizations, including the entities in or through which such services are provided.

(9.1) **MAJOR MEDICAL EQUIPMENT.** Medical clinical equipment intended for use in the diagnosis or treatment of medical conditions, which is used to provide institutional health services of a health care facility which are subject to review, and which expenditure exceeds the thresholds referenced in this section and in Section 22-21-263.

(10) **MODERNIZATION.** The alteration, repair, remodeling, and renovation of existing buildings, including equipment within the existing buildings. Modernization does not include the replacement of existing buildings which are used by a health care facility to provide institutional health services which are subject to review and does not include the replacement of major medical equipment.

(11) **PERSON.** Any person, firm, partnership, association, joint venture, or corporation, the State of Alabama and its political subdivisions or parts thereof, and any agencies or instrumentalities and any combination of persons herein specified, but person shall not include the United States or any agency or instrumentality thereof, except in the case of voluntary submission to the regulations established by this article.

(12) **RURAL HEALTH CARE PROVIDER/APPLICANT/HOSPITAL.** A provider or applicant or hospital which is designated by the United States government Health Care Financing Administration as rural.

(13) **STATE HEALTH PLAN.** A comprehensive plan which is prepared triennially and reviewed at least annually and revised as necessary by the Statewide Health Coordinating Council, with the assistance of the State Health Planning and Development Agency, and approved by the Governor.

The Statewide Health Coordinating Council shall meet at least annually to determine whether revisions for the State Health Plan are necessary. If the Statewide Health Coordinating Council fails to meet and to review or revise the State Health Plan on an annual basis, there shall be no fees required on all certificate of need applications filed with the Certificate of Need Review Board until the Statewide Health Coordinating Council meets and reviews or revises the State Health Plan. For purposes of this paragraph, the annual meeting of the Statewide Health Coordinating Council shall occur on or before August 1 of each calendar year.

The State Health Plan shall provide for the development of health programs and resources to assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable costs, for all residents of the state. Nothing in this section should

be construed as permitting expenditures for facilities, services, or equipment which are inconsistent with the State Health Plan.

(14) **STATE HEALTH PLANNING AND DEVELOPMENT AGENCY (SHPDA).** An agency of the State of Alabama which is designated by the Governor as the sole State Health Planning and Development Agency, which shall consist of three consumers, three providers, and three representatives of the Governor who all shall serve staggered terms and all be appointed by the Governor. Where used in this article, the terms, "state agency," and the "SHPDA," shall be synonymous and may be used interchangeably.

(15) **STATEWIDE HEALTH COORDINATING COUNCIL.** A council, appointed by the Governor, established pursuant to Sections 22-4-7 and 22-4-8 to advise the State Health Planning and Development Agency on matters relating to health planning and resource development and to perform other functions as may be delegated to it, to include an annual review of the State Health Plan.

(16) **TO OFFER.** When used in connection with health services, a health care facility or health maintenance organization that holds itself out as capable of providing, or as having the means for the provision of, specified health services.

§ 22-21-261. Legislative findings; purpose of article.

The Legislature of the State of Alabama declares that it is the public policy of the State of Alabama that a certificate of need program be administered in the state to assure that only those health care services and facilities found to be in the public interest shall be offered or developed in the state. It is the purpose of the Legislature in enacting this article to prevent the construction of unnecessary and inappropriate health care facilities through a system of mandatory reviews of new institutional health services, as the same are defined in this article.

§ 22-21-262. Article not applicable to certain acquisitions. Repealed.

§ 22-21-263. New institutional health services subject to review.

(a) All new institutional health services which are subject to this article and which are proposed to be offered or developed within the state shall be subject to review under this article. No institutional health services which are subject to this article shall be permitted which are inconsistent with the State Health Plan. For the purposes of this article, new institutional health services shall include any of the following:

(1) The construction, development, acquisition through lease or purchase, or other establishment of a new health care facility or health maintenance organization.

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization which, under generally accepted accounting principles consistently applied, is a capital expenditure in excess of two million dollars (\$2,000,000) indexed annually for inflation for major medical equipment; in excess of eight hundred thousand dollars (\$800,000) for new annual operating costs indexed annually for inflation; in excess of four million dollars (\$4,000,000)

indexed annually for inflation for any other capital expenditure by or on behalf of a health care facility or a health maintenance organization. The index referenced in this subdivision shall be the Consumer Price Index Market Basket Professional Medical Services index as published by the U.S. Department of Labor, Bureau of Labor Statistics. The SHPDA shall publish this index information to the general public.

(3) A change in the existing bed capacity of a health care facility or health maintenance organization through the addition of new beds, the relocation of one or more beds from one physical facility to another, or reallocation among services of existing beds through the conversion of one or more beds from one category to another within the following bed categories: general medical surgical, inpatient psychiatric, inpatient/residential alcohol and drug abuse or inpatient rehabilitation beds, or long-term care beds including skilled nursing care, intermediate care, transitional care, and swing beds. Notwithstanding any provision of this subdivision to the contrary, any health care facility or health maintenance organization in which at least 65 percent of the beds are dedicated or used exclusively for acute care services, general medical surgical, or nonspecialized services may reallocate existing beds within the following specialized bed categories: inpatient psychiatric, inpatient/residential alcohol and drug rehabilitation beds, to acute care services, or general medical surgical beds without first obtaining a certificate of need from the SHPDA.

(4) Health services proposed to be offered in or through a health care facility or health maintenance organization, and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the 12 month period prior to the time such services would be offered. Health services, other than those health services involving long-term care services, including without limitation, skilled and intermediate nursing home care, swing beds services, or transitional care services, provided directly by acute care hospitals classified as rural by the U.S. Bureau of Census/Office of Management and Budget, United States government Health Care Financing Administration or acute care hospitals with less than 105 beds that are located over 20 miles from the nearest acute health care facility located within Alabama shall not be subject to this subdivision but shall be subject to the other subdivisions of this subsection. Provided, however, that the exemption from this subdivision herein established shall not apply to home health services provided outside of the county in which the hospital is located.

(b) The four conditions of new institutional health services listed in this section shall be mutually exclusive.

(c) Notwithstanding all other provisions of this article to the contrary, those facilities and distinct units operated by the Department of Mental Health and Mental Retardation and those facilities and distinct units operating under contract or subcontract with the Department of Mental Health and Mental Retardation where the contract constitutes the primary source of income to the facility shall not be subject to review under this article.

(d) For the purposes of this article, and notwithstanding all other provisions of this article to the contrary and notwithstanding any and all provisions of the State Health Plan on September 1,

2003, relating to lithotripsy, magnetic resonance imaging, and positron emission tomography, new institutional health services, which are subject to this article, shall not include any health services provided by a mobile or fixed-based extracorporeal shock wave lithotripter, mobile or fixed-based magnetic resonance imaging, or positron emission tomography proposed to be offered in or through a health care facility or health maintenance organization. The SHPDA, after consultation with and the advice of the Statewide Health Coordinating Council, in accordance with the Alabama Administrative Procedure Act and within 60 days of September 1, 2003, shall cause the State Health Plan to be amended to repeal and delete all sections of the Alabama State Health Plan relating to mobile and fixed-based lithotripters, mobile and fixed-based magnetic resonance imaging, and positron emission tomography, and cause the amendment and repeal of any other SHPDA rules and regulations inconsistent with this article.

§ 22-21-264. Criteria for state agency review.

The SHPDA, pursuant to the provisions of Section 22-21-274, shall prescribe by rules and regulations the criteria and clarifying definitions for reviews covered by this article. These criteria shall include at least the following:

- (1) Consistency with the appropriate State Health Facility and services plans effective at the time the application was received by the State Agency, which shall include the latest approved revisions of the following plans:
 - a. The most recent Alabama State Health Plan which shall include updated inventories and separate bed need methodologies for inpatient rehabilitation beds, inpatient psychiatric beds and inpatient/residential alcohol and drug abuse beds.
 - b. Alabama State Health Plan for services to the mentally ill.
 - c. Alabama State Plan for rehabilitation facilities.
 - d. Alabama developmental disabilities plan.
 - e. Alabama State alcoholism plan.
 - f. Such other State Plans as may from time to time be required by state or federal statute.
- (2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.
- (3) The availability of alternative, less costly or more effective methods of providing such services.
- (4) Determination of a substantially unmet public requirement for the proposed health care facility, service or capital expenditure that is consistent with orderly planning within the state and the community for furnishing comprehensive health care, such determination to be established on the merits of the proposal after giving appropriate consideration to:
 - a. Financial feasibility of the proposed change in service of facility;
 - b. Specific data supporting the demonstration of need for the proposed change in facility or service shall be reasonable, relevant and appropriate;
 - c. Evidence of evaluation and consistency of the proposed change in facility or service with the facility's and the community's overall health and health-related plans;

d. Evidence of consistency of the proposal with the need to meet nonpatient care objectives of the facility such as teaching and research;

e. Evidence of review of the proposed facility, service or capital expenditure when appropriate and requested by other state agencies.

f. Evidence of the locational appropriateness of the proposed facility or service such as transportation accessibility, manpower availability, local zoning, environmental health, etc.;

g. Reasonable potential of the facility to meet licensure standards.

h. Reasonable consideration shall be given to medical facilities involved in medical education.

(5) Determination that the person applying is an appropriate applicant, or the most appropriate applicant in the event of duplicative applications, for providing the proposed health care facility or service, such determination to be established from the evidence as to the ability of the person, directly or indirectly, to render adequate service to the public, including affirmative evidence as to the following:

a. Professional capability of the facility proposing the capital expenditure;

b. Management capability of the facility proposing the capital expenditure;

c. Adequate manpower to enable the facility to offer the proposed service;

d. Evidence of the existence of the applicant's long-range planning program and an ongoing planning process;

e. Evidence of existing and ongoing monitoring of utilization and the fulfilling of unmet or under met health needs in the case of expansion;

f. Evidence of communication with all planning, regulatory, utility agencies and organizations that influence the facility's destiny.

(6) Consideration of the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas.

(7) The special needs and circumstances of health maintenance organizations.

(8) In case of a construction project, consideration shall be given to:

a. The costs and methods of the proposed construction including the costs and methods of energy provision; and

b. The probable impact of the construction project reviewed on the costs of providing health services.

§ 22-21-265. Certificates of need -- Required for new institutional health service.

(a) On or after July 30, 1979, no person to which this article applies shall acquire, construct, or operate a new institutional health service, as defined in this article, or furnish or offer, or purport to furnish a new institutional health service, as defined in this article, or make an arrangement or commitment for financing the offering of a new institutional health service, unless the person shall first obtain from the SHPDA a certificate of need therefor. Notwithstanding any provisions of this article to the contrary, those facilities and distinct units operated by the Department of Mental Health and Mental Retardation, and those facilities and distinct units operating under contract or subcontract with the Department of Mental Health and Mental Retardation where the contract constitutes the primary source of income to the facility, shall not be required to obtain a

certificate of need under this article.

(b) Notwithstanding all other provisions of this article to the contrary, the replacement of equipment by health care facilities shall be exempt from certificate of need review, provided:

- (1) The replacement does not change the purpose, use, or application of the equipment.
- (2) The existing equipment is taken out of service.
- (3) The replacement equipment does not enable the health care facility to expand its health services.
- (4) The replacement equipment does not enable the health care facility to provide any health services not previously provided on a regular basis.

A determination of whether the acquisition of equipment is exempt from review under this section shall be made by the Executive Director of the SHPDA upon the filing of an application requesting the determination, on the form or forms prescribed by the CON Review Board, together with a fee in the amount of 20 percent of the fee provided in Section 22-21-271. If it is determined that the replacement is not reviewable pursuant to this section, the applicant shall be notified in writing that no certificate of need is required. The SHPDA shall define an appeals process.

Any provision in this article to the contrary notwithstanding, a rural hospital shall only be required to submit a fee equal to 25 percent of the fee applicable to non-rural when filing a request for determination under this section.

(c) Notwithstanding any other provision of this article to the contrary, the modernization or construction of a nonclinical building, parking facility, or any other noninstitutional health services capital item on the existing campus of a health care facility shall be exempt from certificate of need review, provided the construction or modernization does not allow the health care facility to provide new institutional health services subject to review and not previously provided on a regular basis.

(d) The SHPDA shall maintain the Alabama State Health Plan to include separate bed need methodologies for inpatient psychiatric services, inpatient rehabilitation services, and inpatient/residential alcohol and drug abuse services. The SHPDA shall utilize these methodologies in considering all certificate of need applications.

(e) Notwithstanding all other provisions of this article to the contrary, the increase in the number of nursing home beds of a health care facility licensed pursuant to Section 22-21-260(6) as a skilled nursing care facility or an intermediate care facility, but excluding an increase in the bed capacity of an intermediate care facility designated as an ICF-MR by the State Board of Health and operated by the state Department of Mental Health and Mental Retardation which facilities shall be governed by the other provisions of this article, shall be exempt from certificate of need review, provided:

- (1) The increase does not exceed 10 percent of the total skilled nursing beds of the facility, rounded to the nearest whole number, or 10 beds, whichever is greater.
 - (2) The average rate of occupancy for the nursing home beds of the facility is not less than 95 percent, rounded to the nearest whole number, for the 24-month period ending on June 30 of the year immediately preceding the application for exemption from the certificate of need review.
 - (3) The aggregate average rate of occupancy for all other skilled nursing facilities and intermediate nursing facilities in the same county as the requesting facility's is not less than 95 percent, rounded to the nearest whole number, for the 24-month period ending on June 30 of the year immediately preceding the application for exemption from certificate of need review.
 - (4) The increase does not require capital expenditures exceeding the capital expenditure thresholds prescribed in Section 22-21-263(a)(2).
 - (5) The facility has not been granted an increase of beds under this exemption within the immediately preceding 24-month period.
- In calculating the average occupancy for the facility under subdivision (2) of this subsection and for all other skilled and intermediate nursing facilities in the same county under subdivision (3) of this subsection, beds previously granted, including beds granted after January 1, 1995, to the facility, and to other skilled or intermediate nursing facilities in the same county as the requesting facility, pursuant to a certificate of need or to this exemption shall be deemed built and available for occupancy as of the date granted regardless of when the beds were placed in service. SHPDA shall promulgate regulations to determine how occupancy shall be calculated for the purpose of this subsection, taking into account certain factors such as, but without limitation, disregarding beds that have not been available for use for the three years next preceding the period for which occupancy is being measured.
- (6) The facility has had an average daily census comprised of 40 percent of Medicaid patients within the fiscal year ended June 30 immediately prior to filing an application for exemption under this section.
 - (7) Any exemption to add beds without a certificate of need shall expire and be deemed null and void unless the beds are placed in service not less than 12 months after the date the exemption is granted. Notwithstanding the foregoing, SHPDA may promulgate rules permitting the Executive Director of SHPDA to grant one extension not to exceed twelve months upon a showing of substantial progress. Notwithstanding the foregoing, any exemption granted by the SHPDA prior to April 10, 1995, for facilities which have agreed to the provisions of the June 21, 1995 consent decree, is ratified and confirmed and shall be deemed to have been granted in accordance with this subsection. In addition, any facility which was granted an exemption by the SHPDA prior to April 10, 1995, is ratified and confirmed and shall be deemed to have been approved as of the latter of the actual date approved or March 3, 1995 and to have been granted in accordance with this subsection.

A determination of whether the increase in beds is exempt from review under this section shall be made by the Executive Director of SHPDA upon the filing of an application requesting the determination, on the form or forms prescribed by the CON Review Board, together with a fee in an amount to be determined by the review board in accordance with Section 22-21-271(a). The SHPDA shall promulgate rules affording an applicant pursuant to this subsection a right to

appeal adverse rulings.

Applications pursuant to this section for exemption from certificate of need review for an increase in bed capacity shall be made only during the 90-day period beginning January 1 through March 31 of each year.

The provisions of this section shall automatically terminate and become null and void on December 31, 2005, unless a bill to continue or reestablish the provisions of this section shall be passed by both houses of the Legislature and enacted into law.

(f) Notwithstanding all other provisions of this article to the contrary, an existing home health agency may accept referrals of patients from outside its Medicare certified service area without obtaining a certificate of need, provided all of the following conditions are met:

- (1) The county of the referral is contiguous to a county for which the home health agency holds a certificate of need or an exemption granted pursuant to provisions of Section 22-21-263.
- (2) The home health agency establishes no branch office in the county of the referral.
- (3) The home health agency incurs no capital expenditures in the county of the referral in excess of five hundred dollars (\$500).

The home health agency shall notify the SHPDA that it has begun accepting referrals from a county contiguous to its service area within 14 days of the receipt of the first referral from the contiguous county. No notice to the SHPDA shall be required related to subsequent referrals in the same contiguous county. The SHPDA shall take steps to provide for the inclusion of statistical information relating to the service to referrals outside the Medicare certified service area in its annual statistical reports. The SHPDA may impose, by rule, a reasonable charge upon home health agencies accepting such referrals to cover the additional cost of gathering and processing the information.

(g) Notwithstanding all other provisions of this article to the contrary, the replacement, including relocation in the same county, of an existing acute care hospital by the construction of a new digital hospital shall be exempt from certificate of need review provided the hospital meets all of the following:

- (1) The digital hospital design incorporates a fully automated centralized digital system to integrate all current and future medical technologies with capabilities for all systems to interface in a comprehensive medical record. The integration of medical technology shall include, but not be limited to, all patient medical records, diagnostic images, diagnostic reports, laboratory results, pharmacy data, pharmacological interactions, contraindications, surgical reports, surgical streaming video, pathology reports, unique patient identification, voice activated transcription, wireless applications, automated billing with electronic transmission capability, and electronic procurement systems.
- (2) The electronic medical systems shall interface on a single electronic platform to produce the most favorable patient outcome with a reduction in medical errors.

(3) Medical records shall only be accessed by authorized clinical personnel who are provided access by hospital consoles, physician offices, physician homes, or any remote location via unique identification requirements.

(4) Patient rooms shall be designed to provide optimal electronic documentation of vital signs, real-time data entry, any and all treatment protocols, physician orders, and patient progression.

(5) The digital hospital shall have a minimum project cost of one hundred million dollars (\$100,000,000) to include design, systems, property, buildings, equipment, and electronic software development.

(6) The construction and design of the facility shall utilize technology and materials for patient flow to limit general public contact with patient care areas, healthcare workers, and hazardous materials to reduce the potential for cross-contamination and resulting direct medical costs.

(7) The digital hospital environment shall be energy efficient, cost effective, and clinically designed to produce the most favorable environment.

(8) The digital hospital shall meet all of the following conditions:

a. Operate as an acute care hospital.

b. Replace an existing acute care hospital located in the same county as the digital hospital.

c. Be licensed for no more than the same number of hospital beds and for the same bed categories as the existing acute care hospital to be replaced by the digital hospital, unless otherwise approved by the Certificate of Need Review Board through issuance of a certificate of need.

d. Shall not exceed the same scope of health services, including the same amount of diagnostic or therapeutic major medical equipment, as the existing acute care hospital to be replaced by the digital hospital, unless otherwise approved by the SHPDA approval process.

e. Shall not exceed the number of inpatient and outpatient surgical suites as contained in the existing acute care hospital to be replaced by the digital hospital, unless otherwise approved by the SHPDA approval process.

(9) The existing acute care hospital, replaced by the digital hospital, shall be taken out of service as an acute care hospital and shall not be converted to or used as another health care facility, unless approved by the Certificate of Need Review Board through issuance of a certificate of need.

(10) Any presently reviewable health service which is proposed to be offered by the digital hospital which was not offered on a regular basis within the preceding twelve-month period in or through the existing acute care hospital to be replaced by the digital hospital shall be subject to Certificate of Need Review Board approval through issuance of a certificate of need.

(11) The only digital hospital exempt from certificate of need review shall be the first digital hospital developed in the state, and the digital hospital shall be located in a county where there is located an accredited medical school and teaching facility and not less than 3,000 licensed general hospital beds, and construction shall be commenced within one year from the issuance of a certificate of need by SHPDA.

A determination whether the construction of a digital hospital is exempt from review under this subsection shall be made by the Executive Director of the SHPDA, upon the filing of an application requesting the determination, on the forms acceptable to the Executive Director of

SHPDA together with an application fee as provided in Section 22-21-271. If it is determined that the replacement facility is not reviewable pursuant to this section, SHPDA shall notify the applicant in writing that the application is exempt from certificate of need review and shall issue a certificate of need. The applicant shall have a right of appeal from any adverse ruling denying exemption and the SHPDA shall promulgate rules affording an applicant a right to appeal adverse rulings pursuant to this subsection.

The provisions of this subsection shall automatically terminate and become null and void upon the issuance of the first certificate of need for the construction and operation of a digital replacement hospital as herein provided or on December 31, 2005, whichever first occurs, unless a bill to continue or reestablish the provisions of this subsection shall be passed by both houses of the Legislature and enacted into law.

§ 22-21-265.1. Certificates of need -- No legislative intent to ratify illegal actions or false information of applicants, agents, etc.

It is not legislative intent to forgive, ratify or confirm any illegal actions or presentation of information known to be false on the part of applicants for certificates of need or the agents or employees of either the applicants or SHPDA.

§ 22-21-265.2. Certificates of need -- Legislative intent reiterated.

It is not the intent of the Legislature to forgive, ratify, or confirm any illegal actions or presentation of information known to be false on the part of applicants for certificates of need or the agents or employees of either the applicants or the State Health Planning and Development Agency.

§ 22-21-265.3. Certificates of need -- All-digital, automated hospital exempt from review process.

The Legislature finds and determines that the well-being and health of the citizens of the State of Alabama will be enhanced by the development and growth of a state of the art digital, automated hospital using the latest technological advances in healthcare to lower healthcare costs, reduce human errors, and provide patients with the best medical care available, and that it is in the best interest of the state to induce the location of one all-digital, automated hospital, meeting the requirements of a digital hospital as provided in subsection (f) of Section 22-21-265, in a county in which is located an accredited medical school and teaching facility and not less than 3,000 licensed general hospital beds, in order to set new standards for quality, efficiency, and cost-effective delivery of healthcare services, and to promote these purposes by exempting from the certificate of need review process the first all-digital, automated hospital to be developed and located in such a county. The Legislature further finds and declares the exemption to be granted by subsection (f) of Section 22-21-265 and the purposes to be accomplished hereby are proper governmental and public purposes and that the inducement of the location of an all-digital,

automated hospital in such a county is of paramount importance to the development of state of the art healthcare in this state.

§ 22-21-266. Certificates of need -- Required findings for inpatient facilities.

No certificate of need for new inpatient facilities or services shall be issued unless the SHPDA makes each of the following findings:

- (1) That the proposed facility or service is consistent with the latest approved revision of the appropriate state plan effective at the time the application was received by the state agency;
- (2) That less costly, more efficient or more appropriate alternatives to such inpatient service are not available, and that the development of such alternatives has been studied and found not practicable;
- (3) That existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner consistent with community demands for services;
- (4) That in the case of new construction, alternatives to new construction (e.g., modernization and sharing arrangement) have been considered and have been implemented to the maximum extent practicable; and
- (5) That patients will experience serious problems in obtaining inpatient care of the type proposed in the absence of the proposed new service.

§ 22-21-267. Certificates of need -- Application for certificate or modification thereto and extensions thereof.

Any application for a certificate of need under Section 22-21-265, for a modification thereto or for an extension thereof shall be made in written form and shall include such information and supporting data relevant to the merits of the application as may be prescribed by the approved rules and regulations of the SHPDA. The application shall be filed with the SHPDA not less than 90 days prior to the date of the proposed obligation for the capital expenditure or the inauguration of the proposed service.

§ 22-21-268. Certificates of need -- Emergency certificate prior to hearing.

Any person may apply, either independently and without notice under Section 22-21-267 or as a part of an application filed under Section 22-21-267, for an emergency certificate of need for the authorization of capital expenditures made necessary by unforeseen events which endanger the health and safety of the patients. Emergency capital expenditures include, but are not necessarily limited to, emergency expenditures to maintain quality care, to overcome failure of fixed equipment, including heating and air conditioning equipment, elevators, electrical transformers and switch gear, sterilization equipment, emergency generators, water supply and other utility

connections. Applications for emergency certificates of need shall include a description of the work to be done and/or equipment to be purchased, the cost thereof, justification for considering the capital expenditure as being of an emergency nature and such other information as the SHPDA may require. Emergency certificates of need issued hereunder shall be subject to such special limitations and restrictions as the duration and right of extension or renewal as may be prescribed in the rules and regulations adopted by the SHPDA.

§ 22-21-269. Certificates of need -- Certificate of need for planning. Repealed.

§ 22-21-270. Certificates of need -- Period for which valid; extension of time; termination; transferability.

(a) A certificate of need issued under subsection (a) of Section 22-21-265 and Section 22-21-268 shall be valid for a period not to exceed 12 months and may be subject to one extension not to exceed 12 months, provided the criteria for extension as set forth in the rules and regulations of the SHPDA are met. Applications for an extension filed under this section shall be accompanied by a filing fee to be established by rule, not to exceed 25 percent of the original CON application fee. If no obligation has occurred within such period, the certificate of need shall be considered terminated and shall be null and void. Should the obligation be incurred within such valid period, the certificate of need shall be continued in effect for a period not to exceed one year or the completion of the construction project, whichever shall be later, or the inauguration of the service or the actual purchase of equipment.

(b) Failure to commence the construction project within the time period stated in the construction contract or to complete the construction project within the time period specified in the construction contract, which may be extended by mutual agreement of the parties to the contract, shall render the certificate of need null and void, unless tolled or extended pursuant to statute or SHPDA rule or regulation. Provided, the SHPDA, or an administrative law judge appointed by the Governor on appeal for a fair hearing, may for causes beyond the control of the applicant, continue the certificate of need in force if commencement of the construction project is delayed for a period not to exceed 60 days or if during the specified construction period the construction work should cease for not more than six months, or in the event of default in the construction contract by the contractor, or if, for any cause, the construction work has not ceased or otherwise been stopped for a period exceeding 60 consecutive days.

(c) Applicants who held valid certificates of need which were terminated under this section may file a new application for a certificate pursuant to and subject to the provisions of this article.

(d) Upon completion of the construction and issuance of a certificate of completion or the receipt of proof of purchase of equipment, the certificate of need shall be continued in force and effect.

(e) A certificate of need shall not be transferable, assignable, or convertible, other than between members of a parent-subsidary controlled corporate group as defined in Internal Revenue Code, 26 U.S.C. § 1563 (a)(1), and shall be valid solely to the person and purpose named thereon, except to such other member of the controlled group, or by change of name or merger with another corporation.

(f) The transfer of stock in, or change of name or merger of, a corporation which holds a certificate of need shall not constitute a transfer, assignment, or conversion of the certificate.

§ 22-21-271. Certificates of need -- Application fees; appropriation of funds; disposition of fees.

(a) Each application for a certificate of need shall be accompanied by a fee of one percent of the estimated cost of the proposed cost of the new Institutional Health Service, or a maximum of twelve thousand dollars (\$12,000) (indexed) per application. Provided, that the application fee shall be three-fourths of one percent of the estimated cost of the proposed new Institutional Health Service, or a maximum of eight thousand dollars (\$8,000) if the applicant has had an average daily census comprised of 50 percent or more Medicaid patients within the last year prior to the filing of the application and a maximum of six thousand dollars (\$6,000) if a rural hospital applicant has had an average daily census comprised of 30 percent or more Medicaid/Medicare patients within the last year prior to the filing of the application. The minimum fee shall be set by the SHPDA. Fees shall be used for the purpose of defraying the lawful operating expense of the certificate of need program conducted by the SHPDA and of the Statewide Health Coordinating Council.

(b) Each request for an opinion from the State Agency as to whether a project is subject to review under this article shall be accompanied by a fee to be established by the SHPDA.

(c) SHPDA, by rule approved by the Certificate of Need Review Board or the Statewide Health Coordinating Council, as applicable, may impose additional reasonable fees for any administrative filing by a health care provider for which a fee is not specified in this chapter, and for any non-routine data compilation or summary. Nothing in this subsection shall authorize SHPDA to impose a fee for the initial publication of any report or statistical update which it is required to publish under law or rule.

(d) In addition to all other fees, SHPDA shall impose a temporary surcharge of two thousand dollars (\$2,000) on each certificate of need application and three hundred dollars (\$300) for each reviewability determination to defray expenses incurred in developing and implementing, by January 1, 2014, an online, searchable filing system for filings and orders in administrative proceedings and requests for reviewability or exemption determinations and related agency findings. The surcharge shall automatically terminate on the first day of the ninth month after certification to the CON Review Board by SHPDA's Executive Director that the online filing system has been successfully implemented.

(e) There is hereby authorized to be appropriated from the General Fund of the State of Alabama such amounts as may be necessary from time to time to defray the costs of administering this article over and above such fees as may be collected under this section.

(f) Application fees collected under this article shall not be refundable. Fees collected under this article are hereby appropriated for the purposes stated in this article.

(g) All fees collected under this article shall be retained in a separate fund for the purpose of enforcing and administering this article, and shall be disbursed as other funds of the state are disbursed.

§ 22-21-271.1. Certificates of need -- Fee increases.

(a) Any law to the contrary notwithstanding, the staff agency of the State Health Planning and Development Agency or its executive director may not increase or set any fees otherwise authorized relating to the certificate of need process pursuant to this article.

(b) Any fee increase by the staff agency of the State Health Planning and Development Agency or its executive director adopted after January 1, 1998, is rescinded and shall not be operative unless readopted in accordance with this section.

(c) Any fee increase related to the certificate of need process of the State Health Planning and Development Agency shall be adopted as a rule pursuant to the Alabama Administrative Procedure Act, Chapter 22 of Title 41.

(d)(1) For the purpose of this section, the term "State Health Planning and Development Agency" means the CON review board which is defined as the State Health Planning and Development Agency (SHPDA) in subdivision (14) of Section 22-21-260, and which consists of three consumers, three providers, and three representatives of the Governor.

(2) For the purpose of this section, the term "any fee related to the certificate of need process" means any fee authorized to be established by the State Health Planning and Development Agency, its staff agency, or the executive director of the staff agency. The term includes, but is

not limited to, applications for a CON, opinions from the state agency as to whether a project is subject to review, or any other fee established pursuant to this article.

§ 22-21-272. Certificates of need -- Contracts for review and recommendations concerning applications. Repealed.

§ 22-21-273. Health facilities review council. Repealed.

§ 22-21-274. Adoption and public notice of review procedures and criteria.

The SHPDA, with the advice and consultation of the Statewide Health Coordinating Council, shall prescribe by rules and regulations the review criteria and review procedures required by this article. Said review criteria and review procedures shall be consistent with this article and with appropriate federal regulations. Prior to the adoption of rules and regulations, the SHPDA shall give wide publicity to the proposed rules and regulations and shall conduct a public hearing following legal notice of not less than 30 days. The public hearing shall be held in the City of Montgomery, Alabama. Prior to advertising the public hearing, the SHPDA shall submit the proposed rules and regulations to the Statewide Health Coordinating Council and other interested agencies. Future revisions of the rules and regulations shall be made as required in this section for the original rules and regulations and in accordance with the Administrative Procedure Act (§ 41-22-1 et seq.).

§ 22-21-275. Procedures for review of applications for certificates of need.

The SHPDA, pursuant to the provisions of Section 22-21-274, shall prescribe by rules and regulations the procedures for review of applications for certificates of need and for issuance of certificates of need. Rules and regulations governing review procedures shall include, but not necessarily be limited to, the following:

(1) Agreement with other review agencies for review procedures consistent with this article and federal regulations.

(2) Application procedures and forms of the application necessary to elicit and provide all necessary information as required by the review criteria.

(3) Establishment of a project review period of 90 days from the date the state agency determines that the application is complete and notification thereof is made to the applicant. The rules and regulations may provide for a period of not more than 15 days for determination of the completeness of the application, notification of the beginning and termination dates of the project review period and criteria for determining by the state agency of an extension of the project review period not to exceed 30 days with or without the consent of the applicant. An extension of the review period without limitation may be made with the written consent of the applicant or shall occur automatically without the consent of the applicant or the time period necessary to accommodate referral to an administrative law judge under this chapter and the issuance of a recommended order. All reviews must be completed prior to the termination of the review

period. If the state agency does not make a decision within the period of time specified for state agency review, the proposal shall be deemed to have been found not to be needed.

(4) Provision for a "nonsubstantive" review which shall be a modified review applicable to proposals for capital expenditures up to \$500,000.00 and which:

- a. Do not result in a substantial change in a service; or
- b. Propose equipment to upgrade or expand an existing service; or
- c. Increase the bed capacity by not more than 10 percent of the existing bed capacity; provided, that such increase in bed capacity is consistent with the State Health Plan.

(5) Public notification of receipt of application, review periods, public hearings, decisions of the state agency, fair hearings if requested and final decisions regarding a certificate of need.

(6) Provisions and procedures for public hearings in the course of agency review on any application for the certificate of need for new institutional health service which requires substantive review. The SHPDA shall make provisions for a public hearing of any contested case before an administrative law judge designated by the Governor, which shall be conducted as a contested hearing pursuant to the requirements of the Alabama Administrative Procedure Act, Chapter 22 of Title 41, and regulations consistent therewith adopted under this article. The fee for the administrative law judge shall be based on an hourly rate approved by the Executive Director of SHPDA on an annual basis and shall be apportioned, on a pro rata basis, between all parties to the contested case hearing, with each party paying its pro rata amount within 30 days of receipt of an itemized invoice from the administrative law judge. Unless extended by agreement of all parties: a. Any public hearing before an administrative law judge pursuant to this article shall begin within 45 days of assignment to the administrative law judge and completed within 90 days; and b. The administrative law judge shall render proposed findings of fact and conclusions of law in accordance with the Administrative Procedure Act within 30 days of completion of the transcript. SHPDA shall make provisions that if neither the applicant nor aggrieved party shall have requested the application be heard before an administrative law judge, the application shall be heard before SHPDA at a public hearing. Any aggrieved party to a final decision of SHPDA may appeal the final decision of SHPDA to the Court of Civil Appeals. An appeal shall be perfected by filing a written notice of appeal with the clerk of the Court of Civil Appeals within 21 days after the decision of the agency becomes final. The notice of appeal shall be on a form prescribed by the Alabama Rules of Appellate Procedure. The Court of Civil Appeals shall have no discretion to refuse to hear appeals of the final decisions of SHPDA timely filed under this article. Within 30 days after a notice of appeal is filed, SHPDA shall transmit the administrative record to the clerk, with the appealing party bearing the costs associated with the preparation and transmission of the record and transcript of the hearing and of giving notice to the parties of the transmittal. Upon the transmittal of the administrative record to the Court of Civil Appeals, the appeal shall proceed in accordance with the Alabama Rules of Appellate Procedure..

(7) Schedule for reviews to include hearings before the state agency, beginning and ending of review periods and time of the review period as provided in this section.

(8) Provision of the applicant to submit such information that he may deem advisable in justification of the application over and above the minimum information required by this article and the regulations adopted hereunder.

- (9) Provisions for periodic reports by the health provider or applicant respecting the development of the proposal subject to review and for which a certificate of need is issued.
- (10) Provisions for written findings, as appropriate, which the state used as the basis for its decision or any recommendation of the state agency. Such findings and recommendations shall be provided to the applicant and available to other interested persons upon request and upon payment of a reasonable fee to cover actual costs of reproduction and handling.
- (11) Notification upon request of providers of health services and other persons subject to review of findings, recommendations and decisions made under this article.
- (12) Provision for a public hearing upon written request for the reconsideration of a decision by the SHPDA and for good cause by any aggrieved party, including any competing applicant, or any aggrieved person who has intervened pursuant to Section 41-22-14. Request for reconsideration shall be made in writing not more than 15 days subsequent to the date the agency (SHPDA) decision is deemed final and shall have the effect of holding in abeyance the final decision and suspending any certificate of need issued pursuant thereto, subject to the outcome of the public hearing. The provision shall state that there can be no reconsideration by the SHPDA of a decision on a prior request for reconsideration; that an aggrieved party shall not be required to request reconsideration prior to or as a condition to requesting a fair hearing; and that an aggrieved party shall not be required to request reconsideration or a fair hearing prior to or as a condition to seeking judicial review pursuant to Section 41-22-20.
- (13) Provision that no decision of the SHPDA under this article shall be deemed final until 15 days following the date of the decision.
- (14) Provisions that any adverse decision of the agency (SHPDA) (other than a SHPDA decision after first being heard as a contested case before an administrative law judge pursuant to the requirements of the Alabama Administrative Procedure Act) may be appealed to an administrative law judge designated by the Governor for fair hearing which appeal shall be heard de novo as a contested case in accordance with Sections 41-22-12 and 41-22-13. The fair hearing appeal proceedings shall be conducted pursuant to the requirements of the Alabama Administrative Procedure Act, Chapter 22 of Title 41, and regulations consistent therewith adopted under this article. The fee for the administrative law judge shall be based on a standard hourly rate approved by the Executive Director of SHPDA and shall be apportioned, on a pro rata basis, between all parties to the hearing, with each party paying its pro rata amount within 30 days of receipt of an itemized invoice from the administrative law judge. Unless extended by agreement of all parties: a. Any public hearing before an administrative law judge pursuant to this article shall begin within 45 days of assignment to the administrative law judge and completed within 90 days; and b. The administrative law judge shall issue an order within 30 days of completion of the transcript. The appeal shall be commenced by a request for a fair hearing by the applicant or any competing applicant, which request shall be made within 15 days of the date that the decision by the state agency became final, or in the event of a request for reconsideration, within 15 days of the date that the decision of the state agency on reconsideration became final and shall have the effect of holding in abeyance the decision and suspending any certificate of need issued pursuant thereto subject to the outcome of the fair hearing. The decision of the administrative law judge in the fair hearing proceedings shall be considered the final decision of the state agency (SHPDA); provided, that any aggrieved party

may appeal the decision to the Court of Civil Appeals in accordance with the provisions of subdivision (6).

(15) Preparation and publication, at least annually, of reports by the state agency of the reviews being conducted, decisions reached, certificates issued and status of proposals.

(16) Access by the general public to applications reviewed by the SHPDA and to other written material pertinent to the review.

(17) Provisions for letters of intent in the case of construction projects by persons proposing such projects. Letters of intent shall be in such detail as the SHPDA may direct by regulations. Letters of intent shall not substitute for the formal application for a certificate of need as provided in this article.

(18) Provision that the review procedure may vary according to the purpose for which a particular review is being conducted and/or the nature and type of service or expenditure proposed.

§ 22-21-276. Injunctive relief; issuance of license for inpatient beds or facilities in violation of article prohibited; facilities in violation of article not to receive reimbursement for services.

(a) Injunctive relief against violations of this article or any reasonable rules and regulations of the SHPDA may be obtained from the Circuit Court of Montgomery County, Alabama, at the instance of the SHPDA, any holder of a certificate of need that is adversely affected in the exercise of privileges thereunder by such violation or any member of the public directly and adversely affected by such violation. Upon written request by the SHPDA, it shall be the duty of the Attorney General of the State of Alabama to furnish such legal services as may be appropriate and to prosecute such action for injunctive relief to an appropriate conclusion.

(b) The State Board of Health shall not issue a license to operate new inpatient beds or any health care facility constructed, or acquired in violation of this article and without a certificate of need issued pursuant to this article.

(c) Any facility or service provided or constructed in violation of this article and without a certificate of need shall not receive reimbursement for services rendered by the health care facility or for the service provided by the facility which is provided in violation of said article without a certificate of need. This provision applies to all reimbursement programs administered by the State of Alabama. Recommendations will be made to other reimbursing agencies that reimbursement be denied.

§ 22-21-277. Article cumulative; conflicting laws.

The provisions of this article are cumulative and, insofar as possible, they shall be construed in pari materia with other laws relating to public health. Nevertheless, all laws or parts of laws, including, but not limited to any part of Chapter 5A (commencing with Section 31-5A-1) of Title 31, which conflict with this article are repealed.

§ 22-21-278. Kidney disease treatment centers in certain municipalities exempted from certificate of need requirement.

(a) The Legislature hereby finds and declares that it is in the best interest of the state and its residents for kidney disease treatment centers to be established and operated throughout the state so that any patient needing such treatment will be able to utilize a hemodialysis unit located within a reasonable distance from his or her home; that a shortage of kidney disease treatment centers now exists in the rural areas and smaller municipalities in the state; that the existence of the certificate of need requirement with respect to new kidney disease treatment centers is a factor that hinders the establishment of new treatment centers in the less heavily-populated areas of the state; that, in order to encourage and facilitate the development of new kidney disease treatment centers in those areas of the state where such centers are most needed, it is rational, appropriate and desirable to provide an exemption from the certificate of need requirement for any kidney disease treatment center located in a Class 3, 4, 5, 6, 7 or 8 municipality that contains no more than ten hemodialysis units; and that, because of the existence in Class 1, 2 and 3 municipalities of major medical facilities that serve the residents of such municipalities and the surrounding areas, it is rational, appropriate and desirable to provide that the exemption granted by this section shall not apply to a kidney disease treatment center located in a Class 4, 5, 6, 7 or 8 municipality if such municipality is located in a county in which a Class 1, 2 or 3 municipality is located.

(b) Notwithstanding any existing law to the contrary, any kidney disease treatment center that contains no more than ten freestanding hemodialysis units and that is located in a Class 3, 4, 5, 6, 7 or 8 municipality (as such classes are defined in [Sections 11-40-12](#) and [11-40-13](#) or any successor provision of law) shall not be subject to or governed by the provisions of Article 9 of Chapter 21 of Title 22 (including, without limitation, the provisions of said article which require that a certificate of need be obtained from the State Health Planning and Development Agency as a condition precedent to the offering or development of new institutional health services).

(c) The provisions of subsection (b) shall not apply to a kidney disease treatment center located in a Class 4, 5, 6, 7 or 8 municipality if such municipality or any part thereof is located in a county in which a Class 1, 2 or 3 municipality or any part thereof is located.

Chapter 22A. Environmental Management, § 22-22A-2.

§ 22-22A-2. Legislative intent and purposes of chapter.

The Legislature finds the resources of the state must be managed in a manner compatible with the environment, and the health and welfare of the citizens of the state. To respond to the needs of its environment and citizens, the state must have a comprehensive and coordinated program of environmental management. It is therefore the intent of the Legislature to improve the ability of the state to respond in an efficient, comprehensive and coordinated manner to environmental

problems, and thereby assure for all citizens of the state a safe, healthful and productive environment.

(1) To this end an Alabama Department of Environmental Management is created by this chapter within the Executive Branch of State Government in order to effect the grouping of state agencies which have primary responsibility for administering environmental legislation into one department, to promote economy and efficiency in the operation and management of environmental programs, to eliminate overlapping or duplication of effort within the environmental programs of the state, to provide for timely resolution of permitting actions, to improve services to the citizens of the state, to protect human health and safety, to develop and provide for a unified environmental regulatory and permit system, to provide that the responsibility within the Executive Branch for the implementation of environmental programs and policies is clearly fixed and ascertainable, and to insure that government is responsive to the needs of the people and sufficiently flexible to meet changing conditions.

(2) It is also declared to be the intent of the Legislature to retain for the state, within the constraints of appropriate federal law, the control over its air, land and water resources and to secure cooperation between agencies of the state, agencies of other states, interstate agencies and the federal government in carrying out these objectives.

(3) It is the intent of the Legislature to recognize the unique characteristics of the Alabama coastal region and to provide for its protection and enhancement through a continued coastal area program.

(4) It is not the intent of the Legislature to abrogate any of the powers or duties of the State Board of Health which are found in Sections 22-2-1 through 22-2-14.

Chapter 25A. Regulation of Wastewater Onsite Management Entities Using Decentralized Cluster Wastewater Systems. Repealed.

Chapter 25B. Regulation of Privately Owned Wastewater Systems, §§ 22-25B-1 through 22-25B-12.

§ 22-25B-1. Definitions.

For purposes of this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) ADEM. The Alabama Department of Environmental Management.

(2) ADPH. The Alabama Department of Public Health.

- (3) Certificate of economic viability. The certification by the commission of the financial viability of a wastewater management entity's financial viability pursuant to this chapter.
- (4) Cluster wastewater system. An integrated wastewater collection system or treatment system, or both, or multiple systems serving a single development or contiguous developments, which collectively have a design flow of 15,000 GPD or less, and is designed and permitted for discharge of the treated wastewater to a subsurface distribution system, but excluding systems that discharge directly to surface waters of the state. The system must be designed by and certified by a licensed professional engineer to comply with design and permit requirements established by the ADPH. The term does not include a small-flow cluster system.
- (5) Commission. The Alabama Public Service Commission.
- (6) Community wastewater systems. An integrated wastewater collection system or treatment system, or both, or multiple systems serving a single development or contiguous developments, which collectively have a design flow of more than 15,000 GPD, and is designed and permitted for discharge of the treated wastewater to a subsurface distribution system, but the term specifically excludes systems that discharge directly to surface waters of the state. The system must be designed and certified by a licensed professional engineer to comply with the design and permit requirements established by ADEM.
- (7) Customer. A person, business, or other entity, public or private, that is connected or eligible for connection to a certified wastewater management entity's wastewater system upon proper payment of cost and fees and is subject to rates approved by the commission.
- (8) Department. ADEM or ADPH as their jurisdiction is applicable according to the terms of this chapter.
- (9) Design flow. The average daily flow that the wastewater system will treat with appropriate consideration given to maximum flow periods, equalization, and organic loading. Flow from the same subdivision or contiguous subdivisions developed as a common group of wastewater systems, shall be combined as one flow, even if from separate systems, for the purpose of determining whether ADEM or ADPH will permit the system.
- (10) Draft permit. A preliminary permit issued by the department setting forth the discharge and other requirements which will be included in the final permit that may be issued upon compliance with department rules.
- (11) Dwelling. A house, manufactured/mobile home or house trailer, shelter, structure, or building, or portion thereof, that is or could reasonably be expected to be occupied in whole or in part as the home, residence, or sleeping place of one or more persons.

(12) Effluent. Treated wastewater.

(13) Establishment. A facility other than a dwelling that is or could reasonably be expected to generate wastewater of similar composition as a dwelling and of similar strength of or higher strength than a dwelling.

(14) GPD. Gallons per day.

(15) PSC. The Alabama Public Service Commission.

(16) Small-flow cluster system. A wastewater system serving four or fewer dwellings, apartment units, or other establishments whether owned by a single person or multiple persons, including individual single-user septic tank systems but excluding systems that discharge directly to the waters of the state.

(17) Wastewater. Waterborne waste of similar composition as may be found in the typical residence or dwelling and sometimes referred to as sewage; but not to include wastewater generated at an industrial nonresidential site.

(18) Wastewater management entity. An entity which exercises sole responsibility for the operation and maintenance of one or more cluster or community wastewater systems.

(19) Wastewater system. An integrated specialized technological process for the collection, treatment, processing, disposal, discharge, and reuse of domestic wastewater generated by multiple dwellings or establishments, including single structures with multiple units, sometimes referred to as a wastewater plant.

§ 22-25B-2. Exempted entities.

The following entities shall not be certified or regulated by the commission, but shall be subject to all other requirements of this chapter:

(1) Cooperatives transacting business in this state pursuant to Chapter 6 of Title 37 deemed to be general welfare cooperatives.

(2) Municipalities and county governments and any public corporations, boards, agencies, or entities created by a municipality or county government. Nothing herein prohibits municipal and county governmental entities from contracting with any other public or private entity to manage, maintain, or service wastewater systems owned by them.

(3) Entities managing small-flow cluster systems. Notwithstanding the foregoing, entities managing small-flow cluster systems may elect to be subject to all requirements of this chapter.

(4) Entities owning wastewater systems including the source, collection, treatment, and disposal of the wastewater and all of the dwelling structures or commercial establishments served by them. Examples include, but are not limited to, a trailer park or apartment complex under single ownership.

(5) Entities that assume or acquire ownership or management of wastewater systems that were previously owned by entities of state, county, or local governments.

(6) Wastewater treatment systems owned or operated by industrial facilities.

§ 22-25B-3. Responsibilities of wastewater management entities.

(a) No person, firm, corporation, or other legal entity shall operate as a wastewater management entity without full compliance with this chapter and rules promulgated hereunder.

(b) Every cluster and community wastewater system shall be operated by a wastewater management entity as authorized under this chapter. Wastewater management entities shall be subject to such operational permits as may be issued by the department and such certificates as may be issued by the PSC.

(1) A PSC certificate of financial viability shall be valid for a period of two years from the date of issuance. A new certificate of financial viability is required when a wastewater management entity is issued a new operational permit by the department or when an operational permit is modified by the department.

(2) An operational permit for a cluster or community wastewater system issued by the department shall be valid for a period of five years from the date of issuance. A new operational permit is required whenever there is a change in the ownership or operation of the wastewater system that would require a permit modification as determined by the department.

(c) All cluster wastewater systems shall only discharge pursuant to permits issued by the ADPH.

(d) All community wastewater systems shall only discharge pursuant to permits issued by ADEM.

(e) Unless by this chapter expressly exempted from regulation by the PSC, no person or entity shall engage in the construction or installation of a wastewater system subject to this chapter unless a certificate of financial viability has been issued to the system's management entity by the PSC and until a draft operational permit has been issued for the wastewater system by the department.

(f) No wastewater management entity shall engage in the maintenance or operation of a wastewater system or discharge therefrom without first obtaining and complying with a final permit issued by the department.

§ 22-25B-4. ADPH regulation of cluster wastewater systems.

(a) Consistent with this chapter, the ADPH shall promulgate and enforce such rules as are necessary to regulate cluster wastewater systems and their wastewater management entities. Such rules may include, but may not be limited to, the following:

(1) The permitting design, installation, repair, modification, location, and operation requirements of cluster wastewater systems and facilities.

(2) Minimum inspection, monitoring, operating, reporting, record maintenance, and system maintenance requirements for cluster wastewater system management entities.

(3) Mechanisms, methodologies, procedures, or guidelines, or any combination of these, to insure cluster wastewater systems and their management entities comply with law, regulations, conditions of operational permits, and directives of ADPH.

(b) Upon failure of a cluster wastewater entity to comply with this chapter, or any permit requirements, rule, order, or directive of ADPH, the ADPH may revoke the management entity's permit, assess a civil penalty not exceeding ten thousand dollars (\$10,000), or both, per compliance failure or violation.

(c) Each day a violation continues shall constitute a separate violation.

(d) The failure of the wastewater management entity to maintain a valid certificate of economic viability may constitute cause for permit revocation or the assessment of civil penalties, or both.

(e) The assessment and collection of civil penalties shall be in compliance with State Board of Health rules and the Alabama Administrative Procedure Act.

(f) Civil penalties may be assessed under this chapter for any compliance failure or violation occurring within three years prior to the date of issuance of an order or notice or commencement of civil action under this chapter.

(g) Civil penalties assessed hereunder and not paid as provided herein may be recovered in a civil action brought by the ADPH in the Circuit Court of Montgomery County or in the circuit court in whose jurisdiction any threatened or continuing violation occurs.

§ 22-25B-5. ADEM regulation of community wastewater systems.

(a) Consistent with this chapter, ADEM shall promulgate and enforce rules as are necessary to regulate community wastewater systems and their wastewater management entities. Such rules may include, but may not be limited to, the following:

(1) The permitting, design, installation, repair, modification, location, and operation requirements of community wastewater systems and facilities.

(2) Mechanisms, methodologies, procedures, or guidelines, or any combination of these, to insure community wastewater systems and their management entities comply with law, regulations, conditions of operational permits, and directives of ADEM.

(3) Minimum inspection, monitoring, operating, reporting, record maintenance, and system maintenance requirements for community wastewater system management entities.

(b) Upon failure of any wastewater management entity to comply with this chapter, or any permit requirement, rule, or directive of ADEM, ADEM may revoke the management entity's permit or assess a civil penalty pursuant to the civil enforcement provisions of the Alabama Environmental Management Act and rules promulgated thereunder, or both. The failure of the wastewater management entity to maintain a certificate of economic viability issued by the PSC may constitute cause for permit revocation or the assessment of civil penalties by ADEM, or both.

(c) Any penalty assessed by ADEM pursuant to this section shall be in accordance with the civil enforcement provisions of the acts establishing ADEM, its rules, and the Alabama Administrative Procedure Act.

§ 22-25B-6. PSC regulation of wastewater management entities.

(a) The PSC shall promulgate and enforce such rules as are necessary to certify and monitor the economic viability of wastewater management entities. Such regulations may include, but may not be limited to, the following:

(1) Financial viability requirements necessary to insure the long-term operation and maintenance of wastewater systems.

(2) Conditions for the operation or permitting, or both, of cluster wastewater and community wastewater systems.

(3) A system of notice to report any violations of certifications, permits, law, regulations, directives, or orders, or any combination of these, of the PSC, ADEM, or ADPH.

(4) Enforcement mechanisms to insure compliance with law, regulations, certificates, and directives of the PSC.

(5) Standardized financial operations and management of cluster and community wastewater systems and wastewater management entities.

(b) The PSC may make the determination of economic viability utilizing its own resources or may consult with or contract with other agencies of government or appropriate consultants. In determining the grant or denial of the certificate of economic viability, the PSC shall consider the economic viability of an existing entity or the expectation of economic viability of a proposed entity based upon the following criteria or any combination thereof:

(1) Opinion by an independent certified public accountant.

(2) Previous economic history of the entity.

(3) Assets, income, and expenses as related to liabilities of the entity.

(4) Financial stability and previous financial history of the principal of the entity, and the business plan and rate plan of the entity.

(5) Insurability, bondability, and creditworthiness of the entity as determined by standard business methods.

(c) Before the PSC issues any certificate of economic viability, the PSC shall require the wastewater management entity to submit to the PSC evidence of financial assurances. Financial assurances shall include at least one of the following: A performance bond, letter of credit made payable to the commission, pledge of assets, or other similar instrument or mechanism in an amount sufficient to continue management of the system if the entity ceases to exist or fails to fulfill its obligations to the clients served by the entity.

(d) The bond, pledge, letter of credit, or other instrument may be declared forfeited when the operational permit is expired, unless renewal application is under review by the department, or revoked. The PSC may present the declaration of forfeiture to the obligor on the instrument for payment.

(e) Failure of the obligor to make full and timely payment on its financial obligations shall constitute a cause of action for recovery in a civil action at the instance of the PSC.

(f) A wastewater management entity shall not sell, assign, or divest in any way assets or responsibilities without the express written consent of the PSC.

(g) Rate charges to customers for wastewater system service by a certified wastewater management entity shall be approved by the PSC pursuant to the laws, rules, regulations, and procedures pertaining to utilities.

(h) The failure of any wastewater management entity to comply with any requirement, rule, or directive of the PSC or to maintain its operating or discharge permit or other permits in good standing, may result in the revocation by the PSC of the wastewater management entity's certification or the assessment of a civil penalty, or both, in accordance with statutory procedures and regulations of the PSC. Upon the revocation of a certificate of economic viability, the commission shall promptly notify the department.

§ 22-25B-7. Fees and penalties.

The costs of administering this chapter by the PSC, ADEM, and ADPH shall be funded from certification fees, permit fees, and regulatory fees paid by the wastewater management entities. All fees and revenue of any kind generated as a result of the operation of this chapter shall be deposited to the credit of the PSC, ADEM, and ADPH as set forth below, and shall be continuously appropriated to the PSC, ADPH, and ADEM to implement and administer this chapter as follows:

(1) The PSC is authorized to charge and collect from the wastewater management entity a fee for the processing and review of applications for and issuance of certifications as may be established by rules of the PSC.

(2) The ADPH is authorized to charge and collect from any wastewater management entity applying for a permit a fee as established by rules of the State Board of Health.

(3) The ADEM is authorized to charge and collect from any wastewater management entity applying for a permit a fee as established by rules of ADEM.

(4) In addition to any permit fee collected by either ADEM or ADPH, the departments are authorized to collect from each certified wastewater management entity, and each certified wastewater management entity shall pay to either ADPH or ADEM according to the department's jurisdiction as set out in this chapter, a regulatory fee in the amount of four percent of annual gross receipts, payable quarterly on the wastewater systems each regulates.

(5) Any fees authorized pursuant to this chapter shall be limited to the amount necessary to carry out the activities required in this chapter.

§ 22-25B-8. Advisory group.

An advisory group shall be established to advise the appropriate regulatory agencies on construction/installation standards, hereafter known as the Advisory Group on Minimum Construction Standards, and shall be made up of the following members:

- (1) One representative appointed by the ADEM.
- (2) One representative appointed by the ADPH.
- (3) One representative appointed by the PSC.
- (4) One representative appointed by the Home Builders Association of Alabama.
- (5) One representative appointed by the Alabama Onsite Wastewater Board.
- (6) One representative appointed by the Wastewater Utility Management Association.

§ 22-25B-9. Wastewater system failure.

- (a) Upon the failure of a management entity to remediate any wastewater system failure within a reasonable time to protect the health and safety of the public or the environment as may be established by rules or orders of the State Board of Health or ADEM, upon the request of the applicable department, the PSC is hereby granted full authority to take possession of the system, correct the failure, and to operate the system or assign the system to another certified wastewater management entity.
- (b) In the event the PSC operates or assigns a system as provided in subsection (a), it may call upon the violating wastewater management entity's performance bond, letter of credit, or pledged assets to correct the violation and facilitate the transfer to another certified wastewater management entity.

§ 22-25B-10. Public right-of-way crossing.

A certified wastewater management entity, with the approval of the governmental entities in control of the rights-of-way, may install and maintain sewer collection and effluent transport lines within public rights-of-way according to an engineered design and inspection, to comply with the Department of Transportation's standards. The lines installation is limited to a crossing of the right-of-way and installed in proper casement and at no cost to the state, county, or municipal government.

§ 22-25B-11. Civil action.

In addition to any rights and remedies specified herein or otherwise provided by law, the PSC, ADEM, ADPH, district attorney, or the Attorney General, or any combination of these, may commence a civil action to enjoin a violation in the circuit court in whose jurisdiction which any threatened or continuing violation occurs. In any such action, any person having an interest which is or may be adversely affected may intervene as a matter of right.

§ 22-25B-12. Relation to other laws.

(a) Except as specifically provided herein, this chapter is not intended to apply to small-flow cluster systems as defined in Section 22-25B-1 and is supplemental to all other laws and administrative rules and is not intended to repeal or replace any existing statute except to the extent that there is a direct conflict. In such case, this chapter shall control. Any individual, company, or other entity installing, maintaining, repairing, servicing, or manufacturing wastewater systems including single family and small-flow cluster systems, cluster wastewater systems, and community wastewater systems must obtain an appropriate license from the Alabama Onsite Wastewater Board pursuant to Chapter 21A, of Title 34, or from the ADEM.

(b) Notwithstanding any other law, all subsurface distribution wastewater systems serving establishments, a single development, or contiguous developments which collectively have a design flow of 15,000 GPD or less shall be permitted and regulated by the ADPH pursuant to rules promulgated by the State Board of Health, and all subsurface distribution wastewater systems serving establishments, a single development, or contiguous developments which collectively have a design flow of more than 15,000 GPD shall be permitted and regulated by the ADEM pursuant to rules promulgated by the ADEM.

(c) This chapter shall not apply in any county which has a local constitutional amendment authorizing the regulation of wastewater utilities, unless provided for by local act or the Legislature by local law applicable to the county provides for alternative regulation and rate control to apply in the county.

(d) This chapter shall in no way infringe upon or replace the authority granted to the Jefferson County Board of Health pursuant to Act No. 659 (1978).

Chapter 26. Sewage Collection, Treatment, and Disposal Facilities.

§ 22-26-1. Insanitary sewage facilities menacing public health.

It shall be unlawful and shall constitute a misdemeanor to build, maintain or use an insanitary sewage collection, treatment and disposal facility or one that is or is likely to become a menace

to the public health anywhere within the state, including plumbing facilities, privies, septic tank systems, other private collection and disposal systems, sewer lines, public or private, municipal, community, subdivision or other treatment plant and disposal units, but excluding plumbing within structures located within the police jurisdiction of municipal corporations and regulated by the municipal corporation.

§ 22-26-2. Authority of state and county boards of health to require installation of plumbing facilities, connections with sanitary sewers, etc.; compliance with rules and regulations.

The State Board of Health and/or county boards of health, acting through its duly authorized agents or employees, shall require every person, firm or corporation or municipal corporation, or agent thereof, owning or occupying property within the state, to install the required plumbing facilities, type and number of sewage collection, treatment and disposal facilities conforming to rules and regulations of the State Board of Health and/or county boards of health and require connection to a sanitary sewer conforming to rules and regulations of the State Board of Health and/or county boards of health where sanitary sewers are available and are not regulated by the municipal corporation, or to dispose of sewage in such sanitary manner as shall be approved by the State Board of Health. All required sewage treatment and disposal facilities shall conform in every respect with the specifications, rules and regulations applying to these facilities made, adopted and promulgated by the State Board of Health and/or county boards of health and shall be maintained as prescribed by the said rules and regulations.

§ 22-26-3. Approval of plans and specifications.

All plans and specifications applying to sewage collection, treatment and disposal shall be first submitted to the State Board of Health and/or county boards of health for approval before construction. The said plans and specifications shall be approved if in conformance with said specifications, rules and regulations and the required permits for construction issued by the State Board of Health or its duly authorized agents or employees. No person, firm, corporation or municipal corporation shall begin construction without said approval, and a violation of this section shall constitute a misdemeanor, punishable, on conviction, by a fine of not to exceed \$500.00.

§ 22-26-4. Permits for installation of plumbing within police jurisdiction of municipal corporations.

The issuance of permits for the installation of plumbing within structures located within the police jurisdiction of municipal corporations, and the inspection and approval of same, shall be functions of municipal corporations.

§ 22-26-5. Permits for installation of plumbing outside jurisdiction of municipal corporations.

The issuance of permits for the installation of plumbing within and serving structures located outside the jurisdiction exercised by municipal corporations shall be in conformance with the rules and regulations of the State Board of Health and/or county boards of health, and the inspection and approval of same shall be the function of the county health departments.

§ 22-26-6. Penalty for violations of chapter.

Any person, firm, corporation or municipal corporation responsible for conforming or maintaining as required in this chapter and who fails to conform or maintain in violation of said specifications, rules and regulations shall be guilty of a misdemeanor, punishable, upon conviction, by a fine of not to exceed \$500.00.

§ 22-26-7. Certain land subdivided for single-family residences and not having access to public sewer not subject to subdivision regulations of State Board of Health.

(a) Land subdivided for single-family residential purposes into lots of not less than three acres in size shall not be subject to the subdivision criteria and the rules and regulations imposed by the State Board of Health upon development where said lots do not have access to public sewer system where:

- (1) There is a plat restriction that the land will not be further divided into parcels of less than three acres in size until such lots have access to a public sewer system;
- (2) Where the bedrock elevation is of sufficient depth below ground elevation to install a septic tank of sufficient capacity, header line and adequate field line system leading from said septic tank;
- (3) Where the standard, residential percolation test times shall not exceed 60 minutes per inch, without additional information; and
- (4) Where the water table elevation is not within five feet of ground elevation.

(b) At such time that all such adjoining lots have access to a public sewer system, the property may be further subdivided into lots of less than three acres in size for residential and other purposes, provided the residences and other structures designed for human habitation on the property use such public sewer system.

(c) Where said land is subdivided into parcels containing any tracts five acres in size and larger, such tracts shall not be subject to the provisions of subdivision (3) of subsection (a) of this section.

Chapter 27. Solid Waste, §§ 22-27-1 through 22-27-18, 22-27-40 through 22-27-94.

Article 1. Solid Wastes and Recyclable Materials Management Act.

§ 22-27-1. Short title.

This article shall be known as the "Solid Wastes and Recyclable Materials Management Act."

§ 22-27-2. (Final placement and text of 2008 legislation is subject to editorial action of the Code Commissioner) Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) AGENCY. Any controlling agency, public or private, elected, appointed, or volunteer utilizing methods approved by the health department or the department for the purpose of controlling and supervising the collection or management of solid wastes or recyclable materials.
- (2) ASHES. The solid residue from burning of wood, coal, coke, or other combustible material used for heating, from incineration of solid wastes, or for the production of electricity at electric generating plants.
- (3) COAL COMBUSTION BY-PRODUCTS. Fly ash, bottom ash, boiler slag, or flue gas emission control by-products which result primarily from the combustion of coal or other fossil fuels at electric generating plants.
- (4) COMPOSTING OR COMPOST PLANT. An officially controlled method or operation whereby putrescible solid wastes are broken down through microbic action to a material offering no hazard or nuisance factors to public health or well-being.
- (5) DEPARTMENT. The Alabama Department of Environmental Management.
- (6) DIRECTOR. The Director of the Alabama Department of Environmental Management or his or her designee.
- (7) DISCHARGE. The accidental or intentional spilling, leaking, pumping, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water.
- (8) DISPOSAL. The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including, but not limited to, ground waters.
- (9) FACILITY. All contiguous land, structures, and other appurtenances used for the processing, treatment, storage, or disposal of solid waste, or the recovery of recyclable materials from solid waste, whether or not authorized or permitted, including, but not limited to, waste disposal areas and waste disposed therein.
- (10) FINANCIAL ASSURANCE. A financial arrangement by the owner or operator of a municipal solid waste landfill which guarantees the availability of funds which may be used to close, provide post-closure care, or conduct corrective action at that facility if the owner or operator fails to properly execute his or her responsibilities under this article and any rules

promulgated by the department for closure, post-closure care, or corrective action and the terms of any permit issued for operation of that facility.

(11) **GARBAGE.** Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

(12) **GENERATION.** The act or process of producing solid waste. Solid waste shall be considered to be generated at the point that waste materials are first discarded or collected, regardless of any subsequent materials recovery or recycling.

(13) **HAZARDOUS WASTES.** Those waste s defined in, and regulated under, the Alabama Hazardous Waste Management and Minimization Act of 1978, as amended .

(14) **HEALTH DEPARTMENT.** An approved county or district health department, including the Alabama State Department of Public Health and the affected state and county health department.

(15) **HEALTH OFFICER.** The state or affected county health officer or his or her designee.

(16) **HOUSEHOLD WASTE.** Any solid waste, including, but not limited to, garbage, trash, and sanitary waste in septic tanks derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas. Sanitary waste in septic tanks shall be considered as household waste only when it is disposed in a landfill or unauthorized dump and its inclusion as a household waste shall in no way prohibit or supersede the authority of the board or the department to regulate onsite sewage systems or the management of sanitary waste in septic tanks.

(17) **INCINERATOR.** A device designed to burn that portion of garbage and rubbish which will be consumed at temperatures generally ranging 1600 degrees Fahrenheit or over. The unburned residue from an incinerator, including metal, glass, and the like shall be called ashes.

(18) **INDUSTRIAL SOLID WASTE.** Solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Chapters 22 to 30, inclusive, of Title 22.

(19) **INNOCENT LANDOWNER.** An owner of real property upon which there is located an unauthorized dump and who meets all of the following conditions:

a. The solid waste was disposed of on the property after the owner acquired title to the property or the waste was disposed of before the owner acquired title to the property and the owner lacked actual knowledge of the waste after conducting reasonable due diligence or title was acquired by bequest or devise.

b. The owner did not have knowledge that the waste was being disposed of on the property or the owner took steps, including, but not limited to, posting signs to prevent disposal on the property.

c. The owner did not participate in or consent to the disposal of solid waste on the property.

d. The owner did not receive any financial benefit from the disposal of solid waste on the property.

e. Title to the property was not transferred to the owner for the purpose of evading liability for operating an unauthorized dump.

f. The person or persons responsible for disposing of the solid waste on the property, in doing so, was not acting as an agent for the owner.

(20) **LANDFILL.** A method of compaction and earth cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and

stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.

(21) **MATERIALS RECOVERY FACILITY.** A solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials. A materials recovery facility shall be deemed to be a solid waste treatment facility.

(22) **MEDICAL WASTE.** A solid waste or combination of solid wastes which because of its infectious characteristics may either:

a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.

b. Pose a substantial present hazard or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

(23) **MUNICIPAL SOLID WASTE LANDFILL.** A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill may also receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, industrial solid waste, construction/demolition waste, and rubbish. A municipal solid waste landfill is a sanitary landfill.

(24) **PERSON.** An individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, agent, agency, association, state, municipality, commission, political subdivision of a state, an interstate body, or other private or public legal entity.

(25) **PRIVATE SOLID WASTE MANAGEMENT FACILITY.** A solid waste management facility that is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated on-site or by the permittee.

(26) **PUBLIC SOLID WASTE MANAGEMENT FACILITY.** A solid waste management facility that accepts solid waste from the public generally or for a fee or any solid waste management facility that is not a private solid waste management facility.

(27) **RECOVERED MATERIALS.** Those materials which have known recycling potential; which can be feasibly recycled; which have been diverted or removed from the solid waste stream for recycling, whether or not requiring subsequent separation and processing; and which have a substantial portion that are consistently used in the manufacture of products which may otherwise be produced from raw or virgin materials. Recovered materials shall not include solvents or materials, except sawdust, bark, and paper materials that are destined for incineration, energy recovery, or any use which constitutes disposal. Recovered materials shall only be those materials for which during the calendar year (commencing on January 1), the amount of material recycled or diverted from the solid waste stream for recycling and transferred to a different site for recycling equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.

(28) **RECOVERED MATERIALS PROCESSING FACILITY.** A facility primarily engaged in the storage, processing, and resale or reuse of recovered materials. A recovered materials processing facility is not a solid waste management facility; however, any solid waste resulting from the operation of a facility shall be subject to all applicable laws and regulations relating to

solid waste and shall be deemed to be generated for purposes of reporting pursuant to solid waste reduction goals, at the point of collection of the recovered materials from which the solid waste resulted. A recovered material processing facility shall provide notification to the department according to rules adopted by the department.

(29) **RECYCLABLE MATERIALS.** Those materials which are capable of being recycled, whether or not the materials have been diverted or removed from the solid waste stream.

(30) **RECYCLING.** Any process by which materials are collected, separated, stored, recovered, or processed and reused or returned to use in the form of raw materials or products, but does not include the use of materials as a fuel, or for any use which constitutes disposal.

(31) **RUBBISH.** Nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures, not less than 1600 degrees Fahrenheit.

(32) **SANITARY LANDFILL.** A controlled area of land upon which solid waste is deposited and is compacted and covered with compacted earth each day as deposited, with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution as determined by the Alabama Department of Environmental Management.

(33) **SOLID WASTES.** Any garbage, rubbish, construction or demolition debris, ash, or sludge from a waste treatment facility, water supply plant, or air pollution control facility, and any other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or community activities, or materials intended for or capable of recycling, but which have not been diverted or removed from the solid waste stream. The term "solid waste" does not include recovered materials, solid or dissolved materials in domestic sewage, solid or dissolved material in irrigation return flows, or industrial discharges which are point sources subject to the National Pollutant Discharge Elimination System permits under the Federal Water Pollution Control Act, as amended, or the Alabama Waste Pollution Control Act, as amended; or source, special, nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are land applications of crop residues, animal manure, and ash resulting exclusively from the combustion of wood during accepted agricultural operations, waste from silvicultural operations, or refuse as defined and regulated pursuant to the Alabama Surface Mining Act of 1969 (Article 1, Chapter 16, Title 9, Sections 9-16-1 to 9-16-15, Code of Alabama 1975).

(34) **SOLID WASTE DISPOSAL FACILITY.** Any landfill or part of a facility where final deposition of solid waste occurs and at which waste may remain after closure.

(35) **SOLID WASTE MANAGEMENT.** The systematic control of solid waste including its storage, processing, treatment, recovery of materials from solid waste, or disposal.

(36) **SOLID WASTE MANAGEMENT FACILITY.** Any solid waste volume reduction plant, transfer station, material recovery facility, or other facility, the purpose of which is the storage, treatment, utilization, processing, disposal, or recovery of materials from solid waste, or any combination thereof.

(37) **UNAUTHORIZED DUMP.** Any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not

having a permit from the department. Abandoned automobiles, large appliances, or similar large items of solid waste shall be considered an unauthorized dump within the meaning of this article. The careless littering of a relatively few, smaller individual items such as tires, bottles, cans, and the like shall not be considered an unauthorized dump, unless the accumulation of solid waste poses a threat to human health or the environment. An unauthorized dump shall also mean any solid waste disposal site which does not meet the regulatory provisions of this article.

§ 22-27-3. Authority of local governing bodies as to methods of waste collections and disposal; household exemptions; approval of department; exception.

(a) *Generally.* (1) The county commission or municipal governing body may, and is hereby authorized to, make available to the general public collection and disposal facilities for solid wastes in a manner acceptable to the department. The county commission or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies and may include house-to-house service or the placement of regularly serviced and controlled bulk refuse receptacles within reasonable (generally less than eight miles) distance from the farthest affected household and the wastes managed in a manner acceptable to the department.

(2) Any county commission or municipal governing body providing services to the public under this article shall have the power and authority by resolution or ordinance to adopt rules and regulations providing for mandatory public participation in and subscription to such system of services. Such governing body may, in its discretion, submit the question of requiring such mandatory public participation to a vote of the qualified electors of the county or municipality as the case may be. If such governing body submits the question to the voters, then the governing body shall also provide for holding and canvassing the returns of the election and for the giving notice thereof for two consecutive weeks in a paper of general circulation in the county. Every person, household, business, industry, or property generating solid wastes, garbage, or ash as defined in this section shall participate in and subscribe to such system of service unless granted a certificate of exception as provided in subsection (g). Provided, however, any individual, household, business, industry, or property generating solid wastes that were sharing service for a period of at least 6 months may continue to share service without filing for a certificate of exception. In the event such person, household, business, industry, or property owner who has not been granted a certificate of exception refuses to participate in and subscribe to such system of service, the county commission or municipal governing body may in addition to any other remedy provided in this article bring an appropriate civil action in circuit court to compel such participation and subscription. Except as provided in subsection (g), any person, firm, or corporation violating such rules and regulations shall be in violation of this article and shall be punished as provided in Section 22-27-7.

(3) Any household whose sole source of income is Social Security benefits shall be granted an exemption from the payment of any fees required under this article, provided the household seeking to claim the exemption shall present proof of income to the county health officer no later than the first billing date of any year in which the exemption is desired. The county health officer or his designee shall forward the exemption request and proof of income to the solid waste

officer or municipal governing body upon receipt. The exemption shall apply only so long as the household's sole source of income is social security and shall be requested each year in which the exemption is desired. Additionally, the Legislature may, by local law, authorize the county commission to grant additional exemptions to households whose total income does not exceed 75% of the federal poverty level. Any person who knowingly provides false or misleading information in order to obtain an exemption shall be subject to the provisions of Section 22-27-7.

(4) No county commission shall provide solid waste collection and disposal services within the corporate limits of a municipality without the express consent of the municipal governing body of such municipality nor shall any municipality provide solid waste collection and disposal services outside its corporate limits without the express consent of the county commission of the county in which it is situated.

(5) Any county providing door-to-door solid waste collection shall not reduce such service unless and until a letter has been sent to each resident or property or business owner receiving door to door service stating that such service will be reduced or changed and allowing at least 60 days for any resident, business owner, or property owner to call for a public hearing and for the county or municipality to hold such public hearing upon request.

(6) Any provision of this article to the contrary notwithstanding, no person, household, business, industry, or property owner shall be required to pay any solid waste collection exemption or disposal fee chargeable under this article unless solid waste collection and disposal services for which such charge was made were actually made available to such person, household, business, industry, or property owner.

(b) *Solid waste officer.* As used in this article, solid waste officer shall mean any county official or county employee or any official or employee of a solid waste disposal authority authorized under Section 11-89A-1 et seq. designated by the county commission to exercise the authority and perform the duties delegated by this article to such official and such officer shall have the same powers of enforcement against persons violating this article as do license inspectors with regard to persons violating revenue laws as provided under Section 40-12-10 (i), (j), (k), and (n).

(c) As used in this article, the terms "solid wastes", "garbage", and "ash" do not include any drilling discharges from oil or natural gas operations.

(d) *Garbage disposal.* Garbage and rubbish containing garbage shall be disposed of by sanitary landfill, approved incineration, composting, or by other means now available or which may later become available as approved by the department. The method chosen and used shall also meet the requirements of the health department for sanitation and the protection of public health.

(e) *Burning.* No garbage or rubbish containing garbage or other putrescible materials or hazardous wastes shall be burned except in approved incinerators meeting the necessary temperature requirements and air pollution controls as now established or as may later be established. The open burning of rubbish shall be permitted only under sharply controlled circumstances where sanitary landfill or landfill is not feasible and not in proximity to sanitary landfill or landfill operations where spread of fire to these operations may be a hazard in the

opinion of the department.

(f) *Haulage.* Trucks or other vehicles engaged in the business of hauling garbage and rubbish shall be so covered, secured, or sealed that there will be no loss during haulage to cause littering of streets and highways, or cause a nuisance or hazard to the public health.

(g) *Exception.* (1) A person, household, business, industry, or any property owner may store, haul, and dispose of his or her own solid wastes on his or her land or otherwise, provided such storage, haulage, or disposal is accomplished pursuant to a certificate of exception as provided in this subsection. In order to obtain a certificate of exception, an application, an application fee, and plan must be filed with the county health officer or his or her designee in the case of household solid waste or with the department in the case of solid waste from business or industry, setting out the proposed method of storing, hauling, and disposing of solid waste so as to comply with rules and regulations adopted by the state or county boards of health or the department as appropriate and not create a public nuisance or hazard to the public health. The certification of exception application fee shall be established by the State Board of Health or the department, as the case may be, except that with regard to an individual household such fee shall be ten dollars (\$10). The proceeds from such application fees are hereby appropriated to the State Board of Health or the department, as the case may be, to be used for the administration of this article. The county health officer or his or her designee or the department as appropriate shall investigate such application and plan and issue a certificate of exception within the time set by the State Board of Health or the department, as the case may be (not to exceed sixty days in the case of an individual household), if such proposal will, in such officer's or designee's or the department's judgment, comply with such rules and regulations and adequately prevent a public nuisance or hazard to public health. A certificate of exception granted under authority of this section shall be valid for the period established by the department, except that in the case of an individual household such period shall not exceed one year. The county health officer or his or her designee or the department shall notify the county commission or municipal governing body in writing of the intention to grant a certificate of exception and no such certificate of exception shall be granted for an individual household without prior written approval of the county commission or municipal governing body as the case may be.

(2) Notwithstanding any other provision of this chapter to the contrary, no exception, exception fee, or any other review, approval, or payment shall be required of any generator for the collection, handling, or disposal of its own solid waste using facilities or equipment owned by the generator, its corporate parent, affiliate, or subsidiary and duly permitted for such use by the Alabama Department of Environmental Management or its successor in function.

(h) *Coal combustion by-products.* Upon the adoption and implementation of a federal regulatory program to govern the disposal of coal combustion by-products pursuant in whole or in part to Subtitle D of the Solid Waste Disposal Act, [42 U.S.C. § 6941 et seq.](#), the department is authorized to develop and adopt rules as necessary to implement a state regulatory program

consistent with the federal requirements. Until such federal program requirements take effect, the disposal of coal combustion by-products shall be subject to the applicable requirements of this article; provided, however, that a facility permitted by the department pursuant to Chapter 22 of this title as of May 25, 2011, and thereafter may continue to operate without additional authorization by the department until federal requirements under the Solid Waste Disposal Act take effect. To the extent permissible under the federal program, the department shall allow beneficial uses of coal combustion by-products as an alternative to disposal as part of any adopted state program.

§ 22-27-4. Hazardous wastes; unauthorized dumps; vermin controls.

(a) *Hazardous wastes.* Hazardous wastes shall be managed in accordance with the provisions of Sections 22-30-1 through 22-30-24, and the rules promulgated thereunder.

(b) *Unauthorized dumps.* The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined, and enforced upon and regulated as provided in this article generally, and Section 22-27-11, specifically.

(c) *Vermin controls.* Rodents and insects of public health importance, including, but not limited to, rats, flies, and mosquitoes shall be controlled in a manner consistent with the administrative rules of the Board of Health and the department, and the closure of any unauthorized dump where deemed necessary by the health officer and the department, shall be accompanied by an adequate vermin eradication program to prevent the spread of vermin to nearby properties.

§ 22-27-5. Authority of localities to establish charges, fees, etc., and enter into mutual agreements or contracts; approval of department; licensing of private or corporate agencies; permits and bonds; nonpayment of fees, etc.

(a) *Fees, etc.; mutual agreements or contracts.* The county commission or municipality undertaking the responsibility for providing services to the public under this article may establish fees, charges and rates and may collect and disburse funds within cooperating areas or districts, inside or outside the corporate limits of municipalities or inside or outside of county boundaries, for the specific purpose of administering this article and providing and operating a solid waste program. Also, said county commission or public authority may enter into mutual agreements or contracts with the government bodies of other counties, municipalities, corporations or individuals, where deemed to be mutually economical and feasible, to jointly or individually collect, haul and/or dispose of solid wastes generated within the cooperating area. All contracts or mutual agreements under this article shall be subject to review by the health officer, and all such contracts and agreements shall be subject to cancellation upon 30 days' notice from said health officer with the concurrence of the department, any time said contracts or agreements fail to be in the best interest of the health, safety and welfare of the citizens residing in the affected area.

(b) *Private or corporate agencies.* Individuals, corporations, partnerships or other agencies engaging in the collection and disposal of solid wastes are subject to this article. Governing bodies may assign territories, approve or disapprove disposal sites, with the concurrence of the health department, and shall establish and collect annual license fees from such firms and set rate schedules if a service fee is charged. In addition to any other approvals which are necessary for any contract between private or corporate agencies and governmental entities for the disposal of solid wastes, approval of the department shall be obtained.

(c) *Permits and bonds.* Under subsection (b) of this section, no license shall be granted or fee collected without a permit issued by the state or county health department, renewable annually at the time licenses are due. Such permit shall be based upon performance and may be revoked for cause, including failure to perform under the provisions of this article and regulations adopted under authority of this article. No license shall be granted without the posting of a performance bond satisfactory to the governing body. All solid waste disposal sites except those which have certificates of exception shall have a permit from the department.

(d) *Financial assurance.* No permit for transportation of garbage by out-of-state transporters, for disposal of such garbage in a sanitary landfill in this state, shall be issued unless financial assurance is posted by such transporter with the health department.

The financial assurance shall be in an amount not less than \$250,000 and must guarantee that such garbage does not contain any regulated hazardous waste, infectious waste, or explosive materials or debris. The financial assurance shall be provided in accordance with acceptable financial assurance instruments which include but are not limited to an escrow account, performance bond, or letter of credit. The health department shall promulgate regulations specifying the terms and conditions of financial assurance instruments, as appropriate.

(e) *Nonpayment of fees, etc.* Any county commission or municipality establishing fees, charges and rates pursuant to subsection (a) of this section shall have the power and authority to adopt resolutions or ordinances providing that if the fees, charges or rates for the services furnished by the county commission or municipality, or licensee of either, under the provisions of said chapter, shall not be paid within 30 days after the same shall become due and payable, such county commission or municipality may, at the expiration of such 30-day period, suspend such services or may proceed to recover the amount of any such delinquency with interest in a civil action, or both.

§ 22-27-5.1. Tipping fee for use of certain county landfills.

(a) Notwithstanding any other provision of law, any county having a population of 25,000 inhabitants or less, according to the 1990 federal decennial census, which voluntarily operates a landfill as defined in Section 22-27-2(12), may charge a tipping fee for use of the county landfill. The county may deposit any or all of the tipping fee in the county general fund to be used for county general purposes. This section shall not be construed to grant any solid waste disposal

authority or unit of local government the authority to impose a tipping fee on the processing, treatment, or disposal of solid waste at a privately-owned or privately-operated solid waste facility.

(b) The provisions of this section are remedial and shall be given retroactive effect for any time period for any county to which this section applies and which has operated a county landfill for inert solid waste.

§ 22-27-5.2

(a)(1) Notwithstanding any provision of law, until May 31, 2014, neither the department nor any state or local agency may grant any new permits to a new public solid waste landfill facility which is intended to receive waste not generated by the permittee.

(2) The moratorium period is necessary in order to allow the department and the Alabama Department of Public Health to review their duties and responsibilities pursuant to the Solid Wastes and Recyclable Materials Management Act. As appropriate, following this review, the department, with input from the Alabama Department of Public Health, shall make recommendations for necessary legislation or undertake rulemaking to implement enhancement identified during the review period.

(3) For the purpose of evaluating solid waste landfill management issues facing the state and to allow for the update of the state's comprehensive solid waste management plan to identify and provide for the state's solid waste management needs, there is imposed a moratorium on the issuance by the department of any new permits for new public solid waste landfills which are intended to receive wastes not generated by the permittee as further qualified in subsection (b). The moratorium shall not apply to industrial landfills receiving waste generated in-state only by the permittee.

(b) The moratorium restriction provided in subsection (a) applies only to any proposed public solid waste landfill facility that has not received its final approval within the department solid waste landfill permitting process and shall include proposed facilities which will meet, upon completion, any of the following criteria regarding capacity, site acreage, or location.

(1) A proposed capacity in excess of 1,500 tons per day.

(2) A proposed capacity of 2,000 cubic yards per day or more.

(3) A site consisting of 500 acres or more.

(4) When combined with existing or proposed public solid waste landfill facilities located within the same county or counties or within 20 miles thereof, a capacity or site which exceeds the minimum amounts set forth in subdivision (1), (2), or (3).

(5) A proposed capacity by a new public solid waste landfill which will be more than that reasonably anticipated in the foreseeable future as identified in the local solid waste management plan for the communities located within the county in which the facility is to be located or within 20 miles of the facility.

(c) The director may waive the limitation imposed by this moratorium for a particular facility upon a finding based upon a joint recommendation by the State Health Officer and the respective host government. The request for waiver shall be initiated by resolution of the governing body of the jurisdiction which recognizes a potential crisis in solid waste management by public solid waste landfills in the jurisdiction. The resolution shall be adopted at a public meeting of the governing body following publication of at least one notice in a newspaper of general circulation in the area at least 10 days prior to the meeting. The resolution shall request the State Health Officer and the respective host government to determine if the situation poses a threat to human health or the environment within the jurisdiction based upon substantive criteria to be established jointly by the department, the State Health Officer, and the respective host government. In the event the State Health Officer and the host government so certify, the moratorium may be waived and the director may issue a permit for the limited purpose of serving the service area or jurisdiction identified.

§ 22-27-6. Authority to adopt resolution or ordinance; rules and regulations; noncompliance as public nuisance; citation; court proceedings.

(a) The county commission may by resolution or ordinance provide for the orderly collection of fees charged under the provisions of this article. Such commission may establish periodic payment systems and is authorized to purchase necessary supplies and materials and employ personnel necessary to effectuate any such periodic payment system. Such periodic payment system may be effected by the county through negotiation with any one or more public or private utilities providing service in the county for the periodic billing of such fees and the collection thereof on behalf of the county by one or more such utilities. Any delinquency in any such payment shall constitute a violation of this article and entitle the county to pursue any remedy provided in this article. The county may agree to pay reasonable compensation to any such utility for its services in connection with the collection and payment to the county of all such sums so collected. The county commission shall adopt such rules and regulations as it deems necessary to implement the provisions of this article.

(b) Whenever the solid waste officer shall find that any person, household, business, industry or any property owner has failed to subscribe to the county solid waste collection program and pay the required solid waste collection and disposal fees or has failed to obtain a certificate of exception in violation of this article such failure shall constitute a public nuisance. The solid

waste officer shall thereupon cite such delinquent to appear before the solid waste officer within 10 days at the courthouse of the county in which the citation is issued and to show cause why subscription has not been made, such fees have not been paid or an exemption has not been obtained and, at the same time, shall file with the county commission a copy of such citation showing service on the delinquent. Should such delinquent appear timely before the solid waste officer and cannot give satisfactory proof that he has obtained a certificate of exception such officer shall cause the delinquent to subscribe to the solid waste collection and disposal program and pay the required fees. If such delinquent shall fail or refuse to subscribe to such program and pay such fees, the solid waste officer shall institute or cause to be instituted proceedings as provided in Section 22-27-7 against such delinquent before any court having jurisdiction of such offense. Should such delinquent fail to appear before the solid waste officer within the time allowed such officer shall institute or cause to be instituted proceedings as provided in Section 22-27-7 against such delinquent before any court having jurisdiction of such offense.

§ 22-27-7. Supervision and regulatory control; rules and regulations; penalty for violation of article.

With regard to the collection of solid wastes, the health department shall exercise such supervision over equipment, methodology and personnel in the management of solid wastes as may be necessary to enforce sanitary requirements, and the state and county boards of health may adopt such rules and regulations as may be needed to specify methodology and procedures to meet the requirements of this article. With regard to the disposal of solid wastes, the department shall exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of the department, and the department may adopt such rules and regulations as may be needed to meet the requirements of this article. Any person violating any provision of this article or any rule or regulation made pursuant to this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50.00 nor more than \$200.00, and, if the violation or failure or refusal to obey or comply with such provision of this article or such rule or regulation is a continuing one, each day's violation shall constitute a separate offense and shall be punished accordingly. Any person, firm or corporation granted an exception under subsection (g) of Section 22-27-3 who or which fails to carry out and comply with the provisions of the proposals embodied in the application and plan upon which a certificate of exception was issued to him or it shall be guilty of a misdemeanor and shall be punished as provided in this section. Any person, firm or corporation which has not been issued a certificate of exception under subsection (g) of Section 22-27-3 and which utilizes the solid waste disposal system of any county or municipality and which fails to pay the fee, rate or charge established by the county commission or municipal governing body therefor shall be guilty of a misdemeanor and shall be punished as provided in this section. All citations to violators of this

article shall be served by any lawful officer or by the solid waste officer.

§ 22-27-8. Financial assurance.

(a) All persons having or requesting a permit for the operation of a municipal solid waste landfill shall establish and maintain financial assurance for proper closure, post-closure care, or corrective action in the form and amount the department specifies by regulation. This requirement is applicable to all municipal solid waste landfills required by federal law or regulations to demonstrate such assurance.

(b) All municipal solid waste landfills permitted or to be permitted by the department shall submit financial assurance forms and supporting documents to the department, and such forms and documents shall establish that there is funding to the appropriate levels required by department regulation. The financial assurance mechanism shall be maintained for the life of the municipal solid waste landfill, and for a period of not less than 30 years after closure, unless the owner or operator demonstrates to the director that a period less than 30 years is sufficient to protect human health and the environment and the director approves this demonstration, or the solid waste is removed and the department determines that no waste or contamination remains at the site. The department may extend post-closure care or corrective action periods for longer than 30 years when necessary to protect human health and the environment.

(c) The financial assurance and requirements established by the department pursuant to this section shall in all respects comply with Environmental Protection Agency rules and regulations regarding closure, post-closure care, or corrective action for a municipal solid waste landfill. In no event shall the department require financial assurance or other requirements pursuant to this section which are more stringent than the Environmental Protection Agency requirements in effect at the time.

(d) The department may adopt rules necessary to implement this section.

§ 22-27-9. Authority of Department of Environmental Management and Department of Public Health.

(a) The Department of Environmental Management shall be the agency with primary regulatory authority over the management of solid waste in the state, except for the collection and transportation of nonhazardous and nonmedical solid waste. The department may exercise the regulatory authority over the permitting and operation of solid waste management facilities necessary to enforce the requirement and purposes of this article.

(b) The Alabama Department of Public Health shall have primary regulatory authority over the collection and transportation of solid waste, excluding medical waste and hazardous waste, the management of sanitary waste in septic tanks, excluding landfill disposal, and the management of collection activities including, but not limited to, the provision of collection services by county and municipal governing bodies, participation in local collection systems, the temporary retainment of solid waste on the generator's own property, not constituting storage, and any containers, or container systems used in the collection of solid waste, such as bulk refuse receptacles, dumpsters, roll-off containers, and household collection carts. The State Board of Health may adopt rules necessary to enforce the requirements of this article.

(c) The State Health Officer and the Director of the Alabama Department of Environmental Management shall ensure that their responsibilities under Article 1 are consistently and equitably applied.

§ 22-27-10. Control of unauthorized dumping; open burning; construction with other rights and remedies.

(a) Solid waste shall be collected, transported, disposed, managed, or any combination thereof, according to the requirements of this article, and the rules of the department or the health department, as authorized by this article, and if disposed of in this state, shall be disposed in a permitted landfill or permitted incineration, or reduced in volume through composting, materials recovery, or other existing or future means approved by and according to the requirements of the department, under authorities granted by this article.

(b) The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article. In addition to other remedies which are available, an unauthorized dump may be enjoined through an action in the circuit court having jurisdiction over the property in which the violation occurred. In addition to any fines, penalties, and other remedies set forth herein, any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump; an innocent landowner, as further detailed by department rules, shall have access to the Solid Waste Fund to pay for reasonable or actual costs of investigation, required cleanup, and closure of the dump, subject to a ranking system established by the department through rules. Landowners shall cooperate with local governments and/or the department in stopping

unauthorized dumping and removing the waste or otherwise closing an unauthorized dump in accordance with this article, and where applicable, the rules of the department. Innocent landowners who do not participate in the creation or operation of an unauthorized dump, and who have not contributed to the unauthorized dump shall not be liable for any fines, costs, actions, punishments, sanctions, or penalties under this article if they are part of the site ranking system established in accordance with department rules to use the Solid Waste Fund to remove the waste or otherwise close the unauthorized dump in accordance with this article and rules of the department with reasonable diligence after written notice. Unless excepted, each landowner shall be liable for applicable fines, penalties, and sanctions under this article if he or she fails to remove the waste or otherwise close the unauthorized dump with reasonable diligence after written notice. It shall be unlawful for any person to fail to comply with an administrative order from the department or, unless excepted, to knowingly or intentionally abandon an unauthorized dump without either removing the waste or otherwise closing the unauthorized dump in accordance with this article and the rules of the department. The sale or lease of land does not constitute an abandonment within the meaning of this section, however, the purchaser or lessee shall not be considered an innocent landowner.

(c) Open burning at a solid waste management facility is prohibited except as necessary to respond to emergencies and pursuant to a restricted burning approval issued by the department. Approved open burning operations must also comply with all applicable federal, state, and local air pollution control laws and regulations.

(d) The permittee shall be responsible for the compliance of a permitted facility with all applicable rules notwithstanding the performance of compliance-related duties by independent contractors or agents.

(e) No provision of this article and no rule promulgated under the authority of this article shall be construed to be a limitation on any of the following:

- (1) The power of a municipality or county to declare, prohibit, or abate public nuisances; provided no municipality, county, or solid waste authority utilizes or adopts definitions related to any of the subjects or activities contained within Article 1 that are not consistent with the definitions contained in Section 22-27-2, as may be amended from time to time.
- (2) The power of the Attorney General to bring an action in the name of the State of Alabama to enforce this article, including, but limited to, enjoin any public nuisance.
- (3) The power of any state agency in the enforcement or administration of any law it is specifically permitted or required to enforce or administer.
- (4) The right of any person to maintain at any time any appropriate action for relief against any private nuisance.

(f) Nothing contained in this article shall be construed in any way to abridge or alter civil or criminal rights of action or remedies now or hereafter existing. No provision of this article, or the granting of any permit under this article, or any act done by virtue of this article, shall be construed as prohibiting the state, counties, municipalities, or its citizens in the exercise of their rights from proceeding to suppress public nuisances, to abate any pollution now or hereafter existing, or to enforce any law. Nothing in this article shall be construed in any way to alter or abridge that authority granted under Chapter 3A, Title 11, commencing with Section 11-3A-1.

§ 22-27-11. Violations; penalties; administrative orders; injunctive relief.

(a) Any violation of this article, any rule promulgated under the authority of this article, any order issued under the authority, or any term or condition of any permit issued under the authority of this article is unlawful. In addition to any penalties lawfully assessed, any person committing a violation shall be liable for all costs of abatement of any pollution and correction of any public nuisance caused by the violation.

(b) The department may issue administrative orders under Section 22-22A-5 or initiate civil actions, or both, as it deems necessary against any person in the enforcement of this article, or any regulation promulgated or permit issued under the authority of this article.

(c) In addition to any other remedies provided in this article, the department or the health department may institute suit against any person for a violation of law or, whenever a public nuisance is threatened or exists, for an injunction to restrain a violation of this article, or the rules, standards, or orders adopted or issued under this article.

(d) In addition to any other remedies provided in this article, upon relation of the Attorney General or any district attorney, an action may be brought in a court of competent jurisdiction for an injunction to restrain any and all violations of this article, or the rules promulgated under this article, or to restrain any public nuisance or detriment to public health.

(e) Except as otherwise provided by law, other than administrative orders and notices issued by the department or the health department to enforce this article, all citations to violators of this article shall be served by any law enforcement officer or by the solid waste officer.

§ 22-27-12. Powers of department.

The department may do the following:

- (1) Adopt rules to implement this article.
- (2) Adopt rules establishing requirements and restrictions for the management of solid waste, excluding the collection and transportation of nonhazardous and nonmedical solid waste. The rules may include factors such as the characteristics of the solid waste, the potential for

contamination of soils, or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. With respect to solid waste disposal or materials recovery facilities, the rules may also include factors such as the quantity, nature, and origin of solid wastes and recovered materials to be managed. The department may condition the issuance of a permit for any solid waste management or materials recovery facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article. Permits shall be issued for a period of time based on design life of the facility and may include renewal periods as determined by rules and not inconsistent with federal law.

(3) Issue permits, notices, and orders to specify the terms and conditions of permits or notices, to conduct inspections, to require that records be established and maintained, to direct the abatement of unauthorized dumps or other public nuisances involving solid waste, and to implement the rules and standards adopted pursuant to this article.

(4) Require postclosure activities be conducted in accordance with the Alabama Uniform Covenants Act and the corresponding rules developed by the department.

(5) Require that solid waste management facilities identify the volumes and types of solid waste to be managed and the counties and state where such solid waste will be generated.

(6) Enter upon, during reasonable hours, all solid waste management and materials recovery facilities owned and operated by persons subject to this chapter to inspect, investigate, obtain samples, monitor, or observe the transfer, treatment, storage, or disposal of solid waste and recovered materials, and to examine or copy records to determine compliance with this article and the rules promulgated under this article.

(7) No later than two years after the effective date of the act adding this section, require that operators of all public solid waste management facilities be certified. The department shall, by rule or regulation, establish qualifications for certification programs, to include variance procedures for existing programs which meet the qualifications and taking into account the types of solid waste management facilities.

(8) Promote, initiate, conduct, and support research, demonstration projects, and investigations and participate in all state agency research programs pertaining to solid waste handling, disposal, materials recovery, and energy recovery systems.

(9) Promulgate rules to ban certain wastes from landfilling or incineration in order to protect the public health and environment and to promote recycling.

(10) Regulate the management, including collection and transportation of all medical waste, until such time as the United States Environmental Protection Agency may establish specific rules which are applicable within the state for infectious waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended.

(11) Do any and all other actions not inconsistent with this article or other state law which it deems necessary and proper for the effective enforcement of this article and the rules promulgated pursuant to it.

§ 22-27-13. Search warrants.

The department or any appropriate law enforcement agency may apply for, and any judge of a court of record may issue, an appropriate search warrant necessary to achieve the purposes of this article within the court's territorial jurisdiction. The warrant shall be issued upon probable cause.

§ 22-27-14. (Final placement and text of 2008 legislation is subject to editorial action of the Code Commissioner) Commencement of actions.

Notwithstanding any other law to the contrary, actions to correct any violations of this article, the rules promulgated under this article, or for civil or criminal penalties under this article shall be commenced within a period of four years from the date the offense is discovered by the department or other enforcing agency or person.

§ 22-27-15. (Final placement and text of 2008 legislation is subject to editorial action of the Code Commissioner) Establishment and review of reduction goals.

(a) No later than 18 months after the effective date of the act adding this section, the department shall establish, by rule, a goal for the percentage, on a statewide basis only, of the reduction in the amount of household and commercial solid waste and the time frames for that reduction. Reduction, by means including, but not limited to, recycling, source reduction, waste minimization, reuse, and composting shall be determined at public solid waste disposal or incineration facilities on a statewide, per capita basis. In order to evaluate the statewide efforts, the department shall adopt rules for the determination of the base year data, and reporting requirements by local governing bodies and public solid waste disposal or incineration facilities, to include both the quantity and origin of the solid waste disposed or incinerated at such facilities. Notwithstanding anything herein to the contrary, the reduction goals shall emphasize activities prior to the delivery of solid waste to public solid waste disposal or incineration facilities, unless reduction activities are provided on the site of the solid waste disposal or incineration facility under an agreement between the generator or collector of the solid waste and the solid waste disposal facility.

(b) Every three years after the implementation of subsection (a), the director shall review the solid waste reduction activities of the state and determine whether the reduction goal established pursuant to this section should be modified by future rulemaking.

(c) In determining the minimum solid waste reduction goals, the department may consider factors such as local collection and disposal costs, solid waste composition, the population density of counties or municipalities, and the distance to available markets for recovered materials.

§ 22-27-16. (Final placement and text of 2008 legislation is subject to editorial action of the Code Commissioner) Ownership and disposition of recovered materials.

Notwithstanding any other law or any provision of Article 1 to the contrary, a generator of recovered materials owns those materials until such time as the generator may voluntarily relinquish ownership of those materials. The generator may not be prohibited from selling, conveying, or arranging for the transportation of recovered materials to a recycler or recovered materials processing facility for reuse or recycling, nor preventing a recycling company, recovered materials processing facility, or nonprofit entity from buying, accepting, collecting, or transporting recovered materials from a buy-back center, drop-box, or from any generator of recovered materials.

§ 22-27-17. (Final placement and text of 2008 legislation is subject to editorial action of the Code Commissioner) Disposal fees; disposition of funds; exemptions; review of records; biennial report.

(a) Beginning on October 1, 2008, the following disposal fees are levied upon generators of solid waste who dispose of solid waste at solid waste management facilities permitted by the department subject to this chapter, which shall be collected in accordance with subsection (b):

- (1) One dollar (\$1) per ton for all waste disposed of in a municipal solid waste landfill.
- (2) One dollar (\$1) per ton or twenty-five cents (\$0.25) per cubic yard for all waste disposed of in public industrial landfills, construction and demolition landfills, non-municipal solid waste incinerators, or composting facilities, which receive waste not generated by the permittee.
- (3) Twenty-five cents (\$0.25) per cubic yard for all waste disposed of in a private solid waste management facility, not to exceed one thousand dollars (\$1,000) per calendar year.
- (4) Regulated solid waste that may be approved by the department as alternate cover materials in landfills shall be assessed the disposal fees applicable in subdivisions (1) and (2) above.
- (5) Regulated solid waste received from out-of-state for disposal at public solid waste facilities permitted by the department shall be assessed the same disposal fees applicable in subdivisions (1) and (2) above, to be collected by the operator of the solid waste facility and remitted in accordance with subsection (b).

(b) Unless exempted under subsection (e), operators of permitted solid waste disposal facilities shall assess the disposal fees levied in subsection (a) on generators of all waste as the waste is delivered to solid waste facilities and shall collect and remit the disposal fees on all wastes received at the facility to the Department of Revenue on a quarterly basis not later than the 20th day of January, April, July, and October. Any sums collected from a generator that purports to be collected due to this section shall be paid to the Department of Revenue. The owner or operator shall certify to the Department of Revenue the volumes of solid waste received for disposal. The Department of Revenue may retain one percent of the solid waste fees collected as an administrative collection allowance. All owners and operators collecting the solid waste fee established in this section may retain four percent of the total solid waste fees collected at their

facility as an administrative collection allowance.

(c) The Department of Revenue shall transfer each month all funds collected from this section less its administrative collection allowance as follows:

(1) Twenty-five percent of fees collected shall be paid to the State Treasury to the credit of the Alabama Recycling Fund (ARF), which is hereby created, to be used by the department exclusively to provide grants to local governments, authorities, and nonprofit organizations for use in developing, implementing, and enhancing local recycling, reuse and waste minimization projects and programs. Such grants shall be awarded annually by the department in accordance with rules adopted pursuant to this article. The ARF is authorized to receive funding from other sources including interest generated by the fund, grants, allotments, and contributions whether public or private.

In addition to any other appropriations provided by law to the Alabama Department of Environmental Management, there is hereby appropriated from the Alabama Recycling Fund in the State Treasury to the department for the fiscal year ending September 30, 2009, all amounts described in this subdivision (1).

(2) Twenty-five percent of the fees collected shall be paid to the State Treasury to the credit of the Solid Waste Fund (SWF), which is hereby created, to be used by the department to pay the costs of remediation, abatement, removal, or other actions related to the closure of unauthorized dumps and landfills, including, but not limited to, equipment, labor, supplies, materials, and professional services. The funds shall be disbursed according to rules adopted by the department and shall be carried out in accordance with any applicable state contracting requirements. The SWF is authorized to receive funding from other sources including interest generated by the fund, grants, allotments, and contributions, whether public or private.

In addition to any other appropriations provided by law to the Alabama Department of Environmental Management, there is hereby appropriated from the Solid Waste Fund in the State Treasury to the department for the fiscal year ending September 30, 2009, all amounts described in this subdivision (2).

(3) Forty-five percent of the fees collected shall be paid to the State Treasury to the credit of the Alabama Department of Environmental Management to be used exclusively to pay the costs of performing its duties under this article and to fund educational programs administered by the department on solid waste management, waste minimization, and recycling.

In addition to any appropriations provided by law to the Alabama Department of Environmental Management, there is hereby appropriated from the State Treasury to the department for the fiscal year ending September 30, 2009, all amounts described in this subdivision (3).

(d) Where operators of solid waste facilities have entered into fixed-price contracts for disposal of solid waste prior to the effective date of the act adding this article, the disposal fee collected by the solid waste facilities pursuant to subsection (b) shall not be considered part of the contract price for disposal.

(e) A waste hauler who has entered into a contract for transportation and disposal of solid waste

which is in effect on the effective date of the act, may recover amounts paid as a disposal fee pursuant to subsection (a) from the entity with whom the waste hauler has contracted under the procedure set out herein.

(1) On September 1, 2008, and each September 1 thereafter during the term of the contract, the waste hauler shall report to the entity with whom it has contracted the total tonnage transported under the terms of the contract in the previous three month period or, at the option of the waste hauler, the previous twelve month period.

(2) The amount reported pursuant to subdivision (1) shall be converted into a monthly average tonnage, and the waste hauler may thereafter collect from the entity an amount equal to the average tonnage amount transported multiplied by the monthly disposal fee paid by the waste hauler pursuant to subsection (a).

(3) Effective October 1, 2008, the rates assessed to each customer serviced pursuant to the contract shall be adjusted in an amount equal to each customer's share of the amount paid to the waste hauler pursuant to subdivision (2).

(4) This subsection shall only apply to contracts in effect on the effective date of this act, and shall not apply to the renewal of an existing contract or to a contract executed on or after the effective date of this act.

(f) The following persons are exempt from payment of fees required by this article:

(1) Operators of industrial boilers, furnaces, and other processing equipment that burn solid waste generated on site for the purpose of fuel replacement or energy recovery and which are permitted by the department or by a local air pollution control agency.

(2) Operators of composting facilities which are owned by the Alabama Department of Corrections and which receive only wastes generated by Alabama Department of Corrections facilities and institutions or those composting facilities otherwise exempt from permitting as provided in rules promulgated by the department.

(3) Operators of industrial boilers, furnaces, and other processing equipment that burn scrap tires for the purpose of fuel replacement or energy recovery and are registered with the department as provided in rules promulgated by the department.

(4) Scrap tire processors who receive and process scrap tires and who are permitted by or registered with the department as provided in rules promulgated by the department, except that a solid waste disposal facility permitted as a scrap tire processor shall collect the fee on all waste disposed of in its landfill.

(g) The department or the Department of Revenue may review or audit all records of wastes received for disposal at each solid waste disposal facility to determine compliance with this article. Further, the Department of Revenue shall perform the following duties:

(1) Collect and administer the fees imposed in this chapter in accordance with Chapter 2A, commencing with Section 40-2A-1, of Title 40.

(2) Impose appropriate interest on any disposal fees paid after the due date in accordance with Section 40-1-44.

(3) Promulgate and enforce rules to effectuate the reporting, collection, and payment of disposal fees established by this article. All rules promulgated shall have the same force and effect of law.

(4) Share information, data, reports, or documentation related to the collection and administration of the disposal fees imposed by this article with the department for the purpose of administering the provisions of this article, notwithstanding any provisions of law requiring confidentiality.

(h) All fees, interest, or other income distributed under this section shall only be used for the purposes specified in this chapter. Any unexpended funds during a budget year shall be carried over to the subsequent budget year and added to the subsequent year's distribution.

(i) The department shall, on or before January 20, 2011, and biennially thereafter, transmit a report to the Alabama Environmental Management Commission, the Legislature, and the Governor concerning the implementation of this article for the preceding two fiscal years. Each biennial report shall include the following information:

(1) The amount of solid waste disposed of at solid waste facilities in the state.

(2) The amount of disposal fees collected under this article.

(3) How funds generated by this article were expended for the previous fiscal years.

(4) The activities and accomplishments of the department in implementing this article.

§ 22-27-18. Solid Waste Fund; Alabama Recycling Fund.

(a) There are established separate special revenue trust funds in the State Treasury to be known as the Solid Waste Fund (SWF) and the Alabama Recycling Fund (ARF). These funds shall be used for the purposes set forth in this article and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government, it being the intent of the Legislature that these funds and their increments shall remain intact and inviolate for the purposes set out in this article. Any interest or earnings on the funds shall be credited only to the funds.

(b) The funds shall be audited annually by the Department of Examiners of Public Accounts.

(c) No funds shall be withdrawn or expended from the funds created in subdivision (a) above except as budgeted and allotted according to Sections 41-4-80 to 41-4-96 and 41-19-1 to 41-19-12 Code of Alabama 1975, and only in amounts as stipulated in the general appropriations act or other appropriation acts.

Article 3. Solid Waste Management Plan. § 22-27-40. Legislative findings.

The Legislature finds that:

(1) The state, its subdivisions and the nation face an emerging crisis in solid waste management;

- (2) Proper waste management is an increasingly complex issue involving the need for reducing the volumes of waste requiring disposal, properly managing wastes to reduce the likelihood of both short-term and long-term threat to human health and the environment, and assuring that adequate, environmentally secure, waste management and disposal facilities will be available at reasonable costs to accommodate wastes generated in the state;
- (3) Provision for necessary systems, facilities, technology and services for solid waste management and resource recovery is a matter of important public interest and concern, and action taken in this regard will be for a public purpose and will benefit the public welfare;
- (4) Solid waste management problems are potentially statewide in scope and necessitate state and local action through the development and implementation of comprehensive long-range plans for solid waste management which recognize the conditions in the state now and those which can be expected in the foreseeable future, and which serve to assure that the state as a whole and local jurisdictions in particular will meet their long-term solid waste management needs;
- (5) Proper planning for solid waste management must include the evaluation of facility sites based on a broad group of factors including, but not limited to, environmental conditions, local needs for waste management, social and economic impacts on the host community, the availability and impact on public services, and the consistency of a proposed facility with any final solid waste management plan;
- (6) Proper solid waste management planning also should provide leadership in the application of new and improved methods and processes to reduce the amount of solid waste that must be disposed of and to promote environmentally acceptable and economically sound solid waste management;
- (7) The failure or inability to economically recover and recycle materials and energy resources from solid waste results in the unnecessary waste and depletion of natural resources;
- (8) The landfill disposal of solid waste, even under the most ideal conditions, has the potential to create long-term pollution and environmental degradation;
- (9) Current conditions and pending federal regulatory requirements likely will increase the costs of landfill disposal, prompt the closure of many landfills in the state and likely change the methods of solid waste management in the state away from the present system of management by individual cities and counties and toward the development of larger facilities which must be capable of meeting the needs of several jurisdictions. Given this evolving situation, the Legislature concludes that a concerted solid waste management planning program is essential to address the imminent and future needs of the state;
- (10) The absence of comprehensive planning will result in the random, haphazard siting of waste disposal services without relation to the actual needs of particular localities in the state, and therefore, to assure that the comprehensive planning required herein is most effective, the permitting of new facilities and the modification of permits for existing facilities should occur only after the comprehensive plans are in place. In the interim new permits or modifications should be issued only to prevent human health or environmental threats in the particular jurisdiction in the state to be served by the facility;

(11) Publicly owned solid waste management facilities are public resources of limited and finite capacity which the state, as guardian and trustee for its people, has the right and the obligation to preserve for the present and future use of its people; and

(12) The state or local governments, by creating and operating solid waste management facilities are participants in the solid waste facility services market and have entered that market for the purpose of serving the citizens of this state.

§ 22-27-41. Legislative purpose.

The purpose of this article is to protect the public health and the state's environmental quality and to serve the public by recognizing the responsibilities of units of local government for the orderly management of solid wastes generated within their jurisdictions, and to require that decisions about the management of solid wastes shall be based on comprehensive local, regional and state planning. The terms and obligations of this article shall be liberally construed to achieve remedies intended.

§ 22-27-42. Legislative intent.

In furtherance of the policies and purposes set forth herein, it is the intent of this legislation:

(1) To develop an integrated system of planning for solid waste management in the state by local governments, regional planning commissions and the department;

(2) To put in place the necessary procedures so that an effective and integrated statewide network of solid waste management facilities may be planned, developed and operated for the benefit of the people of the state;

(3) To assure that solid waste management planning and implementation activities should, to the extent economically feasible, encourage:

a. Reduction of the amount of source waste generated;

b. Source separation and recycling; and

c. Waste processing such as the utilization of a waste-to-energy technology to reduce the volume of waste necessary for land disposal.

(4) To facilitate the siting of solid waste management facilities as required to meet present and projected state and local needs;

(5) To facilitate the reduction of solid waste volumes within the state;

(6) To foster and encourage recycling of solid wastes as an alternative to disposal;

(7) To assure public involvement in the development and implementation of plans for the management of solid wastes;

(8) To encourage private industry to continue to play a key role in the state's solid waste management programs;

(9) To assure that solid waste management facilities and services are provided to state residents in a manner which assures their availability at reasonable costs; and

(10) To assure that the creation, licensing, and operation of landfill solid waste disposal facilities should be limited to what is reasonably required to service the needs of the inhabitants and

businesses of this state, having regard for alternative technologies for waste reduction, management and disposal.

§ 22-27-43. Definitions.

All terms used in this article shall be defined as such terms are defined in Section 22-27-2.

§ 22-27-44. Solid Waste Management Advisory Committee.

There is hereby created a twelve member Solid Waste Management Advisory Committee to advise on the development of the solid waste management plan. The committee members shall be named as follows: two representatives designated by the Governor who shall be private citizens and who shall have been residents of the state for at least two years; two representatives designated by the State Health Officer; two representatives designated by the board of directors of the Association of County Commissions of Alabama; two representatives designated by the board of directors of the Alabama League of Municipalities; one member of the Alabama Environmental Management Commission selected by the commission; one representative from the Alabama Chapter of the Government Refuse Collection and Disposal Association selected from its membership by its board of directors; president of the Alabama Conservancy; and the chairman of the committee who shall be the chief of the Solid Waste Branch of the Department of Environmental Management. Said committee shall meet as necessary and shall advise the director of the Department of Environmental Management regarding the general development of the solid waste management plan and about such other specific matters as he shall bring to the committee's attention. Committee members shall serve without pay, but shall be reimbursed by the department for their actual expenses.

§ 22-27-45. State Solid Waste Management Plan.

The Director of the Alabama Department of Environmental Management, with the advice and consultation of the Solid Waste Management Advisory Committee, is directed to prepare a State Solid Waste Management Plan. In developing the state plan, the department will seek to achieve the following goals:

- (1) That solid waste facilities and management systems are provided for in an orderly manner consistent with the needs and plans of the state and its regions and local governments;
- (2) That alternative methods of solid waste management are encouraged as a means of reducing the state's dependence on landfilling;
- (3) That all aspects of local, regional and state planning, zoning, population estimates, and economics are taken into consideration; and
- (4) That appropriate time schedules are set for the phasing in of the required component parts of the system. Said plan shall be developed in two phases:

a. The first phase of the plan shall be developed prior to the development of the local plans required herein and shall serve as a guide for the local plans. Within 180 days of May 16, 1989, the department shall complete the first phase of the plan which shall, at a minimum:

1. Summarize, using available information, the number, location, current usage, and life expectancy of all permitted solid waste management facilities in the state including without limitation all landfills, sanitary landfills, incinerators, transfer stations, processing facilities and resource recovery facilities;
2. Estimate, using acceptable averaging methods, the general volumes of solid waste expected to be generated in the state per year. After approval of all local plans as provided elsewhere herein, revise and periodically amend these estimates to reflect conditions as reflected in approved local plans;
3. Establish objectives, methods and goals to encourage solid waste reduction, recycling, reuse, and minimization, such objectives to include proposed regulations or legislation to implement a statewide goal of a 25 percent waste reduction and recycling program;
4. Identify alternative means to provide for waste management and disposal capacity assurance within the state;
5. Establish criteria to be used by local governments for the identification of potential locations for solid waste management facilities in the jurisdiction or region.

Such criteria shall at a minimum require consideration of the following:

- (i) The unit of local government's solid waste management needs as identified in its plan;
 - (ii) The relationship of any potential location to planned or existing development or the absence thereof, to major transportation arteries and to existing state primary and secondary roads;
 - (iii) The relationship of any potential location to existing industries in the jurisdiction or state that generate large volumes of solid waste, or the relationship to areas projected by the state or the local regional planning and development commission for development of industries that will generate large volumes of solid waste;
 - (iv) The costs and availability of public services, facilities and improvements which would be required to support a facility in this location and protect public health, safety and the environment;
 - (v) The potential impact a facility in any potential location would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety; and
 - (vi) The social and economic impacts that any proposed location would have on the affected community, including changes in property values and social or community perception.
6. Develop forms for use by local governments in completing their own plans.

b. The second phase of the plan shall be developed as the individual plans of local governments are approved by the department. It shall be the purpose of this phase to incorporate the local plans and to develop a final master plan for solid waste management in the state. This phase shall, at a minimum:

1. Revise all estimates and summaries contained in the first phase of the state plan to reflect information contained in the approved local plans;

2. Based on estimates of need as developed herein, project waste volume capacity needs annually for a 10-year period for the state and for each regional planning commission region and each county therein;
 3. Based on the information developed in other parts of the plan, estimate and periodically revise said estimate of the number and type of solid waste management facilities which may be required to serve the future needs of the state and its local governments.
 4. Encourage alternative management techniques for solid wastes;
 5. Encourage the state's city and county jurisdictions to combine their efforts to manage solid wastes more efficiently;
 6. Evaluate existing service areas and evaluate the option of developing waste flow controls within the state;
 7. Develop policies and serve as a source of information for local jurisdictions regarding changing conditions in solid waste management;
 8. Make such other determinations and recommendations as the director shall deem necessary or appropriate in keeping with the findings and purposes of the Legislature set forth herein.
- c. Generally, the state's solid waste management plan shall be subject to amendment and periodic revision. Each periodic revision of the solid waste management plan may include:
1. A revised estimate of solid waste generation and disposal in the state projected for a 10-year period.
 2. The total amounts of solid waste generated, recycled, and disposed of, and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the plan is revised.
 3. An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.
 4. An evaluation of the success of each county or group of counties in meeting the local solid waste reduction goals.
 5. Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for local governments and state agencies to implement to meet the requirements of this article.
 6. An evaluation of the markets for recycled materials and the success of state, local, and private industry efforts to enhance the markets for such materials.
 7. Recommendations to the Governor and the Legislature to improve the management and recycling of solid waste in this state.
- d. At the completion of each phase of development of the State Solid Waste Management Plan and each subsequent revision, the plan, as revised, shall be adopted by the department as a final regulation in accord with applicable statutory procedures.

§ 22-27-46. Regional planning and development commissions.

- (a) Not later than six months from May 16, 1989, each regional planning and development commission in the state shall prepare and adopt a regional needs assessment evaluating solid waste management needs in their respective regions. This regional needs assessment shall be submitted to the department for information and review and shall be considered by units of local

government within the region in the development of their individual plans as required herein. Thereafter, the assessment shall be revised and submitted to the department and local governments in the region annually. The regional needs assessment shall include, at a minimum, the following:

- (1) An evaluation of the amount of solid waste generated within the region and the amount of remaining disposal capacity, expressed in years, at each solid waste disposal facility within the region;
- (2) An evaluation of the needs of all localities within the district as to the adequacy or inadequacy of solid waste collection, transportation and disposal within those localities;
- (3) A projection of the expected population and business growth in the region, including specific estimates of the types of businesses which may be entering and leaving the region and the resulting impact such changes will likely have on waste volumes generated in the region;
- (4) An evaluation of the environmental, economic and other relevant factors which would be implicated by acceptance of solid waste from beyond the boundaries of the region.

(b) In addition to the development of and periodic revision of an assessment of the region's solid waste management needs, each regional planning commission shall:

- (1) Evaluate, as necessary, the solid waste management needs of all local governments within their regions;
- (2) Formulate, as requested, recommendations to local governments on solid waste management issues including the feasibility of joint efforts within the region acting to develop and operate a solid waste management or disposal facility and foster cooperation on such matters;
- (3) Provide, upon request, assistance to local governments within the region to formulate their own plans for evaluating needs and providing adequate solid waste management within their jurisdictions; and
- (4) Serve as a clearinghouse for local governments in the region regarding solid waste management information.

§ 22-27-47. Local plans required.

(a) Each county and any municipality as described below shall submit to the department, within one and one-half years of May 16, 1989, a plan for the management of solid waste generated within its boundaries. A county's plan shall include the municipal jurisdictions within its boundaries except that any municipality may choose to submit its own solid waste management plan intended for implementation within its city limits and thereby be excluded from its county plan. Cities which do not choose to exclude themselves from their county's plan shall be responsible to share in the county's costs proportionately on a per capita basis. The content of all plans shall be consistent with the requirements of this article and every plan shall not become final until it has been officially adopted and approved pursuant to the requirements of this article. In the event a county or city does not submit a required plan or if said plan does not meet the minimum requirements set out in this article, the department shall prepare the plan which shall serve as the official county or city plan.

(b) Each plan shall at a minimum:

- (1) Describe and explain the general origin, and weight or volume of solid waste currently generated within the jurisdiction's boundaries. For purposes of this estimate the jurisdiction may use such information as is reasonably available, or may use accepted methods of estimation recommended by the department;
- (2) Identify current methods of collection and haulage of solid waste within the jurisdiction;
- (3) Identify and describe the facilities where solid waste is currently being disposed or processed and the remaining available permitted capacity of such facilities and the capacity which could be made available through the reasonable expansion of such facilities. The plan shall also explain the extent to which existing facilities will be used during the life of the plan and shall not substantially impair the use of their remaining permitted capacity;
- (4) Provide a description of current or planned recycling programs and an analysis of their impact on waste generated within the jurisdiction. Particularly regarding recycling, the plan shall describe and evaluate:
 - a. Potential benefits of recycling, including the potential solid waste reduction and the avoided cost of municipal waste processing or disposal.
 - b. Existing materials recovery operations and the kind and weight or volume of materials recycled by the operations, whether public or private.
 - c. The compatibility of recycling with other waste processing or disposal methods used in the jurisdiction including methods of collecting recyclables.
 - d. Options for cooperation or agreement with other jurisdictions for the collection, processing and sale of recyclable materials.
- (5) Address the requirements proposed under Subtitle D of the federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 as amended and identify and explain those actions the jurisdiction should take to assure proper management of its wastes under these requirements;
- (6) Propose procedures for the identification and elimination of unauthorized dumps in the jurisdiction;
- (7) Describe and explain the general origin and weight or volume of solid waste reasonably expected to be generated within the jurisdiction annually during the next 10 years. The assessment shall describe the primary variables affecting this estimate and the extent to which they can reasonably be expected to affect the estimate;
- (8) Provide for the development or expansion of solid waste management systems in a manner that is consistent with the needs of the area, taking into account planning, zoning, population and development estimates, and economics of the jurisdiction and the protection of air, water, land and other natural resources;
- (9) Identify any current agreements between the jurisdiction and other units of local government or public authorities for the joint use of solid waste processing or disposal facilities and evaluate the need for and feasibility of entering joint agreements in the future;
- (10) Identify any current contractual agreements with private entities for the collection, processing or disposal of solid waste and evaluate the need for and feasibility of entering into such agreements in the future;

(11) Identify the general location within a county where solid waste processing or disposal facilities and recycling programs may be located, and identify the site of each facility if a site has already been chosen. In identifying general locations for facilities in the plan, each jurisdiction shall consider at least the following:

- a. The jurisdiction's solid waste management needs as identified in its plan;
- b. The relationship of the proposed location or locations to planned or existing development, to major transportation arteries and to existing state primary and secondary roads;
- c. The relationship of the proposed location or locations to existing industries in the jurisdiction or state that generate large volumes of solid waste and to the areas projected by the state or local regional planning and development commission for development of industries that will generate solid waste;
- d. The costs and availability of public services, facilities and improvements which would be required to support a facility in this location and protect public health, safety and the environment;
- e. The potential impact a facility in the proposed location or locations would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety; and
- f. The social and economic impacts that a facility at the proposed location would have on the affected community, including changes in property values, community perception and other costs;

(12) For any facility expected to serve the jurisdiction's future needs that is located or is proposed to be located outside the jurisdiction, the plan shall explain in detail the reasons for selecting such a facility;

(13) The plan shall include such other information as the department may require by regulation.

(c) Counties may, by agreement with other counties, combine in the development of a joint solid waste management plan.

(d) The department and the local regional planning and development commission shall, upon request, provide assistance to any county or municipality in the development of their local plan.

(e) The plan shall be completed on forms provided by the department and in accordance with the provisions of this act and any regulations promulgated by the department.

(f) Prior to final adoption or amendment of a plan, the jurisdiction shall afford the public an opportunity to present data, views and arguments thereon, orally or in writing. The public comment period shall be no less than 30 days in length and shall include at least one public hearing. Notice of the public comment period shall be published at least once in a newspaper of general circulation in the jurisdiction and in the official gazette, if any, in the jurisdiction. Notice of the inclusive dates of the public comment period and the date of the public hearing may be combined in the same publication. Notice of the time and place of the public hearing shall be published at least 30 days, but not more than 45 days prior to the date of said hearing. Any published notice shall contain a brief description of the proposed plan, and shall identify a location where copies of the plan shall be available for inspection during normal business hours,

and shall also identify a contact person from whom interested persons can obtain additional information or copies of the proposed plan. The plan, including any revisions, subsequently submitted for adoption shall be accompanied by a document containing written responses to comments made during the comment period.

(g) The governing body of the jurisdiction shall adopt the final plan within 60 days from the end of the public comment period at an official business meeting open to the public.

(h) Upon completion and adoption of the local plan, it shall be submitted to the department for review and approval. Within 30 days after receiving a complete plan, the department shall approve, conditionally approve or disapprove it, unless the department gives written notice that additional time is necessary to complete its review. If the department gives such notice, it shall have 30 additional days to render a decision. The department shall approve any local plan that demonstrates to the satisfaction of the department that:

(1) The plan is complete and accurate and consistent with this article and regulations promulgated hereunder.

(2) The plan provides for the processing and disposal of municipal waste in a manner that is consistent with the requirements of the solid waste management act and the regulations promulgated pursuant thereto.

(3) The plan provides for the processing and disposal of local waste for at least 10 years.

(i) Each county and municipality with an approved solid waste management plan shall submit a revised plan to the department in accordance with the requirements of this article:

(1) At least three years prior to the time all remaining available permitted capacity for the jurisdiction will be exhausted, or

(2) When otherwise required by the department.

§ 22-27-48. Implementation of plans.

(a) In addition to any regulatory bodies, the governing body of a county or municipality has a responsibility for and the authority to assure the proper management of solid wastes generated within its jurisdiction in accord with its solid waste management plan. A governing body may assign territories and approve or disapprove disposal sites in its jurisdiction in accord with the plan approved for its jurisdiction. Such approval or disapproval of services or activities described in the local plan shall be in addition to any other approvals required from other regulatory authorities and shall be made prior to any other approvals necessary for the provision of such services, the development of a proposed facility or the modification of permits for existing facilities. The department may not consider an application for a new or modified permit for a facility unless such application has received approval by the affected unit of local government having an approved plan.

In determining whether to recommend approval of the proposed issuance of or modification of a

new or existing solid waste management site, the governing body shall consider each of the following:

- (1) The consistency of the proposal with the jurisdiction's solid waste management need as identified in its plan;
- (2) The relationship of the proposal to local planned or existing development or the absence thereof, to major transportation arteries and to existing state primary and secondary roads;
- (3) The location of a proposed facility in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste;
- (4) Costs and availability of public services, facilities and improvements required to support a proposed facility and protect public health, safety and the environment;
- (5) The impact of a proposed facility on public safety and provisions made to minimize the impact on public health and safety; and
- (6) The social and economic impacts of a proposed facility on the affected community, including changes in property values, and social or community perception.

The application of the plan for local approval shall be accompanied by an application fee payable to the local governing body in an amount equal to 20 percent of the application or permit fee required by the department, but local approval shall not apply to simple renewals of a permit which is to be otherwise unchanged. Further, there shall be no requirement for local review and approval of permit modifications for the limited purposes of changing liner and leachate collection design, changes in waste streams from within the facility's designated service area, changes in sequence of fill, changes to incorporate new technology and changes intended to bring a facility into compliance with statutes and regulations. A renewed application for local approval submitted within 18 months of an application being denied or rejected by the local governing body shall be accompanied by an application fee payable to the local governing body in an amount equal to 50 percent of the application or permit fee required by the department.

Any determination by the local governing body of the proposed issuance of or modification of a permit for a new or existing solid waste management site or the proposal to contract for any services described in the solid waste management plan, shall be made in a public meeting only after public notice of such application or proposal and an opportunity for public comment is provided.

In providing public notice of any application or proposal regarding any services described in the solid waste management plan, the local government shall at a minimum hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the jurisdiction. Furthermore, such notice shall be given at least 30 days but not more than 45 days prior to the proposed date of the hearing. Each notice published in compliance with this section shall contain at a minimum a description of the proposed action to be considered, its relevance to and consistency with the local solid waste management plan and shall identify a contact person

from whom interested persons can obtain additional information and can review copies of both the local plan and the application or proposal to be considered. All pertinent documents shall be available for inspection during normal business hours at a location readily accessible to the public. Within 90 days of receiving an application or proposal, the local governing body shall either approve the application or deny the application setting forth the reasons therefor. The failure of the local governing body to act on the proposal within 90 days of receiving the application shall constitute approval by the local governing body.

(b) Following local review and approval of any proposal regarding services or activities described in the local solid waste management plan, the applicant shall obtain a statement of consistency from the regional planning and development commission. Therein, the commission shall evaluate the proposal using the provisions of the current regional solid waste management needs assessment. In particular, the regional commission shall evaluate the proposal as it relates to available existing capacity within the region and the projected lifetime of such capacity. The evaluation shall also identify any proposed capacity which is in excess of expected regional needs. No statement of consistency shall be required for contracts exclusively for the collection or transportation of solid wastes.

(c) Plans required by this section shall not apply to industrial landfills receiving wastes generated on site only or by the permittee.

§ 22-27-49. Moratorium on issuance of permits.

(a) For the purpose of evaluating solid waste management problems facing the state and to allow for the development of comprehensive plans to identify and provide for the state's solid waste management needs, there is hereby imposed a moratorium on the issuance by the Department of Environmental Management of any new or modified permits or transfers of existing permits for solid waste management facilities which receive or are intended to receive wastes not generated by the permittee. Said moratorium shall not apply to industrial landfills receiving waste generated in state only by the permittee. Modifications for the limited purposes of changing liner and leachate collection design, changes in waste streams from within the facility's designated service area, changes in sequence of fill, and changes to incorporate new technology, or changes intended to bring a facility into compliance with statutes and regulations are specifically excluded from this moratorium. Said moratorium shall continue for a period of 24 months from May 16, 1989, or until the completion and adoption of the comprehensive state and local solid waste management plans required herein, whichever occurs first. The director is hereby authorized to waive the limitation imposed by this moratorium for a particular facility upon a finding based upon a recommendation by the State Health Officer and accompanied by a resolution from the host government. The request for waiver shall be initiated by resolution of the governing body of the jurisdiction which recognizes a potential crisis in solid waste management in the jurisdiction unless a permit application or modification for a facility intended to serve the area is approved. Said resolution shall be adopted at a public meeting of the governing body following publication of at least one notice in a newspaper of general circulation

in the area at least 10 days prior to the meeting. Said resolution shall request the State Health Officer to determine if the situation poses a threat to human health or the environment within the jurisdiction based upon substantive criteria to be established by rule of the State Board of Health. In the event the State Health Officer so certifies, the moratorium may be waived and the director may issue a permit or modification for the limited purpose of serving the jurisdiction or jurisdictions identified in the State Health Officer's certification.

(b) Any application approved by A.D.E.M. during the moratorium period pursuant to solid waste siting shall encourage recycling of said solid waste.

Article 4. Disposal of Waste Cooking Grease and Animal Byproducts.

§ 22-27-70. Definitions.

When used herein the following words and terms shall have meaning ascribed below unless the context clearly indicates otherwise.

(1) **COMMERCIAL ESTABLISHMENT.** Any food service establishment, retail food store, public or private school, food processing establishment, or other establishment where food is sold or offered for sale; or any establishment that slaughters, fabricates, bones, or processes animals, poultry, or fish, whether or not required by law to be licensed or permitted by an agency of the State of Alabama.

(2) **DISPOSE.** To discard or carry away, whether personally or by and through a contractor, and whether for the purposes of recycling, reuse, or reprocessing or for ultimate elimination.

(3) **INEDIBLE ANIMAL BY-PRODUCT.** Any bone, fat, offal, carcass, blood, skin, hide, tallow, lard, feather, horn, hoof, or any other solid by-product derived from any animal, poultry, or fish, as part of the operation of a commercial establishment; but not to include post-consumer waste from retail food service establishments or commercial kitchens.

(4) **WASTE COOKING GREASE.** Grease, fat, or oil, whether derived from plant or animal or any combination thereof, previously used in the cooking or preparation of food for animal or human consumption and is no longer suitable for such use.

§ 22-27-71. Disposal in approved manners.

All commercial establishments, except nonlicensed or permitted family farms, which produce waste cooking grease or any inedible animal by-product in the course of doing business shall dispose of such grease or by-product only in a manner approved by the agency granting a license or permit to operate the establishment, if applicable, or in any case in a manner approved by the Department of Agriculture and Industries, Department of Environmental Management, Department of Public Health, or local water and wastewater utilities, as appropriate.

§ 22-27-72. Compliance with Section 22-27-71.

Failure to comply with the provisions of Section 22-27-71 are grounds for the refusal of or suspension of a license or permit otherwise required by law.

§ 22-27-73. Violations of article.

Any person who violates the provisions of this article shall, upon conviction be guilty of a Class C misdemeanor.

Article 4A. Methods of Disposing Waste Cooking Grease and Animal By-products.

§ 22-27-90. Definitions.

When used herein the following terms shall have the following meanings:

- (1) **COMMERCIAL ESTABLISHMENT.** Any food service establishment, retail food store, limited food service establishment, limited retail food store, food processing establishment, or other place of business where food is prepared or sold or offered for sale, or any establishment that slaughters, fabricates, bones or processes animals, poultry, or fish, whether or not required by law to be licensed or permitted by an agency of the State of Alabama.
- (2) **DEPARTMENT.** The Alabama Department of Environmental Management as established by Section 22-22A-4.
- (3) **DISPOSE.** To discard or carry away, whether personally or by and through a contractor, and whether for the purposes of recycling, reuse, or reprocessing or for ultimate elimination.
- (4) **INEDIBLE ANIMAL BY-PRODUCT.** Any bone, fat, offal, carcass, blood, skin, hide, tallow, lard, feather, horn, hoof, or any other solid by-product derived from any animal, poultry, or fish, as part of the operation of a commercial establishment, but not to include, post-consumer waste from retail food service establishments or commercial kitchens.
- (5) **LICENSED, PERMITTED, OR REGISTERED RENDERER.** An establishment licensed, permitted, or registered by the Alabama Department of Agriculture and Industries to receive, transport, and process inedible animal by-products and waste cooking grease.
- (6) **TRANSPORT.** To carry or move from one location to another by way of public or private roads, whether personally or by and through a contractor.
- (7) **VEHICLE.** Every form of conveyance except those which by their very nature can have no application in, on, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks, provided, however, that for the purposes of this article, a bicycle or a ridden animal shall be deemed a vehicle.
- (8) **VIRGIN COOKING GREASE.** Grease, fat, or oil, whether derived from plant or animal or any combination thereof, intended for use in cooking or preparation of food for animal or human consumption that has not been previously used.

(9) WASTE COOKING GREASE. Grease, fat, or oil, whether derived from plant or animal or any combination thereof, previously used in the cooking or preparation of food for animal or human consumption and is no longer suitable for that use, but not to include interceptor or trap grease.

§ 22-27-91. Approved methods of disposal.

All waste cooking grease and inedible animal by-product produced in the course of doing business in commercial establishments, except nonlicensed or permitted farms, shall be disposed of by utilization of an approved method. Approved methods of disposal shall be limited to the following:

- (1) Discharging the waste cooking grease or inedible animal by-product into a municipal sewer when the receiving municipality has agreed in writing to accept the waste and under the conditions specified by the municipality.
- (2) Depositing the waste cooking grease or inedible animal by-product into a landfill approved by the department to receive the waste and under the conditions as shall be specified by the landfill permit.
- (3) Offering the waste cooking grease or inedible animal by-product for removal or transportation by a licensed, permitted, or registered renderer for the purposes of recycling.
- (4) Other methods of disposal approved by the appropriate state regulatory agency.

§ 22-27-92. Transport of cooking grease.

It is unlawful to transport waste cooking grease and virgin cooking grease on or in the same vehicle or to use in the preparation of food for human consumption virgin cooking grease which has been transported on or in the same vehicle as waste cooking grease.

§ 22-27-93. Compliance with article.

Failure to comply with the provisions of this article shall constitute grounds for the denial, suspension, or revocation of a license or permit otherwise required by law to operate the commercial establishment.

§ 22-27-94. Violations of article.

Any person who violates the provisions of this article shall, upon conviction, be guilty of a Class B misdemeanor.

Chapter 32. Southeast Interstate Low-Level Radioactive Waste Management Compact, § 22-32-1 through 22-32-9.

§ 22-32-1. Enactment of Southeast Interstate Low-Level Radioactive Waste Management Compact.

The Southeast Interstate Low-Level Radioactive Waste Management Compact is hereby enacted into law and entered into by the State of Alabama with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

Article I. Policy and Purpose

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

It is the policy of the party states to: enter into a Regional Low-Level Radioactive Waste Management Compact for the purpose of providing the instrument and framework for a cooperative effort, provide sufficient facilities for the proper management of low-level radioactive waste generated in the region, promote the health and safety of the region, limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and ensure the ecological and economical management of low-level radioactive waste.

Implicit in the congressional consent to this compact is the expectation by the congress and the party states that the appropriate federal agencies will actively assist the compact commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws; and
2. Imposing of sanctions against those found to be in violation of federal rules, regulations and laws; and
3. Timely inspection of their licensees to determine their capability to adhere to such rules, regulations and laws; and
4. Timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act as amended.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction:

- a. "Commission" or "compact commission" means the Southeast Interstate Low-Level Radioactive Waste Management Commission.
- b. "Facility" means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.
- c. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage or disposal of wastes with respect to such waste generated outside the region.
- d. "High-level waste" means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.
- e. "Host state" means any state in which a regional facility is situated or is being developed.
- f. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

- g. "Party state" means any state which is a signatory party to this compact.
- h. "Person" means any individual, corporation, business enterprise or other legal entity (either public or private).
- i. "Region" means the collective party states.
- j. "Regional facility" means (1) a facility as defined in this article which has been designated, authorized, accepted or approved by the commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.
- k. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.
- l. "Transuranic wastes" means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under Section 274 of the Atomic Energy Act of 1954.
- m. "Waste management" means the storage, treatment or disposal of waste.

Article III. Rights and Obligations

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit or abridge those rights.

- a. Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities, and additionally shall have the right of access to facilities made available to the region through agreements entered into by the commission pursuant to Article IV e.9. The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.
- b. If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the commission.

- c. Each party state must establish the capability to regulate, license and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the continued availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities, in accordance with the provisions of Article V, Section b.
- d. Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.
- e. Each party state must provide to the commission on an annual basis, any data and information necessary to the implementation of the commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligations herein defined.
- f. Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of wastes requiring disposal.

Article IV. The Commission

- a. There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ("the commission" or "compact commission"). The commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.
- b. Each commission member is entitled to one vote. No action of the commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.
- c. The commission must elect from among its members a presiding officer. The commission shall adopt and publish, in convenient form, bylaws which are not inconsistent with this compact.
- d. The commission must meet at least once a year and shall also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the commission must be open to the public.
- e. The commission shall have the following duties and powers:

1. To receive and approve the application of a nonparty state to become an eligible state in accordance with Article VII b; and
 2. To receive and approve the application of an eligible state to become a party state in accordance with Article VII c; and
 3. To submit an annual report and other communications to the Governors and to the presiding officer of each body of the Legislature of the party states regarding the activities of the commission; and
 4. To develop and use procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region; and
 5. To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities; and
 6. To develop and adopt within one year after the commission is constituted as provided for in Article VII, section d., procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the commission shall identify a host state for the development of a second regional disposal facility within three years after the commission is constituted as provided for in Article VII, section d. and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.
- In developing criteria, the commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic and ecological impacts on the air, land and water resources of the party states.
- The commission shall conduct such hearings; require such reports, studies, evidence and testimony; and do what is required by its approved procedures in order to identify a party state as a host state for a needed regional facility; and
7. In accordance with the procedures and criteria developed pursuant to Section e.6. of this article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility; and

8. To require of and obtain from party states, eligible states seeking to become party states, and nonparty states seeking to become eligible states, data and information necessary to the implementation of commission responsibilities; and

9. Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the commission, including an affirmative vote of both representatives of a host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facilities' capability to handle such wastes; and

10. To act or appear on behalf of the party state or states, only upon written request of both members of the commission for such state or states, as an intervenor or party in interest before congress, state legislatures, any court of law, or any federal, state or local agency, board or commission which has jurisdiction over the management of wastes. The authority to act, intervene or otherwise appear shall be exercised by the commission only after approval by a majority vote of the commission; and

11. To revoke the membership of a party state in accordance with Article VII f.

f. The commission may establish any advisory committees as it deems necessary for the purpose of advising the commission on any matters pertaining to the management of low-level radioactive waste.

g. The commission may appoint or contract for and compensate a limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the commission. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the commission. If the commission has a headquarters, it shall be in a party state.

h. Funding for the commission shall be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay \$25,000.00 to the commission which shall be used for costs of the commission's services.

2. Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

(a) Must be sufficient to cover the annual budget of the commission; and

(b) Must represent the financial commitments of all party states to the commission; and

(c) Must be paid to the commission, provided, however, that each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budgets of the commission.

3. The commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states, and must remit to the commission funds resulting from collection of such special fees and surcharges within 60 days of their receipt.

i. The commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of commission funds, and submit an audit report to the commission. Such audit report shall be made a part of the annual report of the commission required by Article IV e. 3.

j. The commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this paragraph together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the commission.

k. The commission is not responsible for any costs associated with (1) the creation of any facility, (2) the operation of any facility, (3) the stabilization and closure of any facility, (4) the post-closure observation, and maintenance of any facility, or (5) the extended institutional control, after post-closure observation and maintenance of any facility.

l. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within nonparty states when authorized by the commission pursuant to the provisions of this compact. After January 1, 1986, the commission may prohibit the exportation of waste from the region for the purposes of management.

m.1. The commission herein established is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and is liable for its actions. Liabilities of the commission shall not be deemed liabilities of the party states. Members of the commission shall not be personally liable for actions taken by them in their official capacity.

2. Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of wastes, owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

Article V. Development and Operation of Facilities

a. Any party state which becomes a host state in which a regional facility is operated shall not be designated by the compact commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the commission, to have a regional facility operated within its borders.

b. A host state desiring to close a regional facility located within its borders may do so only after notifying the commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that congress has materially altered the conditions of this compact.

c. Each party state designated as a host for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

d. No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its borders.

e. No party state shall be required to operate a regional facility longer than a 20 year period or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever event occurs first.

Article VI. Other Laws and Regulations

a. Nothing in this compact shall be construed to:

1. Abrogate or limit the applicability of any Act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under Section 274 of the Atomic Energy Act of 1954 in which a regional facility is located;
 3. Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact;
 4. Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article III, Article IV and Article V and shall be subject to any action lawfully taken pursuant thereto;
 5. Prohibit any storage or treatment of waste by the generator on its own premises;
 6. Affect any judicial or administrative proceeding pending on the effective date of this compact;
 7. Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions;
 8. Affect the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or federal research and development activities as defined in P.L. 96-573; and
 9. Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.
- b. No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.
 - c. Upon formation of the compact, no law or regulation of a party state or of any subdivision or any instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.
 - d. Restrictions of waste management at regional facilities pursuant to Article IV 1. shall be enforceable as a matter of state law.

Article VII. Eligible Parties, Withdrawal, Revocation, Entry into; Force, Termination

- a. This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.
- b. Any state not expressly declared eligible to become a party state to this compact in section a. of this article may petition the commission, once constituted, to be declared eligible. The commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section a. of this article.
- c. Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article IV h.1. The commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.
- d.1. The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV h. 1. shall immediately, upon the appointment of their commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the commission and implement the provisions of this compact.
2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of Section c. of this article.
3. The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, Section d. shall not become effective until the effective date of the import ban authorized by Article IV, Section 1. as approved by Congress. The Congress may by law withdraw its consent only every five years.
- e. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.
- f. Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only upon the affirmative vote of at least two-thirds of the commission members. Revocation of party state status may take effect on the date of the

meeting at which the commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the commission imposing the sanction.

The commission must, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the Governors, the presidents of the Senates, and the Speakers of the House of Representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

g. Any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the commission receives notification in writing from the Governor of such party state of the rescission of the compact. The commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the Governors, the Presidents of the Senates, and the Speakers of the House of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.

h. The right of a party state to withdraw pursuant to Article VII g. shall terminate no later than 30 days following the commencement of operation of the second host state disposal facility. Thereafter, a party state may withdraw only with the unanimous approval of the commission and with the affirmative consent of Congress.

i. This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

Article VIII. Penalties

a. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provision of this compact.

b. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

Article IX. Severability and Construction

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

§ 22-32-2. Members of Southeast Interstate Low-Level Radioactive Waste Management Commission.

The Director of the Bureau of Radiological Health and the Director of the Department of Energy shall serve as members of the Southeast Interstate Low-Level Radioactive Waste Management Commission. As directors of departments or agencies of this state, they may designate a subordinate officer or employee of their department or agency to serve in this stead as permitted by Article IV A. of the compact. The reference to the "Bureau of Radiological Health" anywhere in this chapter shall mean the Radiological Health Program of the Department of Public Health.

§ 22-32-3. Acquisition of waste disposal site.

The Department of Energy may accept gifts or grants of title to real property for establishing a low-level radioactive waste disposal site. Further, upon the determination by the Governor of the existence of a need for a site by Alabama citizens within the next five years, the Department of Energy may acquire title to real property by purchase, condemnation, or otherwise for the establishment of a low-level radioactive waste site. Such need may include designation of the State of Alabama as a host state for a low-level radioactive treatment, storage or disposal site by the Southeast Low-Level Radioactive Waste Management Commission.

§ 22-32-4. Authorization to operate site; users' charges; lease or contract for operation and disposal of low-level radioactive wastes.

(a) The Alabama Department of Energy is authorized to operate a treatment, storage or disposal site for low-level radioactive wastes pursuant to any license issued by the Radiation Control Agency.

The Alabama Department of Energy is authorized to charge each user of any licensed site within the state that user's proportionate share of the costs for handling of the wastes. These costs shall

be paid on the basis of a fee per volume of wastes received at each site. Such fee shall be paid to the Department of Energy and may include, but not be limited to costs of:

- (1) Operating fund (as hereinafter provided for), including: labor and equipment, liability insurance, contingency costs, licensing and inspection fees of the Radiation Control Agency for operation of the site;
- (2) Perpetual cost fund costs (as hereinafter provided for);
- (3) Operating fund (as hereinafter provided for);
- (4) State and county royalty fees (as hereinafter provided for); and
- (5) Fees due for the Southeast Low-Level Radioactive Waste Management Commission.

If the department should collect more funds than costs, it may reduce the charges for the next year. The Department of Energy may not conduct any operations except in compliance with Title 22, Chapter 14.

(b) The Alabama Department of Energy may lease and/or contract with any qualified person to operate and dispose of low-level radioactive wastes on land owned by the Department of Energy and if appropriate, using equipment owned by the Alabama Department of Energy. Any lease and/or contract shall provide for the payment of the Alabama Department of Energy for at least the following: state and county royalty fees as hereinafter provided for, and a perpetual care fund hereinafter provided for. Further, the lease or contract shall provide for payment or establishment of the following: all licensing and inspection fees due the radiation control agency, a faithful performance bond in the amount of \$2,000,000.00 to assure that adequate funds are available to close the site should the operator prematurely cease activities, 10 cents per cubic foot for the Alabama Department of Energy's administrative costs, a surety bond, liability insurance, and any fees due to the Southeast Low-Level Radioactive Waste Management Commission. No contract and/or lease shall authorize the disposal of radioactive material until a license authorizing such is issued by the Radiation Control Agency to the contractor-leasor. Any contract or lease shall require the contractor-leasor to comply with the requirements of Title 22, Chapter 14.

§ 22-32-5. Radiation Safety Fund; licensing and inspection fees; bond of contractor-leasor; perpetual care fund; operating fund; compact commission fund; royalty fees; appropriation.

(a) There is hereby created a Radiation Safety Fund into which the State Treasurer shall deposit the licensing, application, and inspection fee of the Radiation Control Agency. The Radiation Control Agency is authorized to collect for deposit into the Radiation Safety Fund application, licensing and inspection fees equal to 75 percent of those fees charged by the U.S. Nuclear Regulatory Commission for issuing similar licenses. This authority applies only to the specific licenses issued by the Radiation Control Agency. The funds available in the Radiation Safety Fund are appropriated to the State Health Department for the purpose of Title 22, Chapter 14. The moneys in this fund may be carried over from one fiscal year to the next provided that any

unencumbered funds in excess of \$100,000.00 on September 30 of each year shall revert to the State of Alabama General Fund.

(b) The Alabama Department of Energy is authorized to collect fees which cover at least the costs listed in Section 22-32-4(a). The revenue generated from these funds shall be disbursed by the Alabama Department of Energy in a Perpetual Care Fund, an Operating Fund, a Compact Commission Fund and for royalty fees as described herein. The proportion of the fee required for the first year of operation costs and/or the perpetual care fund costs shall be based on projections obtained from existing facilities. Charges in the following years will be based on costs for previous years of in-state operation. In the event that the Alabama Department of Energy contracts or leases the disposal site operations, the contractor-leasor shall pay such fees by the fifteenth of the following month. Further, the contractor-leasor shall post with the Alabama Department of Energy a surety bond of \$200,000.00 to assure proper accounting of these funds.

(1) A percentage shall be deposited with the State Treasurer in a Low-Level Radioactive Waste Perpetual Care Fund, the interest of which shall be used by the Alabama Department of Energy to pay the costs of monitoring and maintaining sites for at least 100 years after closure. The amount of this cost shall be based on projections from existing facilities such as the Barnwell, South Carolina facility. The State Treasurer shall deposit or invest these funds in banks, U.S. treasury bills or other equivalent, the interest from such investments to be reinvested in this account. Upon certification by the Governor, Lieutenant Governor, and the Speaker of the House, of need related to low-level radioactive waste disposal, portions of the principal may be expended as necessary to protect the public health and safety.

(2) A percentage shall be deposited with the State Treasurer in a Low-Level Radioactive Waste Operating Fund, to be used by the Alabama Department of Energy in assuring safe operation of any disposal site, including administration of sites operated by contractors or leasors. The amount of this cost in the first year shall be based on projections from currently operating facilities. In the future years the charges will be based on costs for actual instate operation in past years. The moneys in this fund may be carried over from one fiscal year to the next provided that all unencumbered funds in excess of \$300,000.00 on September 30 of each year shall revert to the State of Alabama General Fund. In the event of determination by the Governor of the existence of need of a low-level radioactive waste site in Alabama, the Alabama Legislature may appropriate funds to the Alabama Department of Energy which may be necessary for site selection, purchase and development.

(3) A percentage shall be deposited with the State Treasurer in the Southeast Low-Level Radioactive Waste Management Commission Fund. This fund shall be used by the Alabama Department of Energy to pay Alabama's proportionate share of the annual budget of the Commission as provided in Section 22-32-1, Article IV, h.2 and 3. The moneys in this fund may be carried over from one fiscal year to the next provided that any unencumbered funds in excess of \$50,000.00 on September 30 of each year shall revert to the Low-Level Radioactive Waste Operating Fund.

(4) Royalty fees shall be collected by the Alabama Department of Energy on each cubic foot of waste handled at the state sites. Ten cents per cubic foot shall be paid into the State of Alabama General Fund and up to five cents per cubic foot shall be paid to the county in which the site is located.

(c) There is hereby appropriated from the General Fund \$25,000.00 to the Southeast Low-Level Radioactive Waste Management Commission upon confirmation that Alabama is a party state as defined in the compact.

§ 22-32-6. Delegation of authority to stop, inspect and enforce regulations.

The Radiation Control Agency may delegate to other agencies by memorandum of understanding all or part of their authority to stop, inspect, and enforce radiation safety regulations relating to the transport of low-level radioactive wastes.

§ 22-32-7 Cooperation of departments, agencies, officers and political subdivisions with commission.

All departments, agencies and officers of this state and its political subdivisions are hereby authorized to cooperate with the Southeast Interstate Low-Level Radioactive Waste Commission in the furtherance of any of its activities pursuant to the compact.

§ 22-32-8. Issuance of order prohibiting use of source of ionizing radiation for nonpayment of fees; impoundment or seizure; release on payment of fees, costs, etc.; auction of unredeemed equipment, etc.; fine for violation of chapter.

(a) The Radiation Control Agency shall issue an order prohibiting the use of sources of ionizing radiation by any person who receives, possesses, uses, or services a source of ionizing radiation for a fee as required pursuant to Section 22-32-5 and fails to pay the fee within 45 days of being informed the fee is due.

(b) In addition to the order provided for in subsection (a) of this section, the Radiation Control Agency, without further notice, may impound or seize any source of ionizing radiation and any shielding required for safe handling for which an order prohibiting its use has been issued pursuant to said subsection (a). The person owing the fee required by this chapter shall also be required to pay any actual costs incurred by the Radiation Control Agency in the removal and storage of the impounded or seized source of ionizing radiation.

(c) Upon payment of any required fees, penalties, removal, court and/or storage costs any order prohibiting the use of the source of ionizing radiation or impoundment or seizure issued or executed pursuant to subsections (a) and (b) of this section shall be voided and the source of ionizing radiation shall be released to the licensee at the place where the source is being held by

the Radiation Control Agency or court. The Radiation Control Agency shall not be liable for damages to any source of ionizing radiation and any associated shielding and equipment.

(d) One year after seizing or impounding a source of ionizing radiation and any associated shielding and equipment, the Radiation Control Agency may release the equipment to the director of the Department of Finance for public auction as surplus equipment. The revenue derived shall be paid into the Radiation Safety Fund up to that amount specified in subsection (c) of this section, and any additional revenues shall be paid (1) to the person owning the source or ionizing radiation, or (2) to the person owing the fee. The Radiation Control Agency may limit the bidders on the equipment to those persons who are registered or licensed to possess the equipment.

(e) In addition, a fine not to exceed \$5,000.00 may be imposed by a court of competent jurisdiction on any person who violates this chapter.

§ 22-32-9. Effective date.

The provisions of this chapter became effective August 15, 1983.

Chapter 37A. Alabama Lead Reduction Act of 1997, §§ 22-27-1 through 22-37-9.

§ 22-37A-1. Short title.

This chapter may be cited as the Alabama Lead Reduction Act of 1997.

§ 22-37A-2. Definitions.

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

(1) **ACCREDITED INDIVIDUAL.** An individual who engages in lead hazard reduction activities, who has successfully completed a Safe State accredited lead training course appropriate for the type or category of lead hazard reduction activity to be provided, who meets all other personal accreditation requirements established by Safe State under this chapter, and who holds a valid registration in the state accreditation registry for the relevant type or category of lead hazard reduction activity.

(2) **ACCREDITED LEAD TRAINING COURSE.** A course of instruction which has been reviewed and accredited by Safe State as meeting or exceeding training requirements established under Title IV of the Federal Toxic Substances Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C. § 2601 et seq., as amended).

(3) **BOARD.** The State Board of Health as defined in Section 22-2-1.

(4) **INDOOR.** The enclosed portions of buildings including public buildings, residences, and commercial buildings. For the purposes of this chapter, "indoor" shall include the exterior surfaces and all common areas of the structure including any attached or unattached structure

located within the same lot line, including but not limited to, garages, play equipment, and fences.

(5) **LEAD HAZARD REDUCTION ACTIVITIES.** Activities designed to reduce exposure to lead in residences or public buildings and may include inspections, risk assessments, repair, enclosure, encapsulation, or removal of lead-based paint or lead contamination, or both, and the design and planning of such activities, and other related activities as established in Title IV of Toxic Substances Control Act, Public Law 99-519, 100 Stat. 2970, 15 U.S.C. § 2601 et seq., as amended, which are to be performed in residences or public buildings.

(6) **PERSON.** An individual, firm, partnership, corporation, commission, state agency, county governmental body, municipal corporation, party, company, association, or any other public or private legal entity.

(7) **PUBLIC BUILDING.** A building designed for public access and maintained for the public benefit through the use of state or local government funds, including public housing, schools, day care centers, and government facilities, or any location at which Title IV of the Federal Toxic Substances Control Act, or regulations thereunder, require lead-based paint activities be performed by an accredited individual, as those terms are defined in that act, such as commercial buildings and bridges. This term shall not apply to any of the following:

- a. Business facilities where access is principally limited to employees.
- b. Private clubs and residences.
- c. Commercial buildings.

(8) **SAFE STATE.** The Safe State Program, a division of the University of Alabama.

(9) **STATE HEALTH OFFICER.** The State Health Officer as defined in Section 22-2-8.

§ 22-37A-3. Scope of chapter; functions of board.

(a) With regard to facilities, the scope of this chapter shall not exceed the requirements of Title IV of the Federal Toxic Substances Control Act.

(b) The board may develop a statewide program to identify and reduce the threat to human health posed by exposure to lead. In furtherance of this purpose, the board may perform each of the following functions:

- (1) Conduct and supervise development programs and studies to determine the source, effect, and hazards of lead.
- (2) Conduct research or participate in research within the state.
- (3) Collect and disseminate information.
- (4) Make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties under this chapter.
- (5) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.
- (6) Assist persons in evaluating existing or potential health hazards from lead, including, but not limited to, health hazards from external sources that infiltrate the indoor environment and those from materials, processes, or human activities in the indoor environment.

- (7) Assist persons in methods to control, remove, or minimize sources of lead.
- (8) Advise, consult, and cooperate on matters of common interest in lead hazard reduction with other agencies of the state, political subdivisions of the state, industries, other states, the federal government, and interested persons or groups.
- (9) Represent the state in matters relating to lead hazard reduction and apply for and receive, on behalf of the state, matching grants, gifts, donations, foundation awards, or other legitimate means of support for the intents and purposes of this chapter, and to make other decisions concerning the fiscal aspects of the powers, duties, programs, and activities of the board under this chapter.
- (10) Enter into cooperative agreements or contracts to demonstrate practices, methods, technologies, or processes which may be effective in controlling sources or potential sources of lead, preventing the occurrence of lead, and reducing exposure to lead; and accept financial assistance in the form of grants from public agencies and authorities, nonprofit institutions and organizations, educational institutions, or other persons.
- (11) Establish by rule a fee schedule for performing lead investigations and services, which may not in any case exceed the actual costs.
- (12) Subject to the Alabama Administrative Procedure Act, publish guidelines in performing lead hazard reduction.

§ 22-37A-4. Investigations.

The State Health Officer may conduct investigations as necessary to administer this chapter, and the rules adopted and orders issued under this chapter. The State Health Officer may conduct investigations of general lead contamination problems or conditions in public buildings, and upon request of the building owner of commercial buildings, or upon the request of the owner or occupant of residential buildings.

§ 22-37A-5. Certification of persons engaged in lead hazard reduction on activities; powers of board.

- (a) Before engaging in lead hazard reduction activities, a person, firm, or corporation shall be certified by the board as specified in this chapter. This subsection shall not apply to an individual performing lead abatement on a structure, or the portion of a structure that is used as his or her private residence. Notwithstanding the foregoing, this subsection shall apply to any person contracted by the home owner to perform deleading activities and also applies where the owner performs such activities in or upon another structure which is not his or her private residence or the portion thereof. For the purpose of this subsection, the term "deleading" means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.
- (b) Subject to the Alabama Administrative Procedure Act, the board shall develop and publish certification procedures for each type of contractor in lead hazard reduction activities and specify qualifications, including, but not limited to, training accreditation and blood lead tests for

personnel. The satisfaction of these qualifications shall be documented by the contractor before the contractor is certified and permitted to engage in the provision of lead hazard reduction activities.

(c) The board shall establish decertification and recertification policies and procedures for each type of lead hazard service contractor.

(d) The board may establish by rule reasonable and necessary fees for the conduct of the contractor certification program and for the performance of field inspections of abatement projects. The board may adopt rules, including definitions and standards, and issue necessary orders to implement this chapter, which rules and orders shall have the effect of law.

(e) The board may enter into cooperative agreements with and accept grant assistance from the U.S. Environmental Protection Agency in support of certification provisions of Title IV of the Federal Toxic Substances Control Act or from any other agency of government or under other authority to carry out the intents of this chapter.

§ 22-37A-6. Designating Safe State as accreditation agency; powers of Safe State.

(a) Safe State, a division of the University of Alabama, is designated as the state accreditation agency for lead hazard training.

(b) Subject to the Alabama Administrative Procedure Act, Safe State shall establish a program to review and accredit lead training courses in accordance with Title IV of the Federal Toxic Substances Control Act.

(c) Safe State shall establish and maintain a state registry of accredited individuals who have successfully completed accredited lead training courses and who meet all other personal accreditation requirements established by Safe State under this chapter.

(d) An individual who provides or participates in the lead hazard reduction activities described in Section 22-37A-5 shall obtain valid Safe State registration and certification from the board prior to engaging in such activities.

(e) Subject to the Alabama Administrative Procedure Act, Safe State shall develop and publish policies and procedures governing the accreditation of lead training courses and the registration of accredited individuals.

(f) Safe State may establish reasonable fees for the conduct of the accreditation and registration programs and expend the fees to administer the program.

(g) Safe State may enter into cooperative agreements with and accept grant assistance from the U.S. Environmental Protection Agency in support of the training and accreditation provisions of

Title IV of the Federal Toxic Substances Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C. § 2601 et seq., as amended), or from any other agency of government or under other authority to carry out the intents of this chapter.

(h) Safe State may negotiate and establish reciprocity agreements with other states where equivalency of lead training accreditation or registration of individuals, or both, can be demonstrated.

§ 22-37A-7. Certification; violation.

(a) Persons engaged in lead hazard reduction activities shall be certified by the board and observe proper removal procedures and precautions, as established by the rules adopted by the board. The board may enforce such rules by order.

(b) An owner or operator of an entity engaged in lead hazard reduction activities who fails to comply with subsection (a) of this section and rules adopted or orders issued thereunder shall be guilty of a Class C misdemeanor.

§ 22-37A-8. Injunctive relief.

If it appears that a person has violated, is violating, or is threatening to violate Section 22-37A-5 or Section 22-37A-7 or a rule adopted or order issued under this chapter, the State Health Officer or a county health officer, as appropriate, may institute a civil suit in his or her own name in a circuit court to obtain injunctive relief to restrain the person from continuing the violation or threat of violation.

§ 22-37A-9. Fee, fines, etc. collected.

All fees collected and all fines, penalties, and funds of any nature received by the State Board of Health under authority of this chapter shall be remitted to the State Board of Health to the credit of the Lead Reduction Fund, which is created. The expenses incurred by the State Board of Health in carrying out this chapter shall be paid from moneys in the Lead Reduction Fund; however, the expenditure from said fund shall be budgeted and allotted pursuant to the Budget Management Act and Article 4 of Chapter 4 of Title 41.

Chapter 50. Department of Mental Health and Mental Retardation; Board of Trustees, §§ 22-50-11, 22-50-17.

Article 1. General Provisions.

§ 22-50-11. Department -- Additional and cumulative powers.

The Department of Mental Health and Mental Retardation is given hereby the following additional and cumulative powers through its commissioner:

- (1) It is authorized and directed to set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness and any and all forms of mental retardation and shall divide the state into regions, districts, areas or zones, which need not be geographic areas, but shall be areas for the purpose of establishing priorities and programs and for organizational and administrative purposes in accordance with these state plans.
- (2) It is designated and authorized to supervise, coordinate and establish standards for all operations and activities of the state related to mental health and mental retardation and the providing of mental health services and mental retardation services; and it is authorized to receive and administer any funds available from any source for the purpose of acquiring building sites for, constructing, equipping, maintaining or operating mental health centers, and community mental retardation programs or facilities or institutions for the purpose of providing mental health services and mental retardation services.
- (3) It is hereby designated as the single state agency of the State of Alabama to receive and administer any and all funds available from any source for the purpose of training, research and education in regard to all forms of mental and emotional illness and all forms of mental retardation through its commissioner.
- (4) It is hereby authorized to enter into contracts with any other state or federal agency or with any private person, organization or group capable of contracting if it finds such action to be in the public interest. However, a resident of Alabama shall not be transferred from a state institution or facility to any institution or facility outside the State of Alabama, by contract or otherwise; provided, that with the consent of the patient or client or the consent of the members of his immediate family, a resident of this state may be transferred to a mental hospital, mental retardation facility or other facility of another state.
- (5) It may, in its discretion, develop a program for the care of aged patients and operate, in any area of the state, nursing homes which shall care for and treat patients that require primary treatment for their geriatric infirmities; such nursing homes operated by the department shall meet the standards duly promulgated by the State Board of Health and shall be licensed under its authority. The department is further authorized to transfer such geriatric patients to private nursing homes within the State of Alabama if it finds such action to be in the public interest; provided, that with the consent of the patient or client or the consent of the members of his immediate family a resident of this state may be transferred to a mental hospital, mental retardation facility, or other facility of another state.

(6) It is hereby authorized to appoint advisory councils as needed from among those leaders in disciplines concerned with mental and emotional illness and disciplines concerned with mental retardation or from the public generally to advise it in regard to plans, programs and regulations. The Mental Health and Mental Retardation Commissioner is ex-officio chairman of these advisory councils and shall call meetings when advice is needed or when a majority of any such advisory council requests a meeting.

(7) The members of such advisory councils shall be entitled to be reimbursed for mileage expenses, not to exceed the amount prescribed by state law for attending meetings called by the Mental Health and Mental Retardation Commissioner. Such sums as are necessary to meet these mileage expenses are hereby appropriated from the Alabama Special Mental Health and Mental Retardation Fund and shall be paid on warrants signed by the Mental Health and Mental Retardation Commissioner.

(8) The Mental Health and Mental Retardation Department is hereby authorized and directed to establish and promulgate reasonable rules, policies, orders and regulations providing details of carrying out its duties and responsibilities, including bylaws for its own organization, government and procedures.

(9) It is authorized and directed to purchase or lease land or acquire property by eminent domain and to purchase, lease, rent, sell, exchange or otherwise transfer property, land, buildings or equipment in order to carry out its duties and responsibilities.

(10) It is authorized and directed to determine reasonable fees for services which it makes available to the public and it shall collect such fees unless, on application and investigation, it is determined that the person receiving such services is unable to pay the established fee, and in such case, such amount as he is able to pay will be collected.

(11) It is authorized and directed to establish and promulgate reasonable minimum standards for the construction and operation of facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients or clients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care when such care is provided for persons, with mental or emotional illness, or day care or residential care for persons who are mentally retarded.

(12) It is authorized to inspect any institution or facility providing any kind of treatment or care for those suffering from mental or emotional illness or mental retardation, and shall certify any such institution or facility which meets its minimum standards to the State Board of Health.

(13) The State Board of Health may issue a license to operate such facilities or institutions as may be established under the provisions of this chapter upon recommendation of the department and upon certification by said department that such facility or institution is in compliance with rules and regulations promulgated by said department and approved by said State Board of Health.

(14) It is authorized to establish and collect reasonable fees for necessary inspection services incidental to certification of compliance.

(15) It is authorized and directed to provide hearings for anyone claiming to be damaged by decisions of its employees or agents, and it may delegate the holdings of such hearings to administrative hearing officers. When a decision of an administrative hearing officer is adopted by the commissioner, the said decision then and there becomes a final decision and may be

reviewed in the circuit court only upon a finding of the court that such decision was arbitrary, illegal or capricious.

(16) It may file and prosecute civil actions in any court in the name of the Mental Health and Mental Retardation Department to enforce this article and such rules and regulations as may be duly promulgated under authority of this article; such civil actions may include actions for an injunction to restrain any person, agency or organization from violating any provision of this article or any rule or regulation duly promulgated under authority of this article, and it may also, with the approval of the attorney general, authorize its legal counsel to attend to any other litigation which concerns the department.

(17) It is authorized to accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind and shall prudently manage such property in accordance with the terms of such gifts or transfer of property and in accordance with sound financial principles.

(18) It is hereby authorized and directed to receive moneys coming to it by way of fees for services or by appropriations and shall prudently manage such moneys in accordance with sound financial principles.

(19) The employees of the department shall be governed by personnel Merit System rules and regulations, the same as other employees in state service, as administered by the state's Personnel Department; provided, that such rules and regulations shall not be applicable to the appointment, tenure or compensation of physicians, surgeons, psychiatrists, psychologists, dentists, social workers, nurses and attorneys. Employees of the department on October 1, 1965, who have been so employed for six months immediately preceding such date, shall remain in their respective employments during good behavior; but nothing in this subdivision shall be construed to prevent or preclude the removal of an employee for cause in the manner provided by law.

(20) All offices, services, programs or other activities of the Alabama Mental Health Board are hereby made offices, services, programs or other activities of the Department of Mental Health and Mental Retardation, and the commissioner is hereby authorized to reorganize such offices, services, programs, or other activities so as to achieve economy and efficiency; and the said commissioner may establish bureaus, divisions, hospitals, clinics, mental health centers, mental retardation programs, alternative living arrangements for the mentally retarded, or other facilities for providing mental health services and mental retardation services, if he finds such action to be in the public interest.

(21) All purchases and construction and supply contracts of the department shall be made or let on a competitive bidding basis, and may be made through the state purchasing agent, or otherwise, as the commissioner may direct. No purchases, except for rights-of-way, shall be made from, nor shall any sales be made to, any member of the Legislature, any member of the Mental Health and Mental Retardation board of trustees hereby created or any other person holding an office of profit with the State of Alabama.

(22) The department is authorized, at its discretion, to provide funding to community or statewide programs for the prevention and/or treatment of epilepsy.

§ 22-50-17. Certificate or license required to operate facility for care or treatment of mental or emotional illness or services to mentally retarded.

(a) No person, partnership, corporation, or association of persons shall operate a facility or institution for the care or treatment of any kind of mental or emotional illness, substance abuse or services to persons with an intellectual disability as defined in this chapter, without being certified by the department or licensed by the State Board of Health; provided that nothing in this section shall be construed so as to require a duly authorized physician, psychiatrist, psychologist, social worker, licensed professional counselor operating under the scope of his or her license, or Christian Science practitioner to obtain a license for treatment of patients in his private office, unless he keeps two or more patients in his office for continuous periods of 24 hours or more in one week, or that a church or ministry be certified which provides only religious services.

(b) No part of this section shall be construed as a mandate for an insurance policy, plan, or contract to offer or provide new or additional coverage benefits, or require any payment or prepayment to any person by any insurer or health care service plan.

Title 26 Infants and Incompetents

Chapter 11. Legitimation of Children, § 26-11-3.

§ 26-11-3. Procedure for change of name of child upon petition by father generally; notification of mother and child; filing of response; appointment of guardian ad litem; hearing; issuance of order by court; certification of minutes of court to Center for Health Statistics, etc.

(a) The father may petition at the time of filing the declaration of legitimation or at any time subsequent to the determination of legitimation to change the name of such child, stating in his declaration the name it is then known by and the name he wishes it afterwards to have. Such petition shall be filed in the office of the judge of probate of the father's residence or the child's residence.

(b) Upon the filing of the petition for name change, notice shall be given to the child's mother and to the child as provided by the Alabama Rules of Civil Procedure. Notice may be waived as provided by the Alabama Rules of Civil Procedure. The child's mother shall, within 30 days after receiving notice, file her objection or consent to the name change with the probate court. The probate court shall appoint a guardian ad litem to represent the child if the mother files a timely objection or if the court determines such appointment to be in the best interest of the child. Following receipt of the mother's response or upon expiration of the time for her response, the probate court shall conduct an informal hearing at which all interested parties may present evidence for determination of whether the name change is in the best interest of the child. The

court shall issue an order of name change or denial of name change.

Upon change of the name of the child, a certified copy of the minutes of the court shall be sent by the judge of probate to the Bureau of Vital Statistics, State Board of Health and to the Registrar of Vital Statistics of the county where the petition was filed within 30 days after the minutes are recorded.

Chapter 14. Reporting of Child Abuse or Neglect, §§ 26-14-1 through 26-14-13.

§ 26-14-1. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) ABUSE. Harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through nonaccidental physical or mental injury, sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation. "Sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes.
- (2) NEGLECT. Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing, or shelter.
- (3) CHILD. A person under the age of 18 years.
- (4) DULY CONSTITUTED AUTHORITY. The chief of police of a municipality or municipality and county; or the sheriff, if the observation of child abuse or neglect is made in an unincorporated territory; or the Department of Human Resources; or any person, organization, corporation, group, or agency authorized and designated by the Department of Human Resources to receive reports of child abuse and neglect; provided, that a "duly constituted authority" shall not include an agency involved in the acts or omissions of the reported child abuse or neglect.

§ 26-14-2. Purpose of chapter.

In order to protect children whose health and welfare may be adversely affected through abuse and neglect, the legislature hereby provides for the reporting of such cases to the appropriate authorities. It is the intent of the legislature that, as a result of such efforts, and through the cooperation of state, county, local agencies and divisions of government, protective services shall be made available in an effort to prevent further abuses and neglect, to safeguard and enforce the general welfare of such children, and to encourage cooperation among the states in dealing with the problems of child abuse.

§ 26-14-3. Mandatory reporting.

- (a) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, school teachers and officials, peace officers, law enforcement officials, pharmacists, social workers, day care workers or employees, mental health professionals, members of the clergy as defined in Rule 505 of the Alabama Rules of Evidence, or any other person called upon to render aid or medical assistance to any child, when the child is known or suspected to be a victim of child abuse or neglect, shall be required to report, or cause a report to be made of the same, orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.
- (b) When an initial report is made to a law enforcement official, the official subsequently shall inform the Department of Human Resources of the report so that the department can carry out its responsibility to provide protective services when deemed appropriate to the respective child or children.
- (c) When the Department of Human Resources receives initial reports of suspected abuse or neglect involving discipline or corporal punishment committed in a public or private school or suspected abuse or neglect in a state-operated child residential facility, the Department of Human Resources shall transmit a copy of school reports to the law enforcement agency and residential facility reports to the law enforcement agency and the operating state agency which shall conduct the investigation. When the investigation is completed, a written report of the completed investigation shall contain the information required by the state Department of Human Resources which shall be submitted by the law enforcement agency or the state agency to the county department of human resources for entry into the state's central registry.
- (d) Nothing in this chapter shall preclude interagency agreements between departments of human resources, law enforcement, and other state agencies on procedures for investigating reports of suspected child abuse and neglect to provide for departments of human resources to assist law enforcement and other state agencies in these investigations.
- (e) Any provision of this section to the contrary notwithstanding, if any agency or authority investigates any report pursuant to this section and the report does not result in a conviction, the agency or authority shall expunge any record of the information or report and any data developed from the record.
- (f) Subsection (a) to the contrary notwithstanding, a member of the clergy shall not be required to report information gained solely in a confidential communication privileged pursuant to Rule 505 of the Alabama Rules of Evidence which communication shall continue to be privileged as provided by law.

§ 26-14-4. Permissive reporting.

In addition to those persons, firms, corporations and officials required by Section 26-14-3 to report child abuse and neglect, any person may make such a report if such person has reasonable cause to suspect that a child is being abused or neglected.

§ 26-14-5. Contents of reports.

The reports provided for in this chapter shall state, if known, the name of the child, his whereabouts, the names and addresses of the parents, guardian or caretaker and the character and extent of his injuries. The written report shall also contain, if known, any evidence of previous injuries to said child and any other pertinent information which might establish the cause of such injury or injuries, and the identity of the person or persons responsible for the same.

§ 26-14-6. Temporary protective custody.

A police officer, a law enforcement official or a designated employee of the State or County Department of Human Resources may take a child into protective custody, or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody, without the consent of the parent or guardian, whether or not additional medical treatment is required, if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health. However, such official shall immediately notify the court having jurisdiction over juveniles of such actions in taking the child into protective custody; provided, that such custody shall not exceed 72 hours and that a court of competent jurisdiction and the Department of Human Resources shall be notified immediately in order that child-protective proceedings may be initiated. During such period of temporary custody, the director of the county department of human resources may give or cause to be given effective consent for medical, dental, health and hospital services for any abused or neglected child.

§ 26-14-6.1. Duties and responsibilities for investigation of reports.

The duty and responsibility for the investigation of reports of suspected child abuse or neglect shall be as follows:

- (1) Reports of suspected child abuse or neglect involving disciplinary or corporal punishment committed in a public or private school or kindergarten shall be investigated by law enforcement agencies.
- (2) Reports of suspected child abuse or neglect committed in a state-operated child residential facility shall be investigated by law enforcement agencies.
- (3) All other reports of suspected child abuse and neglect shall be investigated by the Department of Human Resources.

§ 26-14-7. Duties of Department of Human Resources.

(a) The State or County Department of Human Resources shall make a thorough investigation promptly upon either the oral or written report. The primary purpose of such an investigation shall be the protection of the child.

(b) The investigation, to the extent that is reasonably possible, shall include:

- (1) The nature, extent and cause of the child abuse or neglect;
- (2) The identity of the person responsible therefor;
- (3) The names and conditions of other children in the home;
- (4) An evaluation of the parents or person responsible for the care of the child;
- (5) The home environment and the relationship of the child or children to the parents or other persons responsible for their care; and
- (6) All other data deemed pertinent.

(c) The investigation may include a visit to the child's home, an interview with the subject child, and may include a physical, psychological or psychiatric examination of any child or children in that home. If the admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for the child or children, for the physical, psychological or psychiatric examination, cannot be obtained, then a court of competent jurisdiction, upon cause shown, shall order the parents or persons responsible and in charge of any place where the child may be to allow the interview, examinations and investigation. If, before the examination is complete, the opinion of the investigators is that immediate removal is necessary to protect a child or children from further abuse or neglect, a court of competent jurisdiction, on petition by the investigators and with good cause being shown, shall issue an order for temporary removal and custody.

(d) The county department of human resources shall make a complete written report of the investigation, together with its recommendations. Such reports may be made available to the appropriate court, the district attorney and the appropriate law enforcement agency upon request. The county department of human resources shall make a written report or case summary, together with services offered and accepted to the state's central registry on forms supplied by the registry for that purpose.

§ 26-14-7.1. Due process rights for persons under investigation by department.

Any person who comes under investigation by the Department of Human Resources for the abuse or neglect of a child or children and who is employed by, serves as a volunteer for, holds a license or certificate for, or is connected with any facility, agency, or home which cares for and controls any children and which is licensed, approved, or certified by the state, operated as a state facility, or any public, private, or religious facility or agency that may be exempt from

licensing procedures shall be granted the following due process rights by the Department of Human Resources:

- (1) The department shall notify the alleged perpetrator that an investigation has commenced against him after such investigation has officially begun in accordance with written policies established by the Department of Human Resources. The notice shall be in writing and shall state the name of the child or children allegedly abused, the date or dates that the alleged abuse is thought to have occurred, and the substance of the person's actions which are alleged to be abusive. The department shall establish and maintain written policies outlining the specifics of such notification and other policies deemed necessary and prudent by the department to inform the alleged perpetrator of his rights and the procedures utilized by the department involving child abuse and neglect investigations.
- (2) If the department conducts an investigation relating to child abuse/neglect, the alleged perpetrator shall be notified of the investigator's conclusions.
- (3) If the department's investigators conclude that child abuse/neglect is indicated, an investigative hearing may be held to confirm or reject the investigators' conclusions.
- (4) The alleged perpetrator shall be given ten departmental working days from the receipt of the notification of the investigator's conclusions to request a hearing, and such request must be in writing. If no such request is received in the department's office within ten departmental working days, the alleged perpetrator's opportunity for a hearing shall be considered waived by the department.
- (5) The employer of an alleged perpetrator shall not be notified of the investigator's conclusions prior to a hearing or its waiver unless, in the opinion of the department's investigators, a child is in danger of abuse or neglect; in such case, any person in a position to discover, prevent or protect the child from his abuse or neglect may be informed of information gathered in the investigation prior to a requested investigative hearing for the alleged perpetrator.
- (6) The alleged perpetrator shall be notified of the date, time, and place of any investigative hearing. Such hearing shall not be open to the public.
- (7) The alleged perpetrator shall have the following rights at any departmental investigative hearing:
 - a. The right to present his case himself or be represented by legal counsel or any other person.
 - b. The right to present written evidence, oral testimony, and witnesses.
 - c. The right to be provided by the department a short and plain written statement of the matters asserted which will be presented at the hearing.
 - d. The right to review and copy at cost any written or recorded statement made by the alleged perpetrator to departmental personnel in the course of the child abuse/neglect investigation. This request must be made prior to the date for the hearing.
 - e. The right to review and copy at cost, before or during the hearing, the written material and other evidence in possession of the department which will be placed into evidence at the hearing.
 - f. The right to inspect any exculpatory evidence which may be in the possession of departmental investigators, and the right to be informed of such evidence if known by departmental investigators before the hearing; provided, that a request for such evidence is made at least five working days prior to the date set for the hearing.

- g. The right to review and copy at cost all non-confidential department documents pertinent to the case, including written policies and rights.
 - h. The right to cross-examine witnesses testifying at the hearing.
 - i. The right to request issuance of subpoenas to witnesses and compel attendance. This request must be received no later than ten calendar days prior to the hearing, unless a shorter time is agreed upon by the hearing officer.
 - j. The right to review and copy at cost all documents in the official hearing file maintained by the hearing officer.
 - k. The right to have a hearing officer appointed who shall be disinterested, fair, and impartial.
- (8) The Department of Human Resources or its investigative hearing officers shall have the power and authority to issue subpoenas to compel attendance by and production of documents from any witness. Subpoenas may be served in the same manner as subpoenas issued out of any circuit court. Where any witness has been summoned by the Department of Human Resources, its commissioner or any of his agents, and said witness refuses to appear, testify, or produce records or documents as requested; then any circuit court in this state, or any judge thereof, on application, may issue an attachment for such person and compel him to comply with such order and the court or judge shall have power to punish for contempt in cases of disobedience of such order.
- (9) The Department of Human Resources shall establish policies and written guidelines for the conduct and procedures involved in an investigative hearing. At such hearing, the fact that there was a finding by a juvenile court judge or by a criminal court that child abuse or neglect has occurred shall be presumptive evidence that the report should be marked indicated.
- (10) The hearing officer shall notify the alleged perpetrator in writing of the hearing officer's decision.
- (11) Results of investigative hearings:
- a. If the hearing officer concludes that child abuse and/or neglect is "indicated," such findings and evidence shall be filed with the appropriate district attorney and other law enforcement officials which the department may deem necessary.
 - b. The alleged perpetrator's employer or licensing/certifying agency or group may also be notified of the "indicated" findings. Such notification shall be marked "Confidential" and "To Be Used Only For The Purpose Of Discovery Or Preventing Child Abuse." The department shall establish written policies for notification of employers, prospective employers and licensing/certifying agencies or groups.

§ 26-14-7.2. Child denied medical treatment due to parents' religious beliefs.

- (a) When an investigation of child abuse or neglect by the Department of Human Resources determines that a parent or legal guardian legitimately practicing his or her religious beliefs has not provided specific medical treatment for a child, the parent or legal guardian shall not be considered a negligent parent or guardian for that reason alone. This exception shall not preclude a court from ordering that medical services be provided to the child when the child's health requires it.

(b) The department may, in any case, pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, as may be necessary to provide medical care or treatment for a child when the care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions. Upon application by the department, the court may issue prelitigation or pretrial discovery orders for persons, medical records, and other documents or materials.

§ 26-14-8. Statewide central registry.

(a) For the purposes of this section, the following words shall have the following meanings, respectively:

(1) INDICATED. When credible evidence and professional judgment substantiates that an alleged perpetrator is responsible for child abuse or neglect.

(2) NOT INDICATED. When credible evidence and professional judgment does not substantiate that an alleged perpetrator is responsible for child abuse or neglect.

(b) The Department of Human Resources shall establish a statewide central registry for reports of child abuse and neglect made pursuant to this chapter. The central registry shall contain, but shall not be limited to:

(1) All information in the written report;

(2) Record of the final disposition of the report, including services offered and services accepted;

(3) The names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry; provided, however, that requests for information and responses where no report exists may be destroyed after three years from the date of the request;

(4) The plan for rehabilitative treatment; and

(5) Any other information which might be helpful in furthering the purposes of this chapter.

(c) The Department of Human Resources shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the reports and records of child abuse and neglect. Child abuse and neglect reports and records shall be limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished. The reports and records of child abuse and neglect and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than:

(1) To permit their use to prevent or to discover abuse or neglect of children through the information contained therein, except reports or records in cases determined to be "not indicated" shall not be used or disclosed for purposes of employment or other background checks; or

(2) For investigation of child abuse or neglect by the police or other law enforcement agency; or

(3) For use by a grand jury upon its determination that access to such reports and records is necessary in the conduct of its official business; or

- (4) For use by a court where it finds that such information is necessary for the determination of an issue before the court; or
 - (5) For use by any person engaged in bona fide research who is authorized to have access to such information by the Commissioner of the Department of Human Resources; or
 - (6) For use by any person authorized by a court to act as a representative for an abused or neglected child who is the subject of a report; or
 - (7) For use by a physician who has before him a child whom he reasonably suspects may be abused or neglected; or
 - (8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of said child; or
 - (9) For use by federal, state, or local governmental entities, social service agencies of another state, or any agent of such entities, having a need for the information in order to carry out their responsibilities under law to protect children from abuse and neglect; or
 - (10) For use by child abuse citizen review or quality assurance or multidisciplinary review panels; or
 - (11) For use by child fatality review panels; or
 - (12) For public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality; the term "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Information identifying by name persons other than the victim shall not be disclosed.
- (d) The names of persons or information in the investigative report placed on the state's central registry which may be made available to the alleged perpetrator's employer, prospective employer, or others are those cases that the Department of Human Resources or the investigative hearing officer has determined child abuse or neglect to be indicated.
- (e) In the case of any child abuse or neglect investigation which is determined to be "not indicated," the alleged perpetrator may request after five years from the completion of the investigation that his or her name be expunged from the central registry so long as the Department of Human Resources has received no further reports concerning the alleged perpetrator during said five years, at which time the department shall expunge said name.
- (f) Nothing in this section shall be construed as restricting the ability of a department to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the department may not refuse such a disclosure in cases in which a court orders such disclosure after the court has reviewed, in camera, the record of the department related to the report or complaint and has determined that it has reason to believe that the person making the report knowingly made a false report.
- (g) Any person receiving reports or records of child abuse or neglect or related information under this section shall maintain the confidentiality of the documents and information and not disclose it except as authorized by law.

(h) Any violation of the provision of confidentiality shall be a Class A misdemeanor.

§ 26-14-9. Immunity from liability for actions under chapter.

Any person, firm, corporation or official, including members of a multidisciplinary child protection team, quality assurance team, child death review team, or other authorized case review team or panel, by whatever designation, participating in the making of a good faith report in an investigation or case review authorized under this chapter or other law or department practice or in the removal of a child pursuant to this chapter, or participating in a judicial proceeding resulting therefrom, shall, in so doing, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

§ 26-14-10. Doctrine of privileged communications not grounds for exclusion of evidence as to child's injuries.

The doctrine of privileged communication, with the exception of the attorney-client privilege, shall not be a ground for excluding any evidence regarding a child's injuries or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

§ 26-14-11. Appointment of attorney to represent child.

In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as guardian ad litem for said child.

§ 26-14-12. Establishment of regulations by department of human resources.

The State Department of Human Resources may establish such regulations as may be necessary to implement this chapter and to encourage cooperation with other states in exchanging reports to effect a national registration system.

§ 26-14-13. Penalty for failure to make required report.

Any person who shall knowingly fail to make the report required by this chapter shall be guilty of a misdemeanor and shall be punished by a sentence of not more than six months' imprisonment or a fine of not more than \$500.00.

Chapter 23A. The Woman's Right to Know Act, § 26-23A-1 through 26-23A-13.

§ 26-23A-1. Short title.

This chapter shall be known and cited as "The Woman's Right to Know Act."

§ 26-23A-2. Legislative findings; purpose.

(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.

§ 26-23A-3. Definitions.

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.

§ 26-23A-4. Voluntary and informed consent required for abortion.

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 24 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 24 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.

§ 26-23A-5. Publication of required 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-6 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.

§ 26-23A-6. Availability of information in video format; ultrasound image.

(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, non-judgmental, 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.

§ 26-23A-7. Abortions to be performed by physician.

Only a physician may perform an abortion.

§ 26-23A-8. Medical emergency abortions.

(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.

§ 26-23A-9. Violations.

(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.

§ 26-23A-10. Remedies.

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:

(1) 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.

(2) 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.

(3) 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.

§ 26-23A-11. Anonymity in court proceedings.

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.

§ 26-23A-12. Construction of chapter.

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.

§ 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.

Title 27 Insurance

Chapter 3A. Health Care Service Utilization Review Act, § 37-3A-1 through 37-3A-6.

§ 27-3A-1 Short title.

This chapter may be cited as the "Health Care Service Utilization Review Act."

§ 27-3A-2 Purposes.

The purposes of this chapter are to:

- (1) Promote the delivery of quality health care in a cost-effective manner.
- (2) Assure that utilization review agents adhere to reasonable standards for conducting utilization review.
- (3) Foster greater coordination and cooperation between health care providers and utilization review agents.
- (4) Improve communications and knowledge of benefit plan requirements among all parties concerned before expenses are incurred.
- (5) Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

§ 27-3A-3 Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

- (1) DEPARTMENT. The Alabama Department of Public Health.
- (2) ENROLLEE. An individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the eligible dependents of the individual.
- (3) PROVIDER. A health care provider duly licensed or certified by the State of Alabama.
- (4) UTILIZATION REVIEW. A system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to

be given to an individual within this state. The term does not include elective requests for clarification of coverage.

(5) UTILIZATION REVIEW AGENT. Any person or entity, including the State of Alabama, performing a utilization review, except the following:

- a. An agency of the federal government.
- b. An agent acting on behalf of the federal government, but only to the extent that the agent is providing services to the federal government.
- c. The internal quality assurance program of a hospital.
- d. An employee of a utilization review agent.
- e. Health maintenance organizations licensed and regulated by the state, but only to the extent of providing a utilization review to their own members.
- f. Any entity that has a current accreditation from the Utilization Review Accreditation Commission (URAC). However, entities with current URAC accreditation shall file a URAC certification with the department annually.
- g. An entity performing utilization reviews or bill audits, or both, exclusively for workers' compensation claims pursuant to Section 25-5-312. If an entity also performs services for claims other than workers' compensation, it shall be considered a private review agent subject to this chapter for those claims.
- h. An entity performing utilization reviews or bill audits, or both, exclusively for the Medicaid Agency.
- i. A person performing utilization reviews or bill audits, or both, exclusively for their company's health plan, independent of a utilization review company.
- j. An insurance company licensed by the State of Alabama performing utilization reviews or bill audits, or both, exclusively for their company's health plan, independent of a utilization review company.
- k. The Peer Review Committee of the Alabama State Chiropractic Association.

§ 27-3A-4 Duties of utilization review agents.

- (a) Utilization review agents shall adhere to the minimum standards set forth in Section 27-3A-5.

(b) On or after July 1, 1994, a utilization review agent shall not conduct a utilization review in this state unless the agent has certified to the department in writing that the agent is in compliance with Section 27-3A-5. Certification shall be made annually on or before July 1 of each calendar year. In addition, a utilization review agent shall file the following information:

(1) The name, address, telephone number, and normal business hours of the utilization review agent.

(2) The name and telephone number of a person for the department to contact.

(3) A description of the appeal procedures for utilization review determinations.

(c) Any material changes in the information filed in accordance with this section shall be filed with the State Health Officer within 30 days of the change.

(d) Unless exempted pursuant to paragraph f. of subdivision (5) of Section 27-3A-3, each utilization review agent, upon filing the certification, shall pay an annual fee in the amount of one thousand dollars (\$1,000) to the department. All fees paid pursuant to this subdivision shall be held by the department as expendable receipts for the purpose of administering this chapter.

(e) The department may adopt rules pursuant to the Administrative Procedure Act necessary to implement this chapter.

§ 27-3A-5 Standards for utilization review agents.

(a) Except as provided in subsection (b), all utilization review agents shall meet the following minimum standards:

(1) Notification of a determination by the utilization review agent shall be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review.

(2) Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure shall be reviewed by a physician or determined in accordance with standards or guidelines approved by a physician.

(3) Any notification of determination not to certify an admission, service, or procedure shall include the principal reason for the determination and the procedures to initiate an appeal of the determination.

(4) Utilization review agents shall maintain and make available a written description of the appeal procedure by which the enrollee or the provider of record may seek review of a

determination by the utilization review agent. The appeal procedure shall provide for the following:

a. On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate shall be made by a physician in the same or a similar general specialty as typically manages the medical condition, procedure, or treatment under discussion as mutually deemed appropriate. A chiropractor must review all cases in which the utilization review organization has concluded that a determination not to certify a chiropractic service or procedure is appropriate and an appeal has been made by the attending chiropractor, enrollee, or designee.

b. Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures no later than 30 days from the date the appeal is filed and the receipt of all information necessary to complete the appeal.

c. When an initial determination not to certify a health care service is made prior to or during an ongoing service requiring review, and the attending physician believes that the determination warrants immediate appeal, the attending physician shall have an opportunity to appeal that determination over the telephone on an expedited basis. A representative of a hospital or other health care provider or a representative of the enrollee or covered patient may assist in an appeal. Utilization review agents shall complete the adjudication on an expedited basis. Utilization review agents shall complete the adjudication of expedited appeals within 48 hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal. Expedited appeals that do not resolve a difference of opinion may be resubmitted through the standard appeal process.

(5) Utilization review agents shall make staff available by toll-free telephone at least 40 hours per week during normal business hours.

(6) Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two working days.

(7) Utilization review agents shall comply with all applicable laws to protect the confidentiality of individual medical records.

(8) Physicians, chiropractors, or psychologists making utilization review determinations shall have current licenses from a state licensing agency in the United States.

(9) Utilization review agents shall allow a minimum of 24 hours after an emergency admission, service, or procedure for an enrollee or representative of the enrollee to notify the utilization review agent and request certification or continuing treatment for that condition.

(b) Any utilization review agent that has received accreditation by the utilization review accreditation commission shall be exempt from this section.

§ 27-3A-6 Violations of chapter by utilization review agent.

(a) Whenever the department has reason to believe that a utilization review agent subject to this chapter has been or is engaged in conduct that violates this chapter, the department shall notify the utilization review agent of the alleged violation. The agent shall respond to the notice not later than 30 days after the notice is made.

(b) If the department finds that the utilization review agent has violated this chapter, or that the alleged violation has not been corrected, the department may conduct a contested case hearing on the alleged violation in accordance with the Administrative Procedure Act.

(c) If, after the hearing, the department determines that the utilization review agent has engaged in a violation, the department shall reduce the findings to writing and shall issue and cause to be served upon the agent a copy of the findings and an order requiring the agent to cease and desist from engaging in the violation.

(d) The department may also exercise either or both of the following disciplinary powers:

(1) Impose an administrative fine of not more than five thousand dollars (\$5,000) for a violation that occurred with such frequency as to indicate a general business pattern or practice.

(2) Suspend or revoke the certification of a utilization review agent if the agent knew the act was in violation of this chapter and repeated the act with such frequency as to indicate a general business pattern or practice.

Chapter 21A. Health Maintenance Organizations, §§ 27-21A-1 through 27-21A-32.

§ 27-21A-1. Definitions.

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

(1) AGENT. A person who is appointed or employed by a health maintenance organization and who engages in solicitation of membership in such organization. This definition does not include a person enrolling members on behalf of an employer, union, or other organization.

(2) BASIC HEALTH CARE SERVICES. Emergency care, inpatient hospital and physician care, and outpatient medical services.

(3) COMMISSIONER. The Commissioner of Insurance.

(4) ENROLLEE. An individual who is enrolled in a health maintenance organization.

(5) EVIDENCE OF COVERAGE. Any certificate, agreement, or contract issued to an enrollee setting out the coverage to which he is entitled.

(6) **HEALTH CARE SERVICES.** Any services included in the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

(7) **HEALTH MAINTENANCE ORGANIZATION.** Any person that undertakes to provide or arrange for basic health care services through an organized system which combines the delivery and financing of health care to enrollees. The organization shall provide physician services directly through physician employees or under contractual arrangements with either individual physicians or a group or groups of physicians. The organization shall provide basic health care services directly or under contractual arrangements. When reasonable and appropriate, the organization may provide physician services and basic health care services through other arrangements. The organization may provide, or arrange for, health care services on a prepayment or other financial basis.

(8) **INSURER.** Every insurer authorized in this state to issue contracts of accident and sickness insurance. Hospital service nonprofit corporations, nonprofit medical service corporations, and nonprofit health care corporations are included within such term.

(9) **PERSON.** Any natural or artificial person including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(10) **PROVIDER.** Any physician, hospital, or other person which is licensed or otherwise authorized in this state to furnish health care services.

(11) **SCHEDULE OF CHARGES.** A statement of the method used by a health maintenance organization to establish rates.

(12) **STATE HEALTH OFFICER.** The executive officer of the State Department of Public Health.

(13) **UNCOVERED EXPENDITURES.** The costs of health care services that are covered by a health maintenance organization, for which an enrollee would also be liable in the event of the organization's insolvency.

§ 27-21A-2. Establishment of health maintenance organizations.

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under this chapter. A foreign corporation may qualify under this chapter, subject to its registration to do business in this state as a foreign corporation under the provisions of Sections 10-2A-220, et seq.

(b) Health maintenance organizations licensed as of May 29, 1986, shall be issued a certificate of authority in accordance with Section 27-21A-29.

(c) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

- (1) A certified copy of the organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;
- (2) A certified copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
- (3) A list of the names, addresses, official positions, and such biographical information as may be required by the commissioner concerning the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;
- (4) A copy of any contract made or to be made between any persons listed in subdivision (3) and the applicant;
- (5) A copy of the form of evidence of coverage to be issued to the enrollees;
- (6) A copy of the form or group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;
- (7) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter;
- (8) A description of the proposed method of marketing, a financial plan which includes a projection of operating results anticipated until the organization has had net income for at least one year, and a statement as to the sources of working capital as well as any other sources of funding;
- (9) A power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;
- (10) A statement reasonably describing the geographic area or areas to be served;
- (11) A description of the complaint procedures to be utilized as required under Section 27-21A-10;
- (12) A description of the procedures and programs to be implemented to meet the health care requirements in subdivision (a)(2) of Section 27-21A-3;
- (13) The applicant's most recent report of examination and all annual reports and other periodic reports filed by the applicant within the past year in the applicant's state of domicile and state within which it maintains its principal place of business, if different from state of domicile; as well as any similar reports which the applicant may be required to file under federal law, if applicable;
- (14) Such other information as the commissioner or State Health Officer may require to make the determinations required in Section 27-21A-3.

(d)(1) An applicant or a health maintenance organization holding a certificate of authority granted hereunder shall, unless otherwise provided for in this act, file a notice describing any material modification of the operation set out in the information required by subsection (c). Such notice shall be filed with the commissioner and the State Health Officer prior to modification. If the commissioner does not disapprove within 30 days of filing, such modification shall be deemed approved;

(2) The commissioner or State Health Officer may promulgate rules and regulations exempting from the filing requirements of subdivision (d)(1) those items he deems unnecessary.

(e) An applicant, or a health maintenance organization holding a certificate of authority granted hereunder, shall file with the commissioner all contracts of reinsurance. Any agreement between the organization and an insurer shall be subject to the laws of this state regarding reinsurance. All reinsurance agreements and any modifications thereto must be approved by the commissioner. If the commissioner does not disapprove such agreements or modifications within 30 days of filing, such agreements or modifications shall be deemed approved. Reinsurance agreements shall remain in full force and effect for at least 90 days following written notice by registered mail or cancellation by either party to the commissioner.

§ 27-21A-3. Issuance of certificate of authority.

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall forthwith transmit copies of such application and accompanying documents to the State Health Officer.

(2) The State Health Officer shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

a. Has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility, and continuity of service;

b. Has arrangements, established in accordance with the regulations promulgated by the State Health Officer, for an on-going quality assurance program concerning health care processes and outcomes; and

c. Has a procedure, established in accordance with regulations of the State Health Officer, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and such other matters as may be reasonably required by the State Health Officer.

d. Has demonstrated that the health maintenance organization will effectively provide, or arrange for, the provision of health care services. Such arrangements shall be established in accordance with rules promulgated by the State Health Officer for an on-going quality assurance/utilization review program concerning health care processes and outcomes.

e. Has demonstrated that a copy of the form or group contract which is to be issued to employers, unions, trustees, or other organizations or individuals is in compliance with rules promulgated by the State Health Officer; and

f. Has demonstrated that nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 27-21A-2, or by independent investigation is contrary to the public interest.

(3) Within 90 days of receipt of the application for issuance of a certificate of authority, the State Health Officer shall certify to the commissioner that the proposed health maintenance organization meets the requirements of subdivision (a)(2) or notify the commissioner that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

(b) After receipt of the certification from the State Health Officer, the commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to Section 27-21A-2. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in Section 27-21A-21 if the commissioner is satisfied that the following conditions are met:

(1) The ownership, control, or management of the entity is competent and trustworthy and possesses managerial experience that would make the proposed health maintenance organization beneficial to the subscribers. The commissioner shall not grant or continue to license the business of a health maintenance organization in this state at any time the commissioner has good reason to believe that the ownership, control, or management of the organization is under the control of any person whose business operations are, or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors; by the improper manipulation of assets or of accounts; or by bad faith;

(2) The State Health Officer certifies, in accordance with subdivision (a)(3), that the health maintenance organization's proposed plan of operation meets the requirements of subdivision (a)(2);

(3) Except to the extent of contractually required provisions for copayments, the health maintenance organization will effectively provide or arrange for the provision of basic health care services through insurance, written contractual agreements, or other existing arrangements; and

(4) The contracts for basic health care services contain a provision that providers shall hold the enrollee harmless for the payment of the cost of health care services in any event including, but not limited to, nonpayment of the health maintenance organization, or the health maintenance organization's insolvency. This provision shall not prohibit collection of supplemental charges or copayments on the health maintenance organization's behalf made in accordance with terms of any applicable agreement between the health maintenance organization and the enrollee.

(5) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

- a. The financial soundness of the applicant and its arrangements for health care services and the schedule of charges used in connection therewith;
- b. The adequacy of working capital;

- c. Any agreement with an insurer or other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;
 - d. Any agreement form or contract form with providers for the provision of health care services; and
 - e. Any deposit of cash or securities submitted in accordance with Section 27-21A-12.
- (6) Nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 27-21A-2 or by independent investigation, is contrary to the public interest;
- (7) Any deficiencies identified by the State Health Officer have been corrected; and
- (8) The form or group contract, if any, which is to be issued to employers, unions, trustees, or other organizations is in compliance with the rules and regulations of the State Insurance Department as such rules and regulations specifically apply to health maintenance organizations. Any provisions of this chapter to the contrary notwithstanding, no provision of this chapter shall exempt any HMO from compliance with the rules and regulations required for licensing or in any way exempt any HMO participant or enrollee from quality care standards and regulations as a condition for licensure. Any HMO under contract as of April 1, 1986, with the Alabama Medicaid Agency that has a grant with a national foundation and is licensed by the Alabama Department of Public Health shall not be responsible for any of the fees, taxes, and other financial regulations so long as the grant is in existence. Any HMO which contracts with the Medicaid Agency shall be exempt from the financial responsibilities and taxes listed in this chapter for that percentage of enrollees that are Medicaid recipients. These HMOs shall also be exempt from any provision necessary for the Medicaid Agency to comply with federal regulations.

§ 27-21A-4. Powers of health maintenance organizations.

- (a) The powers of a health maintenance organization include, but are not limited to the following:
- (1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment;
 - (2) The making of loans other than in the ordinary course of business, to providers under contract with it in furtherance of its program or the making of loans to a corporation or corporations in which it owns a majority interest for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.
 - (3) The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization.
 - (4) The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration.
 - (5) The purchase, lease, construction, or renovation of property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(6) The contracting with an insurance company licensed in this state to do business in this state, or a health care service plan authorized to transact business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

(7) The offering of other health care services, in addition to basic health care services or other required health care services.

(b)(1) A health maintenance organization shall file notice, assuring compliance with any applicable state or federal laws, with adequate supporting information, with the commissioner prior to the exercise of any power granted in subsections (a)(1), (a)(2), or (a)(4). The commissioner shall disapprove such exercise of power only if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of the filing, it shall be deemed approved.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirement of subdivision (b)(1) those activities having a de minimis effect.

§ 27-21A-5. Governing body.

The governing body of any health maintenance organization may include providers, or other individuals, or both.

§ 27-21A-6. Fiduciary responsibilities of directors, officers, employees, and partners.

(a) Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the organization.

(b) A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than \$25,000 or such other sum as may be prescribed by the commissioner. All such bonds shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation or termination has been filed with the commissioner unless an earlier date of such cancellation or termination is approved by the commissioner.

(c) Any officer, or director, or any member of any committee or any employee of a health maintenance organization who is charged with the duty of investing or handling the organization's funds shall not deposit or invest such funds except in the organization's corporate name; except, that such health maintenance organization may for its convenience hold any equity investment in a street name or in the name of a nominee; shall not borrow the funds of such

organization; shall not be pecuniarily interested in any loan, pledge or deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member and shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, any such transaction made by, or on behalf of, such insurer.

(d) No health maintenance organization shall guarantee any financial obligation of any of its officers or directors.

(e) This section shall not prohibit such a director, or officer, or member of a committee or employee from becoming a member of the health maintenance organization and enjoying the usual rights so provided for its members, nor shall it prohibit any such officer, director, or member of a committee or employee from participating as a beneficiary in any pension trust, deferred compensation plan, profit-sharing plan, or stock option plan authorized by the health maintenance organization and to which he may be eligible, nor shall it prohibit any director or member of a committee from receiving a reasonable fee for legal services actually rendered to such health maintenance organization.

(f) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (c) of this section solely to enable payment of reasonable compensation to the director who is not otherwise an officer or employee of the health maintenance organization, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to, or for, the health maintenance organization's business and in the usual private, professional, or business capacity of such director or such corporation or firm.

§ 27-21A-7. Evidence of coverage and charges for health care services.

(a)(1) Every enrollee residing in this state is entitled to an evidence of coverage. If the enrollee obtains such coverage through an insurance policy or a contract issued by a health care service plan, the insurer or the health care service plan shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the basic form of the evidence of coverage, or amendment thereto, has been filed with the commissioner and the State Health Officer, and approved by the commissioner.

(3) An evidence of coverage shall contain:

a. No provisions or statements which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in subsection (a) of Section 27- 21A-13; and
b. A clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

1. The health care service and the insurance or other benefits, if any, to which the enrollee is entitled;

2. Any limitations on the services, kinds of services, benefits, or kinds of benefits, to be provided, including any deductible or copayment feature;
3. Where and in what manner information is available as to how services may be obtained;
4. The total amount of payments for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts; and
5. A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

Any subsequent change may be evidenced in a separate document issued to the enrollee.

(b)(1) No schedule of charges for enrollee coverage for health care services, or amendment thereto, may be used until a copy of such schedule, or amendment thereto, has been filed with and approved by the commissioner.

(2) Such schedule of charges shall be established in accordance with actuarial principles for various categories of enrollees, provided that the charges applicable to any enrollee shall not be individually determined based on his health status. Charges shall not be excessive, inadequate, or unfairly discriminatory. A certification, by a qualified actuary or other qualified person acceptable to the commissioner as to the appropriateness of the use of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall within 30 days approve any form if the requirements of subsection (a) are met and the commissioner shall within 30 days approve any schedule of charges if the requirements of subsection (b) are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves such filing, he shall notify the filer. In the notice, the commissioner shall specify the reasons for his disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the commissioner does not approve any form or if the commissioner does not approve any schedule of charges within 30 days of the filing of such forms or schedule of charges, they shall be deemed approved.

(d) The commissioner may require the submission of whatever relevant information he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

§ 27-21A-8. Reporting requirements.

Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least two principal officers with the commissioner, with a copy to the State Health Officer, covering the preceding calendar year. Such report shall be on forms prescribed by the commissioner, and shall include:

- (1) A financial statement of the organization;
- (2) Any material changes in the information submitted pursuant to subsection (c) of Section 27-21A-2;
- (3) The number of persons enrolled at the beginning and end of the year;
- (4) A summary of information compiled pursuant to paragraph (a)(2)c of Section 27-21A-3;

- (5) The amount of uncovered and covered expenditures that are payable and more than 90 days past due; and
- (6) Such additional information or reports as are deemed reasonably necessary and appropriate by the commissioner to enable him to carry out his duties under this chapter.

§ 27-21A-9. Information to enrollees.

Every health maintenance organization shall provide promptly to its enrollees notice of any material change in the operation of the organization that will affect them directly.

§ 27-21A-10. Complaint system.

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner, after consultation with the State Health Officer, to provide reasonable procedures for the resolution of written complaints initiated by enrollees.

(2) Each health maintenance organization shall submit to the commissioner and the State Health Officer an annual report in a form prescribed by the commissioner, after consultation with the State Health Officer, which shall include:

- a. A description of the procedures of such complaint system;
- b. The total number of complaints handled through such complaint system and a compilation of causes underlying the complaints filed; and
- c. The number, amount, and disposition of malpractice claims and other claims relating to the service or care rendered by the health maintenance organization made by enrollees of the organization that were settled during the year by the health maintenance organization. All such information shall be held in confidence by the commissioner.

(b) The commissioner or the State Health Officer may examine such complaint system.

§ 27-21A-11. Investments.

With the exception of investments made in accordance with subdivisions (a)(1), (a)(2), (a)(5), and subsection (b) of Section 27-21A-4, the funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit.

§ 27-21A-12. Protection against insolvency.

(a) Unless otherwise provided below, each health maintenance organization shall deposit with the commissioner, or with any organization or trustee acceptable to him through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures acceptable to him in the amount set forth in this section.

(b) The amount for an organization that is beginning operation shall be the greater of: (1) five percent of its estimated expenditures for health care services for its first year of operation, (2) twice its estimated average monthly uncovered expenditures for its first year of operation, or (3) \$100,000. At the beginning of each succeeding year, unless not applicable, the organization shall deposit with the commissioner, or organization, or trustee, cash, securities, or any combination of these or other measures acceptable to the commissioner, in an amount equal to four percent of its estimated annual uncovered expenditures for that year.

(c) Unless not applicable, an organization that is in operation on May 29, 1986, shall make a deposit equal to the larger of: (1) one percent of the preceding 12 months uncovered expenditures, or (2) \$100,000 on the first day of the fiscal year beginning six months or more after May 29, 1986.

In the second fiscal year, if applicable, the amount of the additional deposit shall be equal to two percent of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit shall be equal to three percent of its estimated annual uncovered expenditures for that year, and in the fourth fiscal year and subsequent years, if applicable, the additional deposit shall be equal to four percent of its estimated annual uncovered expenditures for each year. Each year's estimate, after the first year of operation shall reasonably reflect the prior year's operating experience and delivery arrangements.

(d) The commissioner may waive any of the deposit requirements set forth in subsections (a) and (b) above whenever satisfied that the organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year, or its performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income, or the assets of the organization or its contracts with insurers, health care service plans, governments, or other organizations are reasonably sufficient to assure the performance of its obligations; provided, however, that a minimum deposit of \$100,000 shall be required in all cases.

(e) When an organization has achieved a net worth composed of investments authorized under Section 27-21A-11, but not including land, buildings, and equipment, of at least \$1 million or has achieved a net worth including direct investments in organization-related land, buildings, and equipment of at least \$5 million, the annual deposit requirement shall not apply.

The annual deposit requirement shall not apply to an organization if the total amount of the accumulated deposit is equal to 25 percent of its estimated annual uncovered expenditures for the next calendar year, or the capital and surplus requirements for the formation for admittance of an accident and health insurer in this state, whichever is less.

If the organization has a guaranteeing organization which has been in operation for at least five

years and has a net worth not including land, buildings, and equipment of at least \$1 million or which has been in operation for at least 10 years and has a net worth including direct investments in organization-related land, buildings, and equipment of at least \$5 million, the annual deposit requirement shall not apply; provided, however, that if the guaranteeing organization is sponsoring more than one organization, the net worth requirement shall be increased by a multiple equal to the number of such organizations. This requirement to maintain a deposit in excess of the deposit required of an accident and health insurer shall not apply during any time that the guaranteeing organization maintains for each organization it sponsors a net worth of at least equal to the capital and surplus requirements for an accident and health insurer.

(f) All income from deposits shall belong to the depositing organization and shall be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being substituted.

(g) In any year in which an annual deposit is not required of an organization, at the organization's request the commissioner shall reduce the required, previously accumulated deposit by \$100,000 for each \$250,000 of net worth in excess of the amount that allows the organization not to make the annual deposit. If the amount of net worth no longer supports a reduction of its required deposit, the organization shall immediately redeposit \$100,000 for each \$250,000 of reduction in net worth, provided that its total deposit shall not exceed the maximum required under this section.

(h) Each health maintenance organization shall have and maintain a capital account of at least \$100,000 in addition to any deposit requirements under this section. The capital account shall be net of any accrued liabilities and be in the form of cash, securities, or any combination of these or other measures acceptable to the commissioner.

(i) There is created a nonprofit unincorporated legal entity to be known as the Alabama Health Maintenance Organization Guaranty Association. All health maintenance organizations authorized to transact business in this state shall participate in this guaranty association which shall protect all enrollees of such organizations in this state against failure in the performance of obligations due to the impairment or insolvency of a health maintenance organization. The association shall be separate from, but shall be modeled on the Alabama Life and Disability Guaranty Association, Sections 27-44-1, et seq. and the commissioner shall take such actions and promulgate, in accordance with the provisions of Section 27-2-17, such regulations as he may deem necessary to effectuate the provisions of this subsection.

§ 27-21A-13. Prohibited practices.

(a) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or

misleading, or any form or evidence of coverage which is deceptive. For purposes of this chapter:

(1) A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment with a health maintenance organization;

(2) A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage or possible significance to an enrollee of, or person considering enrollment in a health maintenance organization, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health maintenance organizations and evidences of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health maintenance organization issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Sections 8-19-1, et seq. and 27-12-1, et seq. shall be construed to apply to health maintenance organizations and evidences of coverage except to the extent that such sections are clearly inappropriate in light of the nature of health maintenance organizations as set forth in this chapter.

(c) A health maintenance organization may not cancel or refuse to renew an individual enrollee, except for reasons stated in the organization's rules applicable to all enrollees, or for the failure to pay the charge for such coverage, or for such other reasons as may be promulgated by the commissioner; provided, however, that a health maintenance organization may not in any event cancel or refuse to renew an enrollee solely on the basis of the health of the enrollee.

(d) No health maintenance organization unless licensed as an insurer may refer to itself as a licensed insurer or use a name deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) Any person not in possession of a valid certificate of authority issued pursuant to this chapter may not use the phrase "health maintenance organization" or "HMO" in the course of operation.

§ 27-21A-14. Regulation of producers.

(a) Unless exempted pursuant to subsection (c), health maintenance organizations in this state

shall only solicit enrollees or otherwise market their services through producers duly licensed in accordance with Chapters 7 and 8A of this title.

(b) The commissioner shall, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of producers.

(c) The commissioner may, by rule, exempt certain classes of persons from the requirement of obtaining a license for either of the following reasons:

(1) If the functions they perform do not require special competence, trustworthiness, or the regulatory surveillance made possible by licensing.

(2) If other existing safeguards make regulation unnecessary.

(d) Nothing in this section shall be deemed to prohibit a health maintenance organization from advertising.

§ 27-21A-15. Powers of insurers and health care service plans.

(a) An insurance company licensed in this state, or a health care service plan authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies, health care service plans, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(b) Notwithstanding any provision of insurance and health care service plan laws, Title 10, Chapter 4, Article 6 and Title 27, an insurer or a health care service plan may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. For such purposes, the enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under such contracts, the insurer or health care service plan may make benefit payments to health maintenance organizations for health care services rendered by providers.

§ 27-21A-16. Examination.

(a) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts or agreements as often as is reasonably necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

(b) The State Health Officer may make an examination concerning health care service of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

(c) Every health maintenance organization shall submit its relevant books and records for such examinations and in every way facilitate these examinations. For the purpose of examinations, the commissioner and the State Health Officer may administer oaths to, and examine the officers and agents of the health maintenance organization and the principals of such providers concerning their business.

(d) The expenses of examinations under this section shall be assessed against the organization being examined and such assessment shall be remitted to the commissioner to be deposited to the credit of the Special Examination Revolving Fund in Section 27-2-25, or the State Health Officer to be deposited to the credit of a fund to be known as the Health Maintenance Organization Revolving Fund. The expenses incurred by the commissioner and his examiners in the making of examinations pursuant to the provisions of this chapter, together with the compensation of such examiners, shall be paid from the Special Examination Revolving Fund. The expenses incurred by the State Health Officer and his examiners in the making of examinations pursuant to the provisions of this chapter, together with the compensation of such examiners, shall be paid from the Health Maintenance Organization Revolving Fund.

(e) In lieu of such examination, the commission or State Health Officer may accept the report of an examination made by the commissioner, State Health Officer, or other appropriate agency of the state of domicile of the health maintenance organization. The health maintenance organization shall file a copy of any such report with the commissioner and the State Health Officer.

(f) All records necessary for the complete examination of a health maintenance organization domiciled in this state shall be maintained in a location approved by the commissioner.

§ 27-21A-17. Suspension or revocation of certificate of authority.

(a) The commissioner in consultation with and with the approval of the State Health Officer, where necessary, may suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under Section 27-21A-2, unless amendments to such submissions have been filed with the commissioner and the State Health Officer and approved by the commissioner;

- (2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with requirements of Section 27-21A-7;
- (3) The health maintenance organization does not provide or arrange for basic health care services;
- (4) The State Health Officer certifies to the commissioner that:
 - a. The health maintenance organization does not meet the requirements of subdivision (a)(2) of Section 27-21A-3; or
 - b. The health maintenance organization is unable to fulfill its obligations to furnish health care services;
- (5) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
- (6) The health maintenance organization has failed to implement the complaint system required by Section 27-21A-10 in a reasonable manner to facilitate the resolution of valid complaints;
- (7) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
- (8) The continued operation of the health maintenance organization would be hazardous to its enrollees;
- (9) The health maintenance organization has otherwise failed substantially to comply with this chapter.

(b) A certificate of authority shall be suspended or revoked only after compliance with the requirements of Section 27-21A-20.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising, solicitation, or enrollment whatsoever. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

§ 27-21A-18. Rehabilitation, liquidation, or conservation of a health maintenance organization.

(a) Any rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall

be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in Section 27-32-6, or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(b) A claim by a health care provider for an uncovered expenditure has the same priority as a claim of an enrollee, provided such provider of services agrees not to assert such claim against any enrollee of the health maintenance organization.

(c) The State Health Officer shall provide to the commissioner or receiver of any financially troubled health maintenance organization advice and support to facilitate the expeditious rehabilitation, liquidation, conservation, or dissolution of the health maintenance organization.

§ 27-21A-19. Regulations.

The commissioner may, after notice and hearing, promulgate reasonable rules and regulations, in accordance with Section 27-2-17, as are necessary or proper to carry out the provisions of this chapter. The State Health Officer may promulgate such rules and regulations in accordance with the provisions of Sections 41-22-1, et seq.

§ 27-21A-20. Administrative procedures.

(a) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the health maintenance organization and the State Health Officer in writing specifically stating the grounds for denial, suspension, or revocation. If so requested in writing by the health maintenance organization, the commissioner shall set a hearing on the matter within 30 days of the receipt of such request.

(b) The State Health Officer, or his designated representative, shall be in attendance at the hearing and shall participate in the proceedings. The recommendation and findings of the State Health Officer with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority, shall be conclusive and binding upon the commissioner. Within 30 days after such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the commissioner shall take action as is deemed advisable on written findings which shall be mailed to the health maintenance organization with a copy thereof to the State Health Officer. The health maintenance organization can appeal the action of the commissioner and the recommendation and findings of the State Health Officer to the Circuit Court of Montgomery County by filing an appeal to such court within 30 days of the receipt of such findings. The court

may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(c) Those provisions of this title, relating to the suspension, denial, or revocation of a certificate of authority, shall apply to proceedings under this section.

§ 27-21A-21. Fees.

(a) Every health maintenance organization subject to this chapter shall pay to the commissioner the following fees:

- (1) For filing an application for certificate of authority or amendment thereto, \$50.00;
- (2) For filing an amendment to the organization documents that requires approval, \$10.00;
- (3) For filing each annual report, \$20.00;
- (4) For renewal of annual certificates of authority, \$200.00.

(b) Fees charged under this section shall be deposited to the credit of the General Fund.

§ 27-21A-22. Penalties and enforcement.

(a) The commissioner may, in lieu of suspension or revocation of a certificate of authority under Section 27-21A-17, levy an administrative penalty in an amount not less than \$500.00 nor more than \$5,000.00, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may augment this penalty by an amount equal to the sum that he calculates to be the damages suffered by enrollees or other members of the public. All moneys collected under this section shall be deposited to the credit of the General Fund.

(b)(1) If the commissioner or the State Health Officer shall for any reason have cause to believe that any violation of this chapter has occurred or is threatened, the commissioner or State Health Officer may give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

(2) Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the commissioner or the State Health Officer may deem appropriate under the circumstances. However, unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section or Section 27-21A-20 of this chapter are satisfied.

(c)(1) The commissioner, after notice to the State Health Officer, may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 30 days after service of the cease and desist order, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. Such hearings shall be conducted and judicial review had in accord with the provisions of this title.

(d) In the case of any violation of the provisions of this chapter, if the commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (c), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the Circuit Court of Montgomery County.

§ 27-21A-23. Statutory construction and relationship to other laws.

(a) Except as otherwise provided in this chapter, provisions of the insurance law and provisions of health care service plan laws shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision shall not apply to an insurer or health care service plan licensed and regulated pursuant to the insurance law or the health care service plan laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(b) Solicitation of enrollees by a health maintenance organization granted a certificate of authority shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(c) Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and shall be exempt from the provisions of Section 34-24-310, et seq., relating to the practice of medicine.

(d) No person participating in the arrangements of a health maintenance organization other than the actual provider of health care services or supplies directly to enrollees and their families shall be liable for negligence, misfeasance, nonfeasance, or malpractice in connection with the furnishing of such services and supplies.

(e) Nothing in this chapter shall be construed in any way to repeal or conflict with any provision of the certificate of need law.

(f) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to Section 27-1-17.

(g) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be

subject to the provisions of Chapter 56 of this title, regarding the Access to Eye Care Act.

(h) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to the provisions of Chapter 54 of this title.

(i) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to the provisions of Chapter 57 of this title, requiring coverage to be offered for the payment of colorectal cancer examinations for covered persons who are 50 years of age or older, or for covered persons who are less than 50 years of age and at high risk for colorectal cancer according to current American Cancer Society colorectal cancer screening guidelines.

(j) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to Chapter 58 of Title 27, requiring that policies and contracts including coverage for prostate cancer early detection be offered, together with identification of associated costs.

(k) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to Chapter 59 of this title, requiring that policies and contracts including coverage for chiropractic be offered, together with identification of associated costs.

(l) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to regulations promulgated by the Commissioner of Insurance pursuant to Sections 27-7-43 and 27-7-44.

(m) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to Chapter 12A.

§ 27-21A-24. Filings and reports as public documents.

All applications, filings, and reports required under this chapter, except those which are trade secrets or privileged or confidential commercial or financial information, other than any annual financial statement that may be required under Section 27-21A-8, shall be treated as public documents. All testimony, documents, and other evidence required to be submitted to the commissioner or State Health Officer in connection with enforcement of this chapter shall be absolutely confidential and shall not be admissible in evidence in any other proceeding. The commissioner or the State Health Officer may withhold from public inspection any examination or investigation report for so long as they deem necessary to protect the person examined from unwarranted injury or to be in the public interest.

§ 27-21A-25. Confidentiality of medical information.

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance

organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.

§ 27-21A-26. State Health Officer's and commissioner's authority to contract.

The State Health Officer and the commissioner, in carrying out their obligations under this chapter, may contract with qualified persons to make recommendations concerning the determinations required to be made by them. Such recommendations may be accepted in full or in part by the State Health Officer or commissioner.

§ 27-21A-27. Acquisition of control of or merger of a health maintenance organization.

No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, (or by conversion or by exercise of any right to acquire) be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization, information required by Section 27-29-3, and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner. Approval by the commissioner shall be governed by the provisions of said Section 27-29-3. Control under this section shall be defined in the same manner as it is defined for the purposes of Section 27-29-3, as amended from time to time.

§ 27-21A-28. Taxes.

Health maintenance organizations doing business in this state shall be subject to and pay the annual premium tax to be paid by health insurers on health insurance premiums. The same taxes and filing requirements applicable to health insurers under this title, shall apply to and shall be imposed upon each health insurance organization licensed under the provisions of this chapter; and the organization shall also be entitled to the same tax deductions, reductions, abatements, and credits that health insurers are entitled to receive.

§ 27-21A-29. Existing health maintenance organizations.

(a) Notwithstanding any other provision of this chapter, any health maintenance organization licensed by the State Board of Health and in operation on May 29, 1986, shall be granted a certificate of authority upon payment of the application fee prescribed in Section 27-21A-21 and compliance with Section 27-21A-12. Nothing in this section shall prohibit any such health maintenance organization from continuing to conduct business in this state until such certificate of authority is issued.

(b) Any health maintenance organization which was licensed in this state prior to January 1, 1986, may continue to operate under existing noncontractual provider arrangements (which have been approved by the State Health Officer) for three years.

(c) After issuance of a certificate of authority in accordance with subsection (a) of this section, the commissioner may require submission by the health maintenance organization of any additional information required in Section 27-21A-2 which has not previously been submitted to the State Health Officer.

§ 27-21A-30. Coordination of benefits.

(a) A health maintenance organization is entitled to coordinate benefits on the same basis as an insurer. No such coordination shall be allowed against policies covering individuals on other than a group basis.

(b) A health maintenance organization providing medical benefits or payments to an enrollee who suffers injury, disease, or illness by virtue of the negligent act or omission of a third party is entitled to reimbursement from such third party for the reasonable value of the benefits or payments provided.

§ 27-21A-31. Health maintenance organization advisory council.

There shall be established a three member HMO advisory council to advise and consult with the commissioner and the State Health Officer in carrying out their duties under this chapter. The members of such advisory body shall be appointed annually by the Alabama Association of Health Maintenance Organizations.

§ 27-21A-32. HMO enrollment requirements.

(a) The state government, or any agency, board, commission, institution, or political subdivision thereof, and any city or county, or board of education, which offers its employees a health benefits plan may make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(b) The first time a health maintenance organization is offered by an employer, either public or private, each covered employee must make an affirmative written selection among the different alternatives included in the health benefits plan. Thereafter, those who wish to change from one plan to another will be allowed to do so annually, provided, that nothing in this section shall prevent any health maintenance organization or insurer from requiring evidence of insurability or imposing underwriting restrictions on the acceptance of any such employee. In addition to the annual group enrollment period, the employer shall make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees, who are new employees or have changed their place of residence resulting in eligibility for the plan.

(c) This section shall impose no responsibilities or duties upon any employer, either public or private, to offer health maintenance organization coverage as part of its health benefits plan.

(d) No employer shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by a prevailing collective bargaining agreement or other legally enforceable contract or obligation for the provision of health benefits to its employees, or in any plan provided voluntarily by an employer.

Chapter 21B. Medical Support Health Care Access Act, 27-21B-1 through 27-21B-10.

§ 27-21B-1. Short title.

This chapter shall be known as the "Medical Support Health Care Access Act."

§ 27-21B-2. Definitions.

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

- (1) AGENCY. Any state agency responsible for administering programs under Title IV-D or Title XIX of the Social Security Act.
- (2) INSURER. A health insurer, including a group health plan as defined in Section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, or an entity offering a service benefit plan.

§ 27-21B-3. Power to conduct investigations.

The Alabama Medicaid Agency is authorized and empowered to conduct investigations to determine whether a medical support order exists or eligibility for enrollment of a recipient in a parent's family health coverage exists. The parents of any child who is a recipient shall cooperate in this investigation. State agencies may share information regarding parentage and support orders.

§ 27-21B-4. Enrollment of child.

An insurer shall not deny enrollment of a child under the health coverage of the child's parent on any of the following grounds:

- (1) That the child was born out of wedlock.
- (2) That the child is not claimed as a dependent on the parent's federal income tax return.
- (3) That the child does not reside with the parent or in the insurer's service area.

§ 27-21B-5. Health coverage through insurer.

When a parent is required by a court or administrative order to provide health coverage and the parent is eligible for family health coverage through an insurer, all of the following shall apply:

- (1) The parent shall be able to enroll a child in family coverage without regard to open enrollment season restrictions.
- (2) If the parent fails to enroll a child as required by court or administrative order, the child's other parent or the agency may make an enrollment.
- (3) A child enrolled in health coverage pursuant to this section shall not be disenrolled unless the insurer is provided satisfactory written evidence of either of the following:
 - a. The court or administrative order is no longer in effect.
 - b. The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of the disenrollment.

§ 27-21B-6. Health coverage through employer.

When a parent is required by a court or administrative order to provide health coverage and the parent is eligible for family health coverage through an employer doing business in the state, all of the following shall apply:

- (1) The parent shall be able to enroll any child in family coverage without regard to open enrollment season restrictions.
- (2) If the parent fails to enroll a child, the child's other parent or the agency can make the enrollment.
- (3) The child shall not be disenrolled unless the employer is provided satisfactory written evidence of any of the following:
 - a. The court or administrative order is no longer in effect.
 - b. The child is or will be enrolled in comparable health coverage through another employer which will take effect not later than the effective date of the disenrollment.
 - c. The employer has eliminated family coverage for all of its employees.
- (4) The employer shall withhold from the employee's compensation the employee's share, if any, of premiums for health coverage, so long as the amount does not exceed the maximum amount allowed by law. The employer shall then pay the employee's share of premiums to the insurer.

§ 27-21B-7. Imposition of additional requirements.

An insurer shall not impose any additional requirements on any state agency which has been assigned the rights of an individual eligible for medical assistance under this chapter and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of a covered individual.

§ 27-21B-8. Coverage through insurer of non-custodial parent.

When a child has health coverage through the insurer of a non-custodial parent, the insurer shall do all of the following:

- (1) Provide necessary information to the custodial parent in order for the child to obtain benefits through the coverage.
- (2) Allow the custodial parent or the health provider, with the custodial parent's approval, to submit claims for covered services without approval from the non-custodial parent.
- (3) Make payment on the submitted claims directly to the custodial parent, provider, or the agency.

§ 27-21B-9. Garnishment of wages.

(a) The Alabama Medicaid Agency may garnish the wages, salary, or other employment income of any person who is required by a court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance and has received payment from a third party for the cost of services for the child but has not used the payments to reimburse the other parent or guardian of the child, the provider of services, or the Alabama Medicaid Agency for its payments made. Current or past due child support shall have priority over claims for the costs of the services.

(b) In addition to the powers granted in subsection (a), the Alabama Medicaid Agency may notify the State Department of Revenue of any amounts due under this section. Upon proper and timely notice, the department shall withhold any amount from any state tax refund due to the above-described person.

§ 27-21B-10. Enforcement of health care coverage for certain employers.

(a) In any case in which a noncustodial parent is required by a court or administrative order to provide health care coverage for such child and the employer of the noncustodial parent is known to the Department of Human Resources, the department shall use the federally required medical support notice to provide notice to the employer of the requirement for employer-based health care coverage for the child through the parent of the child who has been ordered to provide health care coverage for the child unless a court or administrative order stipulates that

alternative health care coverage to employer-based coverage is to be provided for a child subject to a Title IV-D child support order. In the case of an employer entered in the directory of new hires pursuant to Section 25-11-5, the department shall send the federal medical support notice to any employer of a noncustodial parent subject to the order within two business days of the entry of the employee, who is an obligor in a Title IV-D case, into the directory of new hires.

(b) Within 20 business days after the date of the medical support notice, the employer of a noncustodial parent subject to an order for health care coverage for the child shall transfer the notice to the appropriate plan providing the health care coverage for which the child is eligible. The employer shall withhold from the compensation of the noncustodial parent any employee contributions necessary for coverage of the child and shall send the amount withheld directly to the health care plan to provide the health care coverage for the child. The employee or obligor may contest the withholding order issued pursuant to this section based upon a mistake of fact and may appeal on the record to the circuit court in the county where the medical support order was issued. If the employee contests the withholding of the employee contributions, the employer shall initiate withholding of the contributions while the contest is being resolved.

(c) An employer shall promptly notify the department whenever the noncustodial parent's employment is terminated.

(d) The department shall promptly notify the employer when there is no longer a current order for medical support in effect for which the department is responsible.

(e) The liability of the noncustodial parent for employee contributions to the health care plan necessary to enroll the child in the plan shall be subject to all available enforcement mechanisms under this title or any other provision of law.

(f) When a notice required by this section which appears regular on its face and which has been appropriately completed is received by the health plan administrator, the notice shall be deemed a qualified medical child support order under 29 U.S.C. § 1169(a)(5)(C)(i). The health insurance plan administrator of a participant under a group health plan who is the noncustodial parent of the child for whom the notice was received pursuant to this subsection, shall, within 40 business days, do all of the following:

(1) Notify the State Title IV-D agency of any state or territory that issued the notice whether coverage is available for the child under the terms of the plan and, if so, whether the child is covered under the plan and either the effective date of the coverage, or if necessary, any steps to be taken by the custodial parent or official of a state or political subdivision thereof substituted for the name of the child pursuant to 29 U.S.C. § 1169(a)(3)(A), to effectuate coverage. The department or its contractors, in consultation with the custodial parent, shall promptly select from the available plan options when the plan administrator reports that there is more than one option available under the employer's plan. If the response is not made to the plan administrator within 20 days and the plan has a default option for coverage, the plan administrator shall enroll

the child in that default option. If there is no default option, the plan administrator may call the office of the department or contractor which sent the notice and seek direction as to the enrollment of the child in the available plans.

(2) Provide the custodial parent or the substituted official a description of the coverage available and any forms or documents necessary to effectuate coverage and permit the custodial parent or substituted official to file claims.

(3) Send the explanation of benefit statements to the custodial parent, substituted official, and the employee.

(4) Send the reimbursement to the custodial parent, legal guardian, or responsible agency for expenses paid by the custodial parent, legal guardian, or substitute official for which the child may be eligible under the plan.

(5) Nothing in this subsection shall be construed as requiring a group health plan, upon receipt of a medical support notice, to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in 42 U.S.C. § 1396g-1.

(g) The review of enrollment of a child for health insurance coverage in employer-based health coverage pursuant to this section following issuance of an order to require the noncustodial parent to provide the coverage shall be limited to a mistake of fact.

(h) An employer who fails to comply with the requirements set forth in this section may be subject to legal action. The employer may be held personally liable to the obligee for failure to withhold contributions for medical support, up to the amount of contributions which were not withheld, and in those cases, conditional and final judgment for the amounts to be withheld may be entered by a court and against the employer.

Title 31. Military Affairs and Civil Defense.

Chapter 9. Emergency Management, §§ 31-9-1 through 31-9-40.

Article 1. Alabama Emergency Management Act of 1955.

§ 31-9-1. Short title.

This chapter may be cited as the "Alabama Emergency Management Act of 1955."

§ 31-9-2. Findings and declarations of necessity; purpose of chapter and public policy.

(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquake or other natural causes, and in order to insure

that preparations of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

- (1) To create a State Emergency Management Agency, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state.
- (2) To confer upon the Governor and upon the governing bodies of the political subdivisions of the state the emergency powers provided in this chapter.
- (3) To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions.
- (4) To authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out the provisions of this chapter.

(b) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources and facilities for dealing with such disaster or emergency.

(c) It is further declared to be the purpose of this chapter and policy of the State of Alabama to assist and encourage emergency management and emergency preparedness activities on the part of the political subdivisions of the state by authorizing the State of Alabama to make grants, as funds are appropriated for such specific purpose, to any political subdivision of the state in amounts not to exceed the amounts expended, or to be expended, for personnel and administrative costs by such political subdivisions for emergency management and emergency preparedness.

§ 31-9-3. Definitions.

As used in this article these terms shall have the following meanings:

(1) **EMERGENCY MANAGEMENT.** The preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, earthquake, or other natural cause. These functions include, without limitation, fire-fighting services; police services; medical and health services; rescue, engineering, air raid warning services; communications; radiological, chemical and other special weapons of defense; evacuation of persons from stricken areas; emergency welfare services (civilian war aid); emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection,

together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2) **LOCAL ORGANIZATION.** The organization of local emergency management forces designed principally for operation within their own community but capable of moving to other areas.

(3) **POLITICAL SUBDIVISION.** Any county or municipality created pursuant to law.

(4) **STATE PUBLIC HEALTH EMERGENCY.** An occurrence or imminent threat of an illness or health condition that does all of the following:

a. Is believed to be caused by any of the following:

1. Bioterrorism.

2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.

3. A natural disaster.

4. A chemical attack or accidental release.

5. A nuclear or radiological attack or accident.

b. Poses a high probability of any of the following harms:

1. A large number of deaths in the affected population.

2. A large number of serious or long-term disabilities in the affected population.

3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(5) **STATE OF EMERGENCY.** When the Governor duly proclaims the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by fire, flood, storm, epidemic, technological failure or accident, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, earthquake, explosion, terrorism, or man-made disaster, or other conditions, other than conditions resulting from a labor controversy or conditions causing a state of war emergency, which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or energy shortage requires extraordinary measures beyond the authority vested in the Alabama Public Service Commission.

(6) **STATE TECHNOLOGICAL EMERGENCY.** An emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

§ 31-9-4. State Emergency Management Agency; Director of Emergency Management.

(a) There is hereby created within the executive branch of the state government a department of emergency management, hereinafter called the "Emergency Management Agency," with a Director of Emergency Management, hereinafter called the "director," who shall be the head thereof. The director shall be appointed by the Governor. The director shall devote his or her entire time to the duties of the office. The director shall not hold another office under the government of the United States or any other state, or of this state, or any political subdivision thereof, during his or her incumbency in such office, and shall not hold any position of trust or

profit, or engage in any occupation or business the conduct of which shall interfere or be inconsistent with the duties of Director of Emergency Management under the provisions of this article. The director shall hold office during the pleasure of the Governor.

(b) The director may employ, subject to the provisions of the Merit System Act, such technical, clerical, stenographic, and other personnel and may make such expenditures within the appropriation therefor, or from other funds made available to him or her for purposes of emergency management, as may be necessary to carry out the purposes of this article; provided, that the state shall not pay the compensation, if any, of block wardens, fire guards, first aid specialists, auxiliary firemen, auxiliary policemen, and similar emergency management personnel, nor shall it pay the compensation of personnel employed by or for a local organization for emergency management.

(c) The director and other personnel of the Emergency Management Agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(d) The director, subject to the direction and control of the Governor, shall be the executive head of the Emergency Management Agency and shall be responsible to the Governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations of emergency management within the state, and shall maintain liaison with and cooperate with major commanders of the armed forces within the state, the State Department of Public Safety, the State Military Department, and with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this article as may be prescribed by the Governor.

(e) The director shall also hold the position of Assistant Director of Homeland Security for Emergency Preparedness and Response.

§ 31-9-5. Civil Defense Advisory Council. Terminated.

§ 31-9-6. Powers and duties of Governor with respect to emergency management generally.

In performing his duties under this chapter, the Governor is authorized and empowered:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him in this chapter, with due consideration of the plans of the federal government.

(2) To prepare a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of

this state, such plans to be integrated into and coordinated with the emergency management plans and programs of this state to the fullest possible extent.

(3) In accordance with such plan and program for the emergency management of this state, to ascertain the requirements of the state, or the political subdivisions thereof, for food or clothing or other necessities of life in the event of disaster or emergency and to plan for and procure supplies, medicines, materials and equipment for the purposes set forth in this chapter; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this chapter; to institute training programs and public information programs; and to take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(4) To make, amend and rescind the necessary orders, rules and regulations looking to the direction or control of practice blackouts, air raid drills, mobilization of emergency management forces and other tests and exercises, warnings and signals for drills or attacks, the mechanical devices to be used in connection therewith, the effective screening or extinguishing of all lights and lighting devices and appliances, the conduct of civilians and the movement or cessation of movement of pedestrians and vehicular traffic, public meetings or gatherings, the evacuation and reception of civilian population, and shutting off water mains, gas mains, electric power connections and the suspension of all other public utilities, during, prior and subsequent to drills or attacks.

(5) To create and establish mobile support units and to provide for their compensation.

(6) To cooperate with the President and the heads of the armed forces, with the Emergency Management Agency of the United States and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation and the incidents thereof.

(7) With due consideration to the recommendation of the local authorities, to appoint full-time state and regional area directors.

(8) To utilize the services and facilities of existing officers and agencies of the state and the political subdivisions thereof.

(9) On behalf of this state, to enter into reciprocal aid agreements or compacts with other states and the federal government, including federally recognized Indian tribes. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical and related services; fire fighting, rescue, transportation and construction services and equipment; personnel necessary to provide or conduct these services; such other supplies, equipment, facilities, personnel and services as may be needed; and the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, fire fighting and police units and health units. Such agreements shall be on such terms and conditions as are deemed necessary.

(10) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid agreements with other states referred to in subdivision (1) of this section.

(11) To delegate any administrative authority vested in him under this chapter, and to provide for the subdelegation of any such authority.

(12) To take such action and give such directions to state and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules, and regulations made pursuant thereto.

§ 31-9-7. Mutual interstate aid agreements and compacts.

(a) The Governor of Alabama is hereby authorized by direction of the Legislature or at his own discretion, to enter into agreements and compacts with other states of the United States for mutual interstate aid in any emergency or disaster arising from enemy attack or other causes. All agreements and compacts entered into prior to June 10, 1955, between the State of Alabama and other states of the United States fostering mutual aid in such emergencies are hereby ratified and confirmed, and made valid and binding in all respects.

(b) The form of such agreement and pact shall be substantially as follows:

The contracting states solemnly agree:

ARTICLE 1. The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack or other causes (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shell fire, and atomic radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the emergency management agencies or similar bodies of the states that are parties hereto. The directors of emergency management of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

ARTICLE 2. It shall be the duty of each party state to formulate emergency management plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for emergency management. In carrying out such emergency management plans and programs, the party states shall so far as possible provide and follow uniform standards, practices and rules and regulations including:

- a. Insignia, arm bands and any other distinctive articles to designate and distinguish the different emergency management services;
- b. Blackouts and practice blackouts, air raid drills, mobilization of emergency management forces and other tests and exercises;
- c. Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

- d. The effective screening or extinguishing of all lights and lighting devices and appliances;
- e. Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;
- f. All materials or equipment used or to be used for emergency management purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;
- g. The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks;
- h. The safety of public meetings or gatherings; and
- i. Mobile support units.

ARTICLE 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the emergency management forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Emergency management forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency management authorities of the state receiving assistance.

ARTICLE 4. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster, and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

ARTICLE 5. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

ARTICLE 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other states party hereto, this instrument contains elements of broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE 7. Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency management forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

ARTICLE 8. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such request; provided that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; provided further that any two or more party states may enter into supplementary agreements establishing a different allocation of cost as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state supplying emergency management forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of supplies, materials, equipment or facilities so utilized or consumed.

ARTICLE 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local emergency management areas thereof. Such plans shall include the manner of transporting such evacuees; the number of evacuees to be received in different areas; the manner in which food, clothing, housing and medical care will be provided; the registration of the evacuees; the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials or supplies; and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster, the party state of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of such evacuees.

ARTICLE 10. This compact shall be available to any state, territory or possession of the United States, and the District of Columbia. The term "state" may also include any neighboring foreign country or province or state thereof.

ARTICLE 11. The committee established pursuant to Article 1 of this compact may request the Emergency Management Agency of the United States government to act as an information and coordinating body under this compact, and representatives of such agency of the United States government may attend meetings of such committee.

ARTICLE 12. This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Emergency Management Agency and other appropriate agencies of the United States government.

ARTICLE 13. This compact shall continue in force and remain binding on each party state until the Legislature or the Governor of such party state takes action to withdraw therefrom. Such

action shall not be effective until 30 days after notice thereof has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ARTICLE 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

(c) Nothing contained in this section shall be construed as a limitation of powers granted in any other section to enter into interstate compacts or other agreements relating to emergency management in an emergency, or as impairing in any respect the force and effect thereof.

§ 31-9-8. Emergency powers of Governor.

(a) The provisions of this section shall be operative only during the existence of a state of emergency, referred to hereinafter as one of the states of emergency defined in Section 31-9-3. The existence of a state of emergency may be proclaimed by the Governor as provided in this subsection or by joint resolution of the Legislature if the Governor in the proclamation or the Legislature in the resolution finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions or a public health emergency has occurred or is reasonably anticipated in the immediate future within this state and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. The emergency, whether proclaimed by the Governor or by the Legislature, shall terminate 60 days after the date on which it was proclaimed unless the Governor extends the emergency by proclamation or the Legislature extends the emergency by a joint resolution. Upon proclamation by the Governor of a state of emergency, the Governor may call the Legislature into special session. Additionally, the Lieutenant Governor or the Speaker of the House may request in writing that the Governor call the Legislature into special session. During the period that the proclaimed emergency exists or continues, the Governor shall have and may exercise the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all emergency management forces and helpers in the state.

(2) To sell, lend, lease, give, transfer, or deliver materials or perform services for emergency management purposes on such terms and conditions as the Governor shall prescribe and without regard to the limitations of any existing law, and to account to the State Treasurer for any funds received for such property.

(3) To procure, by purchase, condemnation, seizure or other means, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitations of any existing law; provided, that this authority shall not be exercised with regard to newspapers, wire facilities leased or owned by news services, and other news publications, and provided further, that he or she shall make compensation for the property so seized, taken, or condemned, on the following basis:

a. In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid therefor, and in case the property shall be returned to the owner in a damaged condition, or shall not be returned to the owner, the Governor shall fix within 30 days the amount of compensation to be paid for the damage or failure to return. Whenever the Governor shall deem it advisable for the state to take title to property taken under this section, he or she shall forthwith cause the owner of the property to be notified thereof in writing by registered or certified mail, postage prepaid, or by the best available means, and forthwith cause to be filed a copy of the notice with the Secretary of State.

b. If the person entitled to receive the amount so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he or she shall be paid 75 percent of such amount and shall be entitled to recover from the State of Alabama, in an action brought in a court in the county of residence of the claimant or in Montgomery County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award, such additional amount, if any, which when added to the amount so paid to him or her, shall be just compensation.

(4) To provide for and compel the evacuation of all or part of the population from any stricken or threatened area or areas within the state and to take such steps as are necessary for the receipt and care of such evacuees.

(5) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.

(6) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this article or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(7) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof. All such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he or she may request.

(8) With due consideration to the recommendations of local authorities, the Governor may formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement of evacuation over public highways and streets of people, troops, or vehicles and materials for national defense or for use in any defense industry, and may coordinate the activities of the departments or agencies of the state and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will best effectuate such plans.

(9) To establish agencies and offices and to appoint temporary executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this article without regard to the Merit System Act.

(b) The proclamation of a state of public health emergency shall activate the disaster response and recovery aspects of the state, local, and inter-jurisdictional disaster emergency plans in the affected political subdivisions or geographic areas. Such declaration authorizes the deployment and use of any forces to which the plans apply and the use or distribution of any supplies,

equipment, and materials and facilities assembled, stockpiled, or available pursuant to this article.

(c) When a state of public health emergency has been declared or terminated, the State Board of Health shall inform members of the public on how to protect themselves and what actions are being taken to control the emergency.

(d)(1) Nothing in this section shall authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition except as provided in subdivision (2).

(2) A law enforcement officer who is acting in the lawful discharge of the officer's official duties may disarm an individual if the officer reasonably believes that it is immediately necessary for the protection of the officer or another individual. The officer shall return the firearm to the individual before discharging that individual unless the officer arrests that individual for engaging in criminal activity or seizes the firearm as evidence pursuant to an investigation for the commission of a crime or, at the discretion of the officer, the individual poses a threat to himself or herself or to others.

§ 31-9-9. Powers and duties of directors of local emergency management organizations as to mutual aid agreements.

(a) The director of each local organization for emergency management may develop or cause to be developed mutual aid agreements with other public and private agencies within this state for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. Such agreements shall be consistent with the state emergency management plan and program, and a copy of each such agreement shall be filed with the State Director of Emergency Management immediately after being entered into. In time of emergency it shall be the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid agreements.

(b) The director of each local organization for emergency management may assist in negotiation of reciprocal mutual aid agreements between the Governor and adjoining states or political subdivisions thereof, and shall carry out any such agreement relating to the local and political subdivision.

(c) The directors of each local organization for emergency management may develop or cause to be developed mutual aid agreements with federally recognized Indian tribes located within the state.

§ 31-9-10. Local emergency management organizations; emergency powers of political subdivisions.

(a) Each political subdivision of this state is hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program and may confer or authorize the conferring, upon members of the auxiliary police, the powers of peace officers, subject to such restrictions as shall be imposed. The governing body of the political subdivision is authorized to appoint a director, who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this article.

(b) The governing body of each political subdivision shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain, and distribute equipment, materials, and supplies for emergency management purposes; to provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers; provided, that compensated employees shall be subject to any existing civil service or Merit System laws.

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency.

(4) To assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related service, police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision.

(5) In the event that the governing body of the political subdivision determines that any of the conditions described in Section 31-9-2(a) has occurred or is imminently likely to occur, the governing body shall have the power:

a. To waive procedure and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

b. To impose a public safety curfew for its inhabitants. If a public safety curfew is imposed as authorized herein, it shall be enforced by the appropriate law enforcement agency within the political subdivision. A public safety curfew imposed under this subsection shall not apply to employees of utilities, cable, and telecommunications companies and their contractors engaged

in activities necessary to maintain or restore utility, cable, and telecommunications services or to official emergency management personnel engaged in emergency management activities.

(6) To close, notwithstanding Section 11-1-8, any and all public buildings owned or leased by and under the control of the political subdivision where emergency conditions warrant, whether or not a local state of emergency has been declared by the governing body of the political subdivision. In the event that any documents required to be filed by a time certain deadline cannot be filed in a timely manner due to the closing of an office under this subdivision, the deadline for filing shall be extended to the date that the office is reopened as provided in Section 1-1-4.

(c) No local governing body of a political subdivision shall have the authority to provide for and compel evacuation of the area except by the direction and under the supervision of the Governor or the State Emergency Management Agency, or both. Any action taken by the governing body of the political subdivision shall remain in full force and effect unless revoked by proclamation of the Governor, issued as provided in Section 31-9-8.

(d)(1) Nothing in this section shall authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition except as provided in subdivision (2).

(2) A law enforcement officer who is acting in the lawful discharge of the officer's official duties may disarm an individual if the officer reasonably believes that it is immediately necessary for the protection of the officer or another individual. The officer shall return the firearm to the individual before discharging that individual unless the officer arrests that individual for engaging in criminal activity or seizes the firearm as evidence pursuant to an investigation for the commission of a crime or, at the discretion of the officer, the individual poses a threat to himself or herself or to others.

§ 31-9-11. Powers, duties, etc., of employees of political subdivisions rendering outside aid.

Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in Section 31-9-10, such employees shall have the same powers, duties, rights, privileges and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

§ 31-9-12. Reimbursement of expenses of operation of mobile support units of other states; operation of Alabama mobile support units in other states.

(a) Whenever a mobile support unit of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the Governor of this state, this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such mobile support unit while

rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid; provided that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for such mutual aid as provided in this section.

(b) No personnel of mobile support units of this state shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section or unless the reciprocal mutual aid agreements or compacts include provisions providing for such reimbursement or unless such reimbursement will be made by the federal government by law or agreement.

§ 31-9-13. Orders, rules and regulations of Governor -- Effect; distribution.

All orders, rules and regulations promulgated by the Governor as authorized by this chapter shall have the full force and effect of law when a copy thereof is filed in the office of the Secretary of State. All existing laws, ordinances, rules and regulations or parts thereof inconsistent with the provisions of this chapter or of any order, rule or regulation issued under the authority of this chapter, shall be suspended during the period of time and to the extent that such inconsistency exists. The Secretary of State shall cause to be printed and distributed to the probate judges of the several counties and to the clerks of the several municipalities of this state a copy of each order, rule or regulation issued under the authority of this chapter.

§ 31-9-14. Orders, rules and regulations of Governor -- Enforcement.

The law-enforcing authorities of the state and of the political subdivisions thereof shall enforce the orders, rules and regulations issued pursuant to this chapter.

§ 31-9-15. Orders, rules and regulations of Governor -- Enforcement -- Arrests without warrant.

A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order, rule or regulation made pursuant to this chapter. This authority shall be limited to those rules and regulations which affect the public generally.

§ 31-9-16. Immunity of state, etc., from liability for torts resulting from emergency management activities; exemptions of emergency management workers from license requirements; powers, duties, etc., of emergency management workers.

(a) All functions under this chapter and all other activities relating to emergency management are

hereby declared to be governmental functions.

(b) Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivisions thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, individual, partnership, association or corporation complying with or reasonably attempting to comply with this chapter or any order, rule or regulation promulgated pursuant to the provisions of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter or under the Worker's Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during an emergency management emergency.

(d) As used in this section, the term "emergency management worker" shall include any full- or part-time paid, volunteer or auxiliary employee of this state, or other states, territories, possessions or the District of Columbia, of the federal government, of any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this state subject to the order or control of, or pursuant to, a request of, the state government or any political subdivision thereof.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this state pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the state, province or political subdivision thereof in which normally employed or rendering services.

§ 31-9-17. Exemption from tort liability of persons granting license or privilege for use of real estate, etc., for shelters.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual disaster or an actual, impending, mock or practice attack, shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises, or for the loss of, or damage to, the

property of such person.

§ 31-9-18. Governor, etc., may accept services, etc., from federal government, private persons, etc.

(a) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, the state, acting through the Governor, or such political subdivision acting through its governing body may accept such offer, and upon such acceptance the Governor of the state or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the state or such political subdivision.

(b) Whenever any person, firm or corporation shall offer to the state, or to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, the state, acting through the Governor, or such political subdivision acting through its governing body may accept such offer and upon such acceptance the Governor of the state or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the state or such political subdivision.

§ 31-9-19. Political activities by emergency management organizations.

No organization for emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

§ 31-9-20. Employment of subversives by emergency management organizations; loyalty oath.

No person shall be employed or associated in any capacity in any emergency management organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or of this state, or the overthrow of any government in the United States by force or violence, or who has been convicted of, or is under indictment or information, charging any subversive act against the United States. Each person who is appointed to serve in an organization for emergency management shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths, or the State Emergency Management Director, or his duly authorized representatives, which oath shall be substantially as follows:

"I,, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the (name of emergency management organization) I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

§ 31-9-21. Compensation insurance for emergency management workers and trainees.

The Director of Emergency Management, upon recommendation of the Emergency Management Advisory Council, with the approval of the Governor, is authorized and empowered and may enter into a contract by bond or policy with an insurance company authorized to do business in this state covering a certain amount to be paid to the employees or trainees of the emergency management corps of this state actually engaged in the performance of duties as such emergency management members or trainees who, by accidental means, may be killed or injured; provided that the amount paid to any such party on account of accidental death or injury should not exceed the amount or amounts as provided by the Worker's Compensation Act of this state.

§ 31-9-22. Penalties.

Any person violating any provision of this chapter or any rule, order or regulation made pursuant to this chapter shall, upon conviction thereof, be fined not more than \$500.00, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

§ 31-9-23. Chapter to be liberally construed.

This chapter shall be construed liberally in order to effectuate its purpose.

§ 31-9-24. Regular and emergency appropriations; state grants to political subdivisions.

(a) The funds appropriated by the Legislature in the general appropriation act for the support and maintenance of this chapter shall be expended solely for the purposes designated in said appropriation act and shall be limited to the amounts provided therein and shall be disbursed, in the same manner as all other state funds are disbursed, by warrant of the Comptroller authorized by the Director of the Emergency Management Agency and approved by the Governor, subject to the terms, conditions, provisions and limitations of Article 4 of Chapter 4 of Title 41 of the Code of Alabama, 1975. In addition to any other appropriation, there is hereby appropriated out

of any moneys in the State Treasury the sum of \$250,000.00, or so much thereof as may be necessary, for the expenses incident to the operation and enforcement of the provisions of this chapter during an emergency as described in Section 31-9-8 hereof and the expenditure and disbursement of such funds shall be in the same manner as other funds of the Emergency Management Agency are expended and disbursed.

(b) The State of Alabama is hereby authorized to make grants, as funds may be appropriated for the specific purpose, to any political subdivision of the state in amounts not to exceed the amounts expended, or to be expended, by such political subdivision for personnel and administrative costs of local emergency management and emergency preparedness. The State Office of Emergency Management and Emergency Preparedness shall be the agency responsible for the administration of the grant program authorized by this section. In allocating state grants under this section, the administrative agency shall invoke and apply the same standards, criteria and measures of eligibility for matching funds as prevail in the administration of the Federal Civil Defense Act of 1950, as amended by Public Law 85-606, and no state grant funds authorized by this section shall be allocated to any political subdivision whose emergency management and emergency preparedness program is not eligible for such matching federal grant funds. The amounts of the annual state grants is that amount (50-50) which is appropriated by the local governments for the sole purpose of emergency management emergency preparedness programs at the local level which is programmed in their annual submission to the State Emergency Management Agency. In the event the state appropriation for this grant program in any given fiscal year is insufficient to match all eligible local expenditures for the same purposes in full, the State Office of Emergency Management shall prorate the allocation of available state grants among eligible local programs in the proportion which the eligible local expenditures of a given local program bears to the total eligible local expenditures of all local programs.

Article 2. . Emergency Management Assistance Compact.

§ 31-9-40. Compact adopted and enacted.

The Emergency Management Assistance Compact is enacted into law and entered with all jurisdictions mutually adopting the compact in the form substantially as follows:

THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Article I -- Purpose and Authorities.

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purpose of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of

Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

The compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II -- General Implementation.

Each party entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government, that are essential to the safety, care, and welfare of the people in the event of any emergencies or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III -- Party State Responsibilities.

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster,

technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure delivery of services, medicines, water, food, and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV -- Limitations.

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof. It is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for the state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of

arrest unless specifically authorized by the receiving states), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state or states, whichever is longer.

Article V -- Licenses and Permits.

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when assistance is requested by the receiving party state, the person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving the skill to meet a declared emergency or disaster, subject to limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article VI -- Liability.

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes.

Article VII -- Supplementary Agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII -- Compensation.

Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of the forces in case members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX -- Reimbursement.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests. Any aiding party state may assume in whole or in part loss, damage, expense, or other cost, or may loan equipment or donate services to the receiving party state without charge or cost, provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

Article X -- Evacuation.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assure the responsibility for the ultimate support of repatriation of such evacuees.

Article XI -- Implementation.

(a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by the state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. The action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States government.

Article XII -- Construction.

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII -- Additional Provisions.

(a) Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

(b) This compact shall not affect the statutory authority or the emergency service authority of the Department of Public Safety, the Department of Transportation, the Military Department, or any other department of state government.

(c) The legally designated state official who is assigned responsibility for emergency management shall not offer resources to, or request resources from, another compact member state, without prior discussion with and concurrence from the state agency, department, office, division, board, bureau, commission, or authority that may be asked to provide resources or that may utilize resources from another compact member state.

(d) The Director of the Emergency Management Agency shall, on or before the first day of January, two thousand three, provide to the Legislature and the Governor copies of all mutual aid plans and procedures promulgated, developed, or entered into after the effective date of this section. The Director of the Emergency Management Agency shall annually hereafter provide the Legislature and Governor with copies of all new or amended mutual aid plans and procedures on or before the first day of January of each year.

Title 32. Motor Vehicles and Traffic.

Chapter 5. Regulation of Operation of Motor Vehicles, Etc., Generally, § 32-5-222.

Article 9. Equipment.

§ 32-5-222. Requirements for child passenger restraints.

(a) Every person transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall provide for the protection of the child by properly using an aftermarket or integrated child passenger restraint system meeting applicable federal motor vehicle safety standards and the requirements of subsection (b). This section shall not be interpreted to release in part or in whole the responsibility of an automobile manufacturer to insure the safety of children to a level at least equivalent to existing federal safety standards for adults. In no event shall failure to wear a child passenger restraint system be considered as contributory negligence. The term "motor vehicle" as used in this section shall include a passenger car, pickup truck, van (seating capacity of 10 or less), minivan, or sports utility vehicle.

(b) The size appropriate restraint system required for a child in subsection (a) must meet the requirements of Section 32-5B-4 and shall include all of the following:

- (1) Infant only seats and convertible seats used in the rear facing position for infants until at least one year of age or 20 pounds.
- (2) Convertible seats in the forward position or forward facing seats until the child is at least five years of age or 40 pounds.
- (3) Booster seats until the child is six years of age.
- (4) Seat belts until 15 years of age.

(c) No provision of this section shall be construed as creating any duty, standard of care, right, or liability between parent and child that is not recognized under the laws of the State of Alabama as they presently exist, or may, at any time in the future, be constituted by statute or decision.

(d) Any person violating the provisions of this section may be fined twenty-five dollars (\$25) for each offense. The charges may be dismissed by the trial judge hearing the case and no court costs shall be assessed upon proof of acquisition of an appropriate child passenger restraint.

(e) Fifteen dollars (\$15) of a fine imposed under subsection (d) shall be used to distribute vouchers for size appropriate child passenger restraint systems to families of limited income in the state. The fifteen dollars (\$15) shall be deposited in the State Treasury to be distributed by the state Comptroller to the Alabama Head Injury Foundation, which shall administer the program free of charge. The Department of Examiners of Public Accounts shall annually audit, review, and otherwise investigate the receipts and disbursements of these funds by the

foundation in the same manner and to the same extent as the department performs examinations and audits of agencies and departments of the State of Alabama.

(f) The provisions of this section notwithstanding, nothing contained herein shall be deemed a violation of any law which would otherwise nullify or change in any way the provisions or coverage of any insurance contract.

(g) For the purpose of identifying habitually negligent drivers and habitual or frequent violators, the Department of Public Safety shall assess the following points:

(1) Violation of child safety restraint requirements, first offense..... 1 point.

(2) Violation of child safety restraint requirements, second or subsequent offense..... 2 points.

(h) Every person transporting a child shall be responsible for assuring that each child is properly restrained pursuant to this section. The provisions shall not apply to taxis and all motor vehicles with a seating capacity of 11 or more passengers.

(i) Each state, county, and municipal police department shall maintain statistical information on traffic stops of minorities pursuant to this section, and shall report that information monthly to the Department of Public Safety and the Office of the Attorney General.

Title 33. Navigation and Watercourses.

Chapter 6. Discharge of Litter and Sewage from Watercraft, §§ 33-6-1 through 33-6-12.

§ 33-6-1. Definitions.

For purposes of this chapter, the following terms shall have the meanings respectively ascribed to them in this section, unless the context clearly requires a different meaning:

(1) **WATERCRAFT.** Any vessel or contrivance used or capable of being used for navigation or flotation upon water whether or not capable of self-propulsion, except passenger or cargo-carrying vessels which are subject to and are adequately controlled, in the opinion of the State Board of Health, in respect to discharge of sewage and litter, by a department or agency of the federal government.

(2) **SEWAGE.** All human body wastes.

(3) **LITTER.** Any bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish or similar refuse discharged as no longer useful or useable.

(4) **MARINE TOILET.** Any toilet or device, including plastic or other kinds of bags or containers, on or within any watercraft for the purpose of discharging sewage.

(5) WATERS OF THIS STATE. All of the waters within this state on which watercraft are used or operated.

(6) PERSON. An individual, partnership, firm, corporation, association or other entity.

§ 33-6-2. Restrictions on discharge of litter or sewage from watercraft. Repealed.

§ 33-6-3. Restrictions on use of marine toilets.

(a) No marine toilet on any watercraft used or operated upon waters of this state shall be operated so as to discharge any untreated sewage into said waters directly or indirectly.

(b) No person owning or operating a watercraft, manufactured subsequent to September 12, 1969, with a marine toilet, shall use, or permit the use of, such toilet on the waters of this state, unless the toilet is equipped with facilities that will adequately treat, hold, incinerate or otherwise handle sewage in a manner that is capable of preventing water pollution in accordance with rules and regulations adopted pursuant to this chapter.

(c) No container of sewage shall be placed, left, discharged or caused to be placed, left or discharged in or near any waters of this state by any person at any time.

§ 33-6-4. Rules, regulations and orders generally -- Adoption by Board of Health; approval by Commissioner of Conservation and Natural Resources or Governor. Repealed by Act 2002-59, p. 145, § 11, effective October 1, 2003.

§ 33-6-5. Rules, regulations and orders generally -- Contents; compatibility of marine toilet standards with federal standards. Repealed.

§ 33-6-6. Marine toilets to be certified and approved by Board of Health. Repealed by Act 2002-59, p. 145, § 11, effective October 1, 2003.

§ 33-6-7. On-shore trash receptacles at marinas, etc.

The owner or whoever is lawfully vested with the possession, management and control of a marina or other waterside facility used by watercraft for launching, docking, mooring and related purposes shall be required to have trash receptacles or similar devices designed for the depositing of trash and refuse at locations where they can be conveniently used by watercraft occupants, and such trash and refuse shall be disposed of in accordance with rules and regulations adopted hereunder.

§ 33-6-8. Public education program. Repealed by Act 2002-59, p. 145, § 11, effective October 1, 2003.

§ 33-6-9. Expenditures by Board of Health. Repealed by Act 2002-59, p. 145, § 11, effective October 1, 2003.

§ 33-6-10. Enforcement of chapter, rules, regulations, etc.; prosecutions under chapter; violations and penalties.

(a) The provisions of this chapter and rules, regulations and orders adopted hereunder shall be enforced by the State Board of Health and the State Department of Conservation and Natural Resources according to rules and regulations hereunder adopted.

(b) Any person may complain under oath to a magistrate, district attorney or grand jury concerning a violation of the provisions of this chapter or of a rule and regulation promulgated thereunder and if a warrant is issued by said magistrate or district attorney, or indictment returned by a grand jury, said charge shall be tried in court to which said warrant is returnable, and said warrant may be made returnable to a district court or to the circuit court and said courts shall have original and concurrent jurisdiction of said offense, or if an indictment is returned, the circuit court shall have jurisdiction of said offense. In such cases convicted defendants may appeal as now provided by law. Whether criminal proceedings have been commenced or not the State Health Officer is authorized to bring a civil action in the circuit court against the owner, operator or person in charge of any vessel or watercraft to compel compliance with the provisions of this chapter or the rules and regulations promulgated thereunder and said circuit court shall have jurisdiction of said case.

(c) Any individual who discharges from any watercraft any sewage or litter into the waters of this state or any owner or operator of any watercraft who knowingly allows or permits such discharge in violation of any provision of this chapter, or without a permit from the State Board of Health, when such permit is required, or if any person shall violate any rule, regulation or order promulgated under this chapter, such person shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not less than \$10.00 nor more than \$1,000.00, or by imprisonment at hard labor in the county jail for not over 12 months, or by both such fine and imprisonment; and each such discharge of sewage or litter shall constitute a separate offense.

§ 33-6-11. Disposition of fines under chapter.

All fines paid or collected hereunder shall be paid into the General Fund of the state.

§ 33-6-12. Applicability of chapter, rules, regulations, etc.; conflicts with other regulations, ordinances or laws.

This chapter and rules and regulations and orders hereunder shall be applicable in the entire state unless such rule, regulation or order is by its own terms restricted. Other regulations, ordinances or other laws when not in conflict with this chapter or rules, regulations or orders adopted hereunder may be enforced by agencies responsible for such enforcement, whether said

regulations, ordinances or other laws are more or less restrictive on disposal of sewage or litter, but when in conflict, this chapter and the rules, regulations or orders adopted hereunder shall supersede and be applicable if said other regulations, ordinances or other laws are less restrictive than this chapter, rules, regulations or orders adopted hereunder.

Title 34. Professions and Businesses.

Chapter 15. Hotels, Inns and Other Transient Lodging Places, § 34-15-1 through 34-15-20.

§ 34-15-1. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) HOTEL. Such term includes any establishment where sleeping or sleeping and eating accommodations are advertised or held out to be available to transients, whether such establishment be known as a hotel, apartment hotel, inn, tavern, club, resort, tourist home, tourist court, motel, court, motor court, motor lodge or by other like term and regardless of the number of rooms, suites or cabins available, but this term shall not be construed to include apartments, clubs, trailer courts, boardinghouses, rooming houses or portions thereof where single night accommodations are not advertised or held out to be available.
- (2) SAFE DEPOSITORY. Such term includes a safe, vault, safety deposit box or other depository for the safekeeping of valuables.
- (3) VALUABLES or VALUABLE ARTICLES. Such term includes money, jewelry, watches, plate or other things made of gold, silver or platinum, rare or precious stones, rings, ornaments, and bonds, securities, bank notes or other valuable papers, transportation tickets or other valuable articles of such description as may be contained in small compass owned or possessed by a guest.

§ 34-15-2. Operation of chapter.

This chapter shall operate as, or as a part of or in conjunction with, any rules and regulations affecting hotels provided and promulgated by the State Board of Health for maintaining and protecting the public health.

§ 34-15-3. Rules and regulations.

The State Committee of Public Health shall make and promulgate reasonable rules and regulations for the purpose of carrying this chapter into effect.

§ 34-15-4. Duty of hotel owners, operators, etc., to maintain conditions, smoke detectors,

etc.

(a) Every owner, manager or operator of a hotel shall maintain the physical and sanitary condition of the structure, its equipment, water supply and human waste disposal and shall conduct the operations thereof in such manner as to render services and accommodations to travelers in compliance with rules and regulations governing hotels and hotel operation adopted by the State Board of Health.

(b) Every owner, manager, or operator of a hotel shall install and maintain in operating condition a battery or electrically operated smoke detector device in each hotel guest sleeping room. The detectors shall have received an approval from a nationally recognized testing organization.

(c) Hotel owners or operators shall be required to test each smoke detector device at least once each quarter of each calendar year to determine if each detector is in working order.

(d) Any person who is convicted, in a court of proper jurisdiction, of tampering with or removing a smoke detector from a hotel room shall be guilty of a Class C misdemeanor as defined by Title 13A.

(e) Hotel owners or operators who are found to be in non-compliance with this section shall be guilty upon conviction of a Class C misdemeanor as defined by Title 13A.

§ 34-15-5. State Hotel Inspector and assistants -- Generally.

The State Health Officer is ex officio State Hotel Inspector, and the inspectors of the State Board of Health, or that may hereafter be of the State Board of Health, are ex officio assistant hotel inspectors, and such assistants shall be, in the inspection of hotels as provided for in this chapter, under the exclusive direction and supervision of the State Hotel Inspector.

§ 34-15-6. State Hotel Inspector and assistants -- Police power.

The State Hotel Inspector and his assistants have police power to enter any hotel at reasonable hours to determine whether the provisions of the rules and regulations of the State Board of Health are being complied with.

§ 34-15-7. Obstruction or hindrance of inspector. Repealed.

§ 34-15-8. Certificate of inspection.

Upon inspecting a hotel, the inspector shall report the condition thereof to the State Hotel

Inspector, together with its sanitary score or rating, whereupon, if the score or rating justifies, the State Hotel Inspector shall issue to the operator of the said hotel a certificate of inspection, showing the sanitary score or rating. Said certificate of inspection shall be kept prominently displayed in the hotel for the information of patrons.

§ 34-15-9. Failure to comply with rules and regulations.

The State Hotel Inspector, upon ascertaining by inspection or otherwise that any hotel is being operated contrary to the rules and regulations of the State Board of Health, shall notify the owner, manager, agent or person in charge of such hotel, in writing, in what respect it fails to comply with said regulations and require such person, within a reasonable time to be fixed by the said State Hotel Inspector, to do, or cause to be done, the things necessary to make it comply with said regulations, whereupon such owner, manager, agent or person in charge of such hotel shall forthwith comply with such requirements. Any owner, manager or person in charge of a hotel who shall willfully fail or neglect to comply with any of the provisions of said rules and regulations of the State Board of Health, after notice as aforesaid, shall be guilty of a misdemeanor and, upon conviction thereof, be fined not less than \$10.00 nor more than \$50.00, and every day that such hotel is operated in violation of said rules and regulations shall constitute a separate offense.

§ 34-15-10. Closure of hotels.

The State Hotel Inspector, or any of his authorized representatives when acting under his direction, may close any hotel if the owner, manager or operator thereof has been found guilty of flagrant or continued violation of the State Board of Health rules and regulations governing the operation of hotels; and in such event, it shall be his duty to take such action. In case of such closure, it shall be the duty of the sheriff of the county to enforce said closure until the closing order is revoked in writing.

§ 34-15-11. Special contract between hotel and guest.

A hotel may require any guest, or person proposing to become a guest, to enter into a special contract as to the duration, kind and place of board, entertainment or lodging to be furnished such guest and the price therefor to be paid. If such guest refuses to enter into such contract and to accept board, entertainment or lodging under the terms and conditions so proposed by the hotel, said hotel may refuse to receive or entertain such guest and because of such refusal shall not incur any liability whatever. Such special contract must be in writing and signed by both parties, and by such contract a hotel may vary its liability for the safety of the goods of its guests.

§ 34-15-12. Safe depository for valuable articles -- Requirement; notice.

Every hotel must provide itself with a safe depository for the valuable articles belonging to its

guests, and must keep displayed on the inner face of the main entrance door in each sleeping room occupied by its guests or in any other conspicuous place in said sleeping room, and in the lobby of said hotel, written or printed notice to its guests that they must leave their valuables with said hotel, its clerk or agent for safekeeping in said safe depository, and of the limitations of liability provided for in Section 34-15-13.

§ 34-15-13. Safe depository for valuable articles -- Conditional liability.

Such hotel as shall maintain a safe depository and display notice as is required by Section 34-15-12 shall, in no event and under no circumstances or conditions, be liable in any amount for any loss, damage or destruction of the valuables of a guest by theft, burglary, fire or by any other cause whatsoever, whether or not of a nature enumerated above, if the said valuables shall not have been left with the hotel, its clerk or agent for deposit in said safe depository. Whenever the phrase "loss, damage or destruction by theft or otherwise" is used in this chapter, it shall include any loss, damage or destruction of the valuables, baggage or property of a guest, as the case may be, by theft, burglary, fire or by any other cause whatsoever, whether or not of a nature enumerated above. If a hotel maintains a safe depository and valuables are left by a guest with said hotel, its clerk or agent for deposit in said safe depository, the limit of liability of said hotel for any loss, damage or destruction of said valuables, by theft or otherwise, shall be \$300.00, regardless of whether or not said hotel shall have displayed notice as required by Section 34-15-12; provided, that upon accepting any such valuables said hotel must furnish to said guest a receipt upon which there shall appear in not less than 10-point type on the face thereof the following words: "The liability for loss, damage or destruction of valuables, by theft or otherwise, is limited by law to \$300.00 unless otherwise provided by special written contract." There shall also appear on said receipt in not less than 10-point type and underlined the following words: "If the guest is depositing valuables in the safe depository of the hotel for safekeeping, which said valuables exceed in value the sum of \$300.00, the guest may request the hotel to enter into a special written contract, to be supplied by the hotel, whereby the hotel agrees to assume liability for the value of said valuables; provided, however, that in no event and under no circumstances or conditions shall the hotel (1) be liable in excess of the actual value of said valuables regardless of the stated value thereof in said contract; and (2) be required to enter into a contract assuming liability in excess of \$5,000.00 for the loss, damage or destruction of said valuables, by theft or otherwise, regardless of the stated value or actual value thereof. Such contract must be in writing, signed by the guest and signed on behalf of the hotel by its manager, assistant manager, desk clerk or other person in charge of or in authority in the hotel." Failure of the hotel to provide such receipt to any guest who leaves valuables with the hotel for deposit in its safe depository shall remove the \$300.00 limitation of liability provided by this section.

§ 34-15-14. Safe depository for valuable articles -- Limitation of liability.

If the liability of a hotel is not otherwise eliminated or limited or varied under the provisions of Section 34-15-11 or 34-15-13, its liability for any loss, damage or destruction of any property of a guest, by theft or otherwise, shall in no event and under no circumstances or conditions exceed

the sum of \$5,000.00, whether or not such hotel has complied with the provisions of this chapter. The word "property" as used in this section shall mean and include valuables and all other items belonging to a guest except baggage as is defined in section 34-15-15.

§ 34-15-15. Liability for loss of baggage.

(a) Every hotel shall provide a check room or other convenient storage place for all baggage of its registered guests, those intending to become guests and others using or occupying any of the public spaces of the hotel, all of whom are hereinafter referred to in this section as guests, and shall keep displayed in the lobby of said hotel written notice that such check room or storage place has been provided; and the hotel shall give receipts or checks for all baggage so delivered to it by its guests when requested to do so by any such guest. When such check room or storage place has been provided, and notice thereof has been so displayed by the hotel and if the hotel makes no extra charge against its guests for so storing or checking their baggage, the hotel shall not be liable for any loss, damage or destruction of said baggage, by theft or otherwise, unless the guest leaves said baggage in such check room or storage place or, in the case of a registered guest, in the room or rooms assigned to such guest. As for baggage which is left with the hotel for storage in such check room or other convenient storage place or as for baggage which is left by a guest in the room or rooms in which such guest was registered after such guest has permanently departed from the hotel, the hotel shall not be liable for any loss, damage or destruction thereof, by theft or otherwise, unless said baggage is called for within 30 days of the time of its acceptance by said hotel or within 30 days of the time when a guest permanently departs from said hotel, as the case may be. The liability of a hotel for any loss, damage or destruction of the baggage of a guest, by theft or otherwise, shall in no event and under no circumstances or conditions exceed the sum of \$500.00, regardless of whether or not such hotel has complied with the provisions of this section, unless a written contract is entered into and executed by the hotel and such guest providing for a greater liability.

(b) The term "baggage," as used in this section, shall mean and include baggage, samples of merchandise of all description and wearing apparel of all description brought to said hotel at the instance of, or by, said guest, but does not include "valuables" as defined in Section 34-15-12.

§ 34-15-16. Failure or neglect to provide sufficient locks, etc.

Any proprietor, owner or manager of any hotel who shall fail or neglect to provide good and sufficient locks, latches or bolts to all the doors and rooms used by guests or provided for the use of guests or patrons of such hotel whereby the same may be securely fastened from the inside of such room shall, on conviction, be fined not less than \$10.00 nor more than \$100.00.

§ 34-15-17. Removal of undesirable guests.

(a) The manager, assistant manager, desk clerk or other person in charge of or in authority in a hotel, any of whom are hereinafter referred to in this section as "manager," shall have the right to

remove, cause to be removed or eject from such hotel, in the manner provided in this section, any guest of said hotel or visitor thereto, both hereinafter referred to in this section as "guest," who, while in said hotel or on the hotel premises, is intoxicated, profane, lewd, brawling or who shall indulge in any language or conduct or otherwise conducts himself in such fashion as to disturb the peace and comfort of other guests, proprietor or employees of such hotel.

(b) The manager shall first orally notify such guest that the hotel no longer desires to entertain him or her and request that such guest immediately depart from the hotel. If such guest has paid in advance, the hotel shall, at the time the request to depart is made, tender to said guest the unused or unconsumed portion of any such advance payment.

(c) Any guest who shall remain or attempt to remain in such hotel after being requested, as stated in subsection (b) of this section, to depart therefrom, shall be guilty of a misdemeanor and shall be deemed to be illegally in such hotel or upon its premises.

(d) In the event any such guest shall be illegally in said hotel or upon its premises as stated in subsection (c) of this section, the manager may call to his assistance any policeman, constable, deputy sheriff, sheriff or other law-enforcement officer, and it shall be the duty of each member of the aforesaid classes of officers, upon request of the manager of such hotel, forthwith and forcibly, if necessary, to immediately remove or eject from such hotel any such guest illegally in said hotel or upon its premises as aforesaid.

§ 34-15-18. Obtaining accommodations by fraud or misrepresentation -- Generally. Repealed.

§ 34-15-19. Obtaining accommodations by fraud or misrepresentation; prima facie evidence.

Proof that food, lodging or other accommodation was obtained by false pretense or by false or fictitious show or pretense of any baggage or other property by such person obtaining such food, lodging or other accommodation, or that such person absconded or left the state without paying or offering to pay for such food, lodging or other accommodation, or that such person gave in payment, or in part payment, for such food, lodging or other accommodation any check or draft on which check or draft payment was refused on due presentation or that such person surreptitiously removed, or attempted to remove, from such hotel, boardinghouse or eating house the baggage or other property brought with him thereto without having paid, or offered to pay, for such food, lodging or other accommodation so furnished him shall be prima facie evidence of the fraud or misrepresentation, or intent to deceive or defraud, mentioned in Sections 13A-8-10 through 13A-8-10.3. No person shall be convicted under the provisions of Sections 13A-8-10 through 13A-8-10.3 where there has been an express agreement to delay payment for such food, lodging or other accommodation until a date after such person terminates his relation as a guest

at such hotel, boardinghouse or eating house.

§ 34-15-20. Obtaining accommodations by fraud or misrepresentation; prima facie evidence -- Posting of law in hotel or inn.

Every hotelkeeper and innkeeper in this state shall keep a copy of Sections 13A-8-10 through 13A-8-10.3 and 34-15-19, printed in distinct type, posted in the lobby, public waiting room or in that portion of his hotel or inn most frequented by the guests thereof, and no conviction shall be had under the provisions of Sections 13A-8-10 through 13A-8-10.3 and 34-15-19, until it shall have been made to appear that a copy of Sections 13A-8-10 through 13A-8-10.3 and 34-15-19, was posted as above provided in the hotel or inn, the owner or keeper of which claims to have been defrauded at the time such food, lodging or other accommodations were obtained.

Title 34. Professions and Businesses.

Chapter 19. Midwives, §§ 34-19-1 through 34-19-10.

§ 34-19-1. Permit required; examination of applicant; revocation of permit. Repealed.

§ 34-19-2. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) NURSE MIDWIFE. A registered nurse who by virtue of added knowledge and skill gained through an organized program of study and clinical experience recognized by the American College of Nurse-Midwives has extended the limits of her practice into the area of management of care of mothers and babies throughout the maternity cycle so long as progress meets criteria accepted as normal.
- (2) PRACTICE OF NURSE MIDWIFERY. Care for the mother during pregnancy and labor providing continuous physical and emotional support and continuous evaluation of progress throughout labor and delivery.
- (3) NORMAL CHILDBIRTH. Delivery, at or close to term, of a pregnant woman whose physical examination by a physician reveals no abnormalities.

§ 34-19-3. License for practice of nurse midwifery required; continuation of practice of lay midwifery.

(a) It shall be unlawful for any person other than a licensed professional nurse who has received a license from the State Board of Nursing and the Board of Medical Examiners to practice nurse midwifery in this state. Any person violating this subsection shall be guilty of a misdemeanor.

(b) Nothing in subsection (a) of this section shall be construed as to prevent lay midwives holding valid health department permits from engaging in the practice of lay midwifery as heretofore provided until such time as said permit may be revoked by the county board of health.

§ 34-19-4. Application for license.

A person desiring to obtain a license to enter into the practice of nurse midwifery shall make written application to the Board of Nursing and the Board of Medical Examiners. Every applicant for a license to practice midwifery must be a licensed registered nurse and possess a certificate from a school for nurse midwives recognized by the American College of Nurse-Midwives.

§ 34-19-5. Issuance, renewal, suspension and revocation of licenses; fee.

(a) The State Board of Nursing and the Board of Medical Examiners may issue or refuse to issue or, having issued, may suspend or revoke licenses to practice nurse midwifery under the provisions of this chapter in accordance with such rules and regulations promulgated under the provisions of this chapter.

(b) Licenses issued under this chapter shall be renewable biennially at such time and in such a manner as prescribed by the State Board of Nursing and the Board of Medical Examiners.

(c) Suspension and revocation of licenses shall be by the State Board of Nursing and the Board of Medical Examiners for due cause after investigation.

(d) The State Board of Nursing and the Board of Medical Examiners are hereby authorized to levy and collect a fee for the issuance and renewal of licenses to practice nurse midwifery pursuant to this chapter.

§ 34-19-6. Practices which may be performed by licensees -- Generally.

A person holding a license to practice midwifery issued by the State Board of Nursing and the Board of Medical Examiners may provide maternity care to patients, including prenatal care, deliver normal pregnancies and administer postnatal care. The above care will be done under appropriate physician supervision.

§ 34-19-7. Practices which may be performed by licensees -- Restrictions generally.

The licenses issued under this chapter shall not confer upon any person the right to practice medicine, to undertake the charge of abnormal cases of confinement or any disease in connection with confinement or to assume any name, title, or designation implying that such person is authorized by law to undertake the charge of any such cases or to practice medicine.

§ 34-19-8. Practices which may be performed by licensees -- Attendance, etc., in cases of abnormal childbirth; location of deliveries.

It shall be unlawful for any person holding a license as a nurse midwife to attend any cases except cases of normal childbirth, as defined in Section 34-19-2, or to perform manipulations of any kind. In all cases in which the child is not delivered spontaneously within a reasonable time, the nurse midwife shall notify a qualified physician immediately and make no effort to deliver the child except under the authorization and supervision of such physician.

All deliveries must be planned to take place in the hospital.

§ 34-19-9. Designation of midwife certification on professional nursing license.

Individuals meeting the requirements set forth shall have their professional nursing license also designated Certified Nurse Midwife (C.N.M.) upon the payment of required fees.

§ 34-19-10. Promulgation of rules and regulations, procedures, standards, etc., for nurse midwives.

The State Board of Nursing and the Board of Medical Examiners shall have the authority and power to make and promulgate such rules and regulations as may appear necessary and proper to carry out the purposes of this chapter, including, but not limited to, minimum educational and physical requirements for nurse midwives, the procedures and techniques to be employed in the practice of nurse midwifery and the ethical standards to be observed by nurse midwives.

Title 36. Public Officers and Employees.

Chapter 1 General Provisions, § 36-1-6.1.

§ 36-1-6.1. Professional liability coverage for state employees or agents; duties of Finance Director; self-insurance; costs of insurance.

(a) The various state agencies, departments, boards, or commissions shall determine and report their needs for liability coverage to the Finance Director, the Insurance Commissioner, and the Attorney General. The Finance Director, with the advice of the Insurance Commissioner and Attorney General, shall then determine the type of blanket policy needed to provide basic coverage for deaths, injuries, or damages arising out of the negligent or wrongful acts or omissions committed by state employees or agents of the state, including retired licensed physicians and dentists while they are voluntarily serving at free health care clinics and individuals serving as foster parents licensed or approved by the Department of Human Resources to maintain homes for a child or children under the supervision of the department or serving as adult foster care providers approved by the Department of Human Resources to provide foster care for adults under the supervision of the Department of Human Resources, while in the performance of their official duties in the line and scope of their employment or duties as foster parents or foster care providers. Any policy of insurance or reinsurance shall be selected by the Finance Director on a competitive bid basis for an initial period of three years with a provision for annual review beginning October 1, 1987.

(b) The Finance Director, with the advice of the Insurance Commissioner and the Attorney General, may provide for self-insurance of the entire state or any part of the state under such terms and conditions as the Finance Director shall determine. Any funds appropriated for the purpose of self-insurance and paid into a special trust account under the provisions of this section shall not revert to the State Treasury at the end of a fiscal year, but may be carried over from year to year provided such funds are not used for any other purpose.

(c) In any action brought in the courts of the State of Alabama or United States wherein a plaintiff seeks damages arising out of the negligent or wrongful acts or omissions committed by state employees or agents of the state, including retired licensed physicians, dentists, and those foster parents and foster care providers specified in subsection (a) herein, while in the performance of their official duties in the line and scope of their employment or duties as foster parents or foster care providers, the plaintiff shall cause the Attorney General of the State of Alabama to be served with a copy of the suit against the employee, agent or servant of the board, agency, commission, or department.

(d) The charges or costs of the liability insurance or self-insurance provided under the provision of this section shall be paid from the funds appropriated for the operation of the several state

departments, agencies, boards, or commissions. The Finance Director may apportion the costs or charges to the several state departments, agencies, boards, or commissions in order to cover the risk involved.

(e) The provisions of this section shall not apply to any educational institution or board in this state.

(f) The State Board of Health, by rule, may establish the qualifications and criteria for retired physicians and dentists to be eligible to participate in professional liability coverage administered by the Department of Finance while serving at free health care clinics under this section. The State Board of Health, by regulation, may also establish the maximum number of retired physicians and dentists who may be provided professional liability coverage and may by regulation establish the maximum amount of funds that may be expended by the Alabama Department of Public Health to pay premiums for such coverage pursuant to this section.

Chapter 26. State Personnel Department and Merit System, §§ 36-26-80 through 36-26-83.

§ 36-26-80. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **LOCAL HEALTH OFFICER.** The duly appointed health officer serving a county health department or a district health department.

(2) **LOCAL HEALTH DEPARTMENT.** The county health department or district health department as set forth in Title 22 of this code.

§ 36-26-81. Appointment of public health service personnel.

The local health officer or his designee shall appoint such personnel as may be necessary to administer the public health services within the county or district. Upon the request of such local health officer or his designee, the State Personnel Department shall establish a local register of eligibles who are residents of the county or district in which the vacancy exists or who are employed by the county health department or district health department in the county or district in which the vacancy exists. If no appointment is made from the local register or there is no local register, an appointment shall be made from the statewide register; provided, that on July 1, 1975, any person employed in county or district health departments under provisions of the merit system council for county departments of health shall be covered under the provisions of the state Merit System Act with the same status.

§ 36-26-82. Coverage of employees by state Merit System.

On and after July 1, 1975, all county and district health department employees shall be covered

with their current status under the state Merit System and shall be extended all benefits of such system.

§ 36-26-83. Exceptions to applicability of article.

The provisions of this article shall not apply to any county health department whose employees are covered by a countywide personnel or Merit System.

Chapter 30. Compensation for Death or Disability of Peace Officers, Firemen, Etc., §§ 36-30-1 through 36-30-7.

Article 1. . Compensation for Death of Peace Officers and Firemen.

§ 36-30-1. Definitions; dependents; persons eligible for compensation.

(a) For the purposes of this chapter, the following words and phrases shall have the following meanings:

(1) AWARDING AUTHORITY. The State Board of Adjustment, created and existing pursuant to Article 4, Chapter 9 of Title 41.

(2) COMPENSATION. The money benefits paid on account of injury or death which occurred during the course of employment or activity as a peace officer or firefighter and is in the nature of workers' compensation.

(3) DEPENDENT CHILD. An unmarried child under the age of 18 years, or one over the age of 18 who is physically or mentally incapacitated from earning.

(4) DIRECT AND PROXIMATE RESULT OF A HEART ATTACK OR STROKE. Death resulting from a heart attack or stroke caused by engaging or participating in a situation while on duty involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical service, prison security, disaster relief, other emergency medical response activity, or participation in a training exercise which involved nonroutine stressful or strenuous physical activity; and the heart attack or stroke is suffered while still on that duty after so engaging or participating or not more than 24 hours after so engaging or participating.

(5) FIREFIGHTER or FIREFIGHTERS. A member or members of a paid or volunteer fire department of a city, town, county, or other subdivision of the state or of a public corporation organized for the purpose of providing water, water systems, fire protection services, or fire protection facilities in the state; and shall include the chief, assistant chief, wardens, engineers, captains, firefighters, and all other officers and employees of such departments who actually engage in fire fighting or in rendering first aid in case of drownings or asphyxiation at the scene of action.

(6) PEACE OFFICER. All sheriffs, deputy sheriffs, constables, municipal police officers, municipal policemen, state and town marshals, members of the highway patrol, state troopers, Alcoholic Beverage Control Board Enforcement Division agents, enforcement officers of the

Public Service Commission, revenue agents, and persons who are required by law to comply with the provisions of the Peace Officers' Minimum Standards, employees of the Board of Corrections, highway camp guards, law enforcement officers of the Department of Conservation and Natural Resources, all law enforcement officers of the Alabama Forestry Commission, livestock theft investigators of the Department of Agriculture and Industries, Capitol security guards, narcotic agents and inspectors of the State Board of Health, any other state, county, or municipal officer engaged in quelling a riot, or civil disturbance, and university police officers.

(b) For the purposes of this chapter, the following described persons shall be conclusively presumed to be wholly dependent:

(1) Spouse, unless it be shown that the spouse was voluntarily living apart from the peace officer or firefighter at the time of death, or unless it be shown that the peace officer or firefighter was not in any way contributing to the spouse's support and had not in any way contributed to the spouse's support for more than 12 months next preceding the occurrence of the injury causing death.

(2) Minor children under the age of 18 years and those over 18 if physically and mentally incapacitated from earning.

(3) Spouse, child, mother, father, grandmother, grandfather, sister, brother, mother-in-law, and father-in-law who were wholly supported by a deceased peace officer or firefighter at the time of his or her death and for a reasonable period of time prior thereto shall be considered his or her dependents and payment of compensation may be made to them as hereinafter authorized.

(c) If a paid or volunteer firefighter, peace officer, certified police officer, or reserve law enforcement officer is killed while engaged in the performance of his or her duties and there are no designated beneficiaries, then the compensation shall be paid to his or her dependents or partial dependents in the manner prescribed by [Section 36-30-3](#), and if there are none, the compensation shall be paid to his or her non-dependent children, and if there are none, the compensation shall be paid to his or her parents, and if there are none, the compensation shall be paid to the estate of the deceased.

(d) Any member of the class named in subdivision (3) of subsection (b) who regularly derived part of his or her support from the earnings of the deceased peace officer or the deceased firefighter, as the case may be, at the time of his or her death and for a reasonable time immediately prior thereto shall be considered his or her partial dependent and payment of compensation may be made to such partial dependent as hereinafter authorized.

§ 36-30-2. Deaths deemed compensable; compensation for total disability; amount of compensation.

(a) In the event a peace officer, or a firefighter, or a volunteer firefighter, who is a member of an organized volunteer fire department registered with the Alabama Forestry Commission, is killed, either accidentally or deliberately, or dies as a result of injuries received while engaged in the

performance of his or her duties, or dies as a direct and proximate result of a heart attack or stroke, his or her beneficiaries or dependents shall be entitled to compensation in the amount of one hundred thousand dollars (\$100,000) to be paid from the State Treasury as provided in Section 36-30-3, unless such death was caused by the willful misconduct of the officer or was due to his or her own intoxication or his or her willful failure or refusal to use safety appliances provided by his or her employer or his or her willful refusal or neglect to perform a statutory duty or any other willful violation of a law or his or her willful breach of a reasonable rule or regulation governing the performance of his or her duties or his or her employment of which rule or regulation he or she had knowledge. Any peace officer, or any firefighter, or volunteer firefighter whose death results proximately from an injury received while performing his or her duties shall, for the purposes of this article, be deemed to have been killed while in the performance of such duties. If the State Health Officer determines from all available evidence that a volunteer firefighter, who is a member of an organized volunteer fire department registered with the Alabama Forestry Commission, has become totally disabled as a result of any injury received while engaged in the performance of his or her fire-fighting duties and the disability is likely to continue for more than 12 months from the date the injury is incurred, then the firefighter shall be entitled to receive disability compensation in the amount of one hundred thousand dollars (\$100,000) to be paid from the State Treasury as provided in Section 36-30- 3. The term total disability shall be interpreted to mean that the injured party is medically disabled to the extent that he or she cannot perform the duties of the job occupation or profession in which he or she was engaging at the time the injury was sustained. The State Health Officer may seek the assistance of any state agency in making the determination of disability and the state agencies shall cooperate with the State Health Officer in such regard. The State Health Officer shall render a decision within 30 days of the time a claim is filed. If such volunteer firefighter disagrees with any officer, he or she may appeal the determination to the State Board of Adjustment in accordance with such board's procedures for such appeals.

(b) Beginning in calendar year 2009, the compensation amounts payable under this section shall be adjusted on January 1 of each year to reflect any increase during the preceding calendar year in the consumer price index as published by the U.S. Department of Labor, Bureau of Labor Statistics. The adjustment shall equal the percentage change in the consumer price index during the preceding calendar year.

§ 36-30-3. Payment of compensation -- Generally.

The compensation payable to surviving beneficiaries or dependents of peace officers and firemen who are killed under the circumstances prescribed in Section 36-30-2 shall be paid to the beneficiaries designated by those peace officers or firefighters. If no beneficiaries have been designated, or if none remain, the compensation shall be paid to the persons entitled thereto without administration or to a guardian or such other person as the awarding authority may direct for the use of the persons entitled thereto, as follows:

- (1) If the deceased peace officer or firefighter leaves a dependent spouse and no other dependents or partial dependents, the total amount of the compensation provided for in Section 36-30-2 shall be paid to the surviving spouse.
- (2) If the deceased peace officer or firefighter leaves a dependent spouse and a dependent child or dependent children and no other dependents or partial dependents, then the total amount of the compensation provided for in Section 36-30-2 shall be paid to such surviving spouse for the benefit of herself or himself and such child or children, or, in its discretion, the awarding authority may determine what portion of the compensation shall be applied for the benefit of such child or children and may order the same paid to a guardian and then order only the remainder of such compensation paid to the surviving spouse.
- (3) If the deceased peace officer or firefighter leaves a dependent child or children and no dependent spouse or other dependents or partial dependents, then such child or children shall be entitled to the total amount of the compensation authorized in Section 36-30-2, and such compensation shall be paid to a duly appointed guardian of the child or children or, in the discretion of the awarding authority, such sum may be paid to the probate judge of the county of residence of said child or children. Any probate judge who receives any moneys due any child or children under this article shall handle and administer all such funds in the manner prescribed in Sections 26-7-2 through 26-7-5.
- (4) If the deceased peace officer or firefighter leaves no dependent spouse or dependent child or children but leaves other dependents or partial dependents, then such dependents and partial dependents jointly shall be entitled to the total amount of the compensation provided in Section 36-30-2, and subject to the limitations prescribed hereinbelow such compensation shall be paid to them in the amounts and manner ordered by the awarding authority.
- (5) If a deceased peace officer or firefighter leaves a dependent spouse and other dependents or partial dependents but no dependent child or children, then the spouse and the other dependents and partial dependents jointly shall be entitled to the total compensation provided in Section 36-30-2; and, subject to the limitations prescribed hereinbelow, such compensation shall be paid to such dependents in the proportions and in the manner ordered by the awarding authority; provided, however, that at least 50 percent of such compensation must be awarded to the dependent surviving spouse.
- (6) If a deceased peace officer or firefighter leaves a dependent spouse and a dependent child or children and other dependents and partial dependents, then the awarding authority shall determine what portion of such compensation shall be paid to the spouse and child or children and, in its discretion, may order all such compensation paid to such spouse and child or children, but must provide that at least 70 percent thereof is paid to them.
- (7) If a deceased peace officer or firefighter leaves a dependent child or children and other dependents and partial dependents but no dependent spouse, then the awarding authority shall determine what portion of such compensation such child or children are entitled to receive and, in its discretion, may order all such compensation awarded to such child or children, but must award at least 60 percent thereof to such child or children.
- (8) If a deceased peace officer or firefighter leaves no dependent spouse or child or children but leaves other dependents and partial dependents, the awarding authority shall determine what portion of such compensation each dependent and each partial dependent shall be entitled to

receive, but such authority may not award to a partial dependent a greater percent of such compensation than the percent of the deceased peace officer's or firefighter's average monthly income which was regularly contributed toward such partial dependent's support for a reasonable time immediately prior to the death of such officer or firefighter. In its discretion the awarding authority may award all of the compensation provided for in Section 36-30-2 to such total dependents of the deceased officer or firefighter to the exclusion of partial dependents.

§ 36-30-4. Payment of compensation -- Compensation to be paid only to residents of United States.

Compensation pursuant to this article for the death of a peace officer or a firefighter shall be paid only to his or her designated beneficiaries or dependents who at the time of such officer's or firefighter's death were actually residents of the United States.

§ 36-30-5. Limitation period for presentation of claims for compensation; form and manner for presentation of claims and proof of facts; adoption of forms and rules of evidence and procedure for determination of claims to compensation authorized.

(a) All claims for compensation as provided in this article shall be presented to the awarding authority within two years from the date of the death of the peace officer or firefighter or the claims are forfeited. All such claims shall be presented in the form prescribed by the awarding authority, and proof of the facts and circumstances of the peace officer's or firefighter's death and, if necessary, the claimant's relationship to and dependence upon such peace officer or firefighter shall be made in the manner prescribed by the awarding authority.

(b) Notwithstanding the provisions of subsection (a), any person who was previously ineligible to claim the compensation provided in this article, but is now eligible to claim the compensation provided in this article because of the enactment of Act 2008-480, and who is making a claim based upon the death of a peace officer or firefighter who died on or after January 1, 2006, but prior to the enactment of Act 2008-480, shall be able to present his or her claim for compensation to the awarding authority within one year of the date of enactment of Act 2008-480 regardless of whether the claim was presented within one year from the date of the death of the peace officer or firefighter.

(c) The awarding authority is hereby authorized to prescribe such forms and adopt such rules of evidence and procedure as it deems necessary or proper, not inconsistent with the provisions of this article, for the proper determination of all claims for compensation under this article.

§ 36-30-6. Hearing and determination of claims by Board of Adjustment; entry of judgment and order for payment of compensation.

The Board of Adjustment when serving as the awarding authority under this article shall hear

and determine claims for compensation under this article in the same manner prescribed by law for the hearing and determination by such board of other claims against the state. If, when acting as the awarding authority, it determines that an applicant for compensation under this article is entitled thereto, it may adjudge and order that such compensation shall be paid out of the appropriation made by Acts 1966, Ex. Sess., No. 208, p. 256 to the Board of Adjustment for the purposes of this article and, if the funds in such appropriation have been exhausted, then out of any fund or funds appropriated to the Board of Adjustment for the purposes of Article 4, Chapter 9 of Title 41.

§ 36-30-7. Construction of article; decision of awarding authority final.

(a) This article shall not be construed to give any person a right of action against the State of Alabama in any court for the recovery of the compensation authorized by this article. This article shall not be construed to take away any right of action in any court under any other law for the recovery of damages for the death of a peace officer or a fireman; nor, in the event of the death of a peace officer or a fireman who was an employee of the State of Alabama at the time of the injury which proximately caused his death, shall this article be construed to take away the right or privilege of the surviving dependents of such peace officer or fireman to file a claim for damages with the State Board of Adjustment pursuant to any other law.

(b) The decision of the awarding authority shall be final and shall not be subject to appeal or review by any court.

Title 38. Public Welfare.

Chapter 9. Protection of Aged or Disabled Adults. §§ 38-9-1 through 38-9-11.

§ 38-9-1. Short title.

This chapter shall be known and may be cited as the Adult Protective Services Act of 1976.

§ 38-9-2. Definitions.

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

- (1) ABUSE. The infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health.
- (2) ADULT IN NEED OF PROTECTIVE SERVICES. A person 18 years of age or older whose behavior indicates that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others, or who, because of physical or mental impairment, is unable to protect himself or herself from abuse, neglect, exploitation, sexual abuse, or emotional abuse by others, and who has no guardian,

relative, or other appropriate person able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances.

(3) CAREGIVER. An individual who has the responsibility for the care of a protected person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, by contract or as a result of the ties of friendship.

(4) COURT. The circuit court.

(5) DEPARTMENT. The Department of Human Resources of the State of Alabama.

(6) EMOTIONAL ABUSE. The willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person.

(7) EMPLOYEE OF A NURSING HOME. A person permitted to perform work in a nursing home by the nursing home administrator or by a person or an entity with an ownership interest in the facility, or by both. A person shall be considered an employee whether or not he or she receives compensation for the work performed.

(8) EXPLOITATION. The expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative or the admission of or provision of care to a protected person who needs to be in the care of a licensed hospital by an unlicensed hospital after a court order obtained by the State Board of Health has directed closure of the unlicensed hospital. For the purpose of this section and [Sections 38-9-6](#) and [38-9-7](#), the term “unlicensed hospital” shall have the meaning ascribed to it in [Section 22-21-33](#), and the term “licensed hospital” shall have the meaning ascribed to it in [Section 22-21-20](#).

(9) INTENTIONALLY. A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his or her purpose is to cause that result or to engage in that conduct.

(10) INTERESTED PERSON. Any adult relative, friend, or guardian of a protected person, or any official or representative of a public or private agency, corporation, or association concerned with his or her welfare.

(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME RESIDENT. The deliberate misplacement or wrongful, temporary, or permanent use or withholding of belongings or money of a resident of a nursing home without the consent of the resident.

(12) NEGLECT. The failure of a caregiver to provide food, shelter, clothing, medical services, or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability.

(13) NURSING FACILITY. A facility which is licensed as a nursing home by the Alabama Department of Public Health pursuant to Article 2, Chapter 21, Title 22.

(14) OTHER LIKE INCAPACITIES. Those conditions incurred as the result of accident or mental or physical illness, producing a condition which substantially impairs an individual from adequately providing for his or her own care or protecting his or her own interests or protecting himself or herself from physical or mental injury or abuse.

(15) PERSON. Any natural human being.

(16) PHYSICAL INJURY. Impairment of physical condition or substantial pain.

(17) **PROTECTED PERSON.** Any person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, mentally ill, developmentally disabled, or mentally retarded, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.

(18) **PROTECTIVE SERVICES.** Those services whose objective is to protect an incapacitated person from himself or herself and from others.

(19) **RECKLESSLY.** A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he or she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk shall be of such nature and degree that its disregard constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware of that risk solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of Section 13A-3-2, acts recklessly with respect thereto.

(20) **SENILITY.** Organic brain damage caused by advanced age or other physical illness to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care.

(21) **SERIOUS PHYSICAL INJURY.** Physical injury which creates a risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, protracted loss of the function of any bodily organ, or the impairment of the function of any bodily organ.

(22) **SEXUAL ABUSE.** Any conduct that is a crime as defined in Sections 13A-6- 60 to 13A-6-70, inclusive.

§ 38-9-3. Legislative findings and intent.

The legislature recognizes that there are many adult citizens of the state who, because of the infirmities of age, disabilities or like incapacities, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

§ 38-9-4. Arrangements for protective services; liability of department for protective services; services to conform to wishes of person to be served; duty of department to ascertain persons in need of care and protection.

(a) Protective services may be arranged when an adult person is in need of care and protection because of danger to his health or safety; provided, that nothing in this chapter shall be construed to mean that the department is chargeable for the cost of such care except where such care is specifically provided for by law or departmental regulations and funding exists for such purpose. All protective services shall be in conformity with the wishes of the person to be served unless

the person is unable or unwilling to accept such services, and if the person is unable or unwilling to accept such services, the court may order such services. The department may be required to provide or arrange for services only for persons it is equipped to serve and agrees to serve.

(b) The department shall seek out, through investigation, complaints from citizens or otherwise, the adults in the state who are in need of care and protection because of danger to their health or safety, and shall, as far as may be possible, through existing agencies, public or private, or through such other resources as are available, aid such adults to a fair opportunity in life.

§ 38-9-5. Emergency protective services.

When there is brought to the attention of a county department of human resources a person who is unable, because of physical or mental disabilities, to provide for his basic needs for shelter, food, clothing or health care, and whose health or safety is in immediate danger, the department may arrange for protective services with the consent of the person. If the person is incapable of giving consent or does not consent, the department shall petition the court for an order authorizing the department to arrange for care for such person immediately. Upon a determination by the court that such care is urgently and immediately necessary to protect the health or safety of the person, an appropriate order of the court shall be issued authorizing the department to arrange for the placement of such person in an approved foster home, licensed nursing home or other similar facility immediately. At the proceeding to obtain the necessary order, any relative or other interested person may appear to oppose or join in the petition of the department. In the event of such involuntary protective placement the court shall thereafter, within 10 days, cause notice to be given, as appropriate, to the person, his spouse and other interested persons of the action of the court, the present whereabouts of the person and setting a time for a hearing on the matter of the person's need for protective placement, the appropriateness of the present placement and arrangements for future care.

§ 38-9-6. Protective placement or other protective services.

(a) An interested person may petition the court to order protective placement or other protective services for an adult in need of protective services. No protective placement or other protective services may be ordered unless there is a determination by the court that the person is unable to provide for his or her own protection from abuse, neglect, exploitation, sexual abuse, or emotional abuse. Upon a petition, setting forth the facts and name, age, sex, and residence of the person, the court of the circuit in which the person resides shall appoint a day, not more than 30 days from the filing of the petition, for the hearing on the petition. If, on the hearing of a petition, the person is not represented by counsel, the court shall appoint a guardian ad litem to represent him or her. A jury of six persons shall be impanelled for the hearing to serve as the trier of facts.

(b) Costs of court proceedings under this chapter shall be paid as other civil court costs are paid, as provided for by law.

(c) The court shall give preference in making a determination to the least drastic alternative considered to be proper under the circumstances, including a preference for noninstitutional care wherever possible. Before ordering the protective placement of any person, the court shall direct a comprehensive evaluation of the adult in need of services, if such an evaluation has not already been made and if it is necessary. The court may utilize available resources in the community in determining the need for placement. The department shall cooperate with the court in securing available resources for the person to be served. A copy of the comprehensive evaluation shall be provided to the guardian or to the guardian ad litem or attorney of the person if a guardian has not been appointed. The court obtaining the evaluation shall request appropriate information which shall include at least the following:

- (1) The address of the place where the person is residing and the person or agency who is providing services at present, if any.
- (2) A resume of any professional services provided to the person by the department or other agency in connection with the problems creating a need for placement.
- (3) A medical, psychological, social, vocational, and educational evaluation and review, where necessary.

(d) The department which arranges for a protective placement shall make an evaluation and submit a written report to the court at least once every six months covering the physical, mental, and social condition of each person for whom it is acting and shall recommend an alternative arrangement where appropriate.

(e) Any record of the department or other agency pertaining to such a person shall not be open for public inspection. Information in a record shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the commissioner of the department or by the court.

(f) Placement may be made in an appropriate alternative living arrangement such as a licensed nursing home, licensed personal care facility, or approved foster care home. No person shall be committed to a mental health facility under this chapter. A court may enter orders granting the department additional time to locate an appropriate licensed facility in which to place a person living in an unlicensed facility.

(g) If the person is eligible for the adult services program of the department, usual department policies shall be followed in regard to fees or payments, or both. If the person's income or resources, or both, make him or her ineligible for department services other than protective services, payment for services in relation to his or her evaluation, and to his or her care in a protective setting is to be made from his or her income or resources, or both. A guardian, a conservator, or both, may be appointed by the court. The department shall not be appointed as

guardian or conservator and shall not be appointed custodian other than for the limited purpose, where appropriate, of transporting an adult for protective placement as ordered by the court. If it is agreeable with the person to be served, the court may appoint a guardian, or conservator, or both, having the same powers, duties, and obligations, including having a bond, as a guardian of an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act and it shall not be necessary to have a hearing on that issue; otherwise, the court may appoint a guardian, a conservator, or both, following the procedures provided by the Alabama Uniform Guardianship and Protective Proceedings Act. If a jury is requested or required, the jury impanelled in this court according to subsection (a) of this section shall serve that function.

(h) When any adult in need of protective services is unable to manage his or her estate and because of the inability is in danger of being reduced to poverty and want, an interested person may petition the court to preserve the estate of the person, to direct use of the estate for the needs of the person and for the general relief of the person.

(i) No civil rights are relinquished as a result of any protective placement under this chapter. Nothing in this chapter shall be construed to authorize or require medical care or treatment for a person in contravention of his or her stated or implied objection upon the grounds that the medical care and treatment conflict with his or her religious beliefs and practices.

(j) As far as is compatible with the mental and physical condition of the adult in need of services or claimed to be in need of services under this chapter, every reasonable effort shall be made to assure that no action is taken without the full and informed consent of the person.

(k) To promote coordination, placement, and service delivery for persons living in unlicensed facilities and needing placement in a licensed facility, the department shall establish a coordinating council composed of representatives of interested state and local agencies including the state Department of Public Health and the state Department of Mental Health. The council shall also include representatives from the Alabama Nursing Home Association, Alabama Assisted Living Association, Alabama Hospital Association, and other interested persons, agencies, or groups as determined by commissioner. The council shall meet at times designated by the commissioner for coordination purposes identified by the commissioner including identifying resources and placements, increasing needed supportive services, and assuring maximum community coordination of effort in placing in a licensed facility persons living in an unlicensed facility.

§ 38-9-7. Violations; penalties.

(a) It shall be unlawful for any person to abuse, neglect, exploit, or emotionally abuse any

protected person. For purposes of this section, residence in a nursing home, mental institution, developmental center for the mentally retarded, or other convalescent care facility shall be prima facie evidence that a person is a protected person. Charges of abuse, neglect, exploitation, or emotional abuse may be initiated upon complaints of private individuals, as a result of investigations by social service agencies, or on the direct initiative of law enforcement officials.

(b) Any person who intentionally abuses or neglects a person in violation of this chapter shall be guilty of a Class B felony if the intentional abuse or neglect causes serious physical injury.

(c) Any person who recklessly abuses or neglects a person in violation of this chapter shall be guilty of a Class C felony if the reckless abuse or neglect causes serious physical injury.

(d) Any person who intentionally abuses or neglects a person in violation of this chapter, shall be guilty of a Class C felony if the intentional abuse or neglect causes physical injury.

(e) Any person who recklessly abuses or neglects a person in violation of this chapter, shall be guilty of a Class A misdemeanor if the reckless abuse or neglect causes physical injury.

(f) Any person who emotionally abuses a person in violation of this chapter shall be guilty of a Class A misdemeanor.

(g) Any person who exploits a person in violation of this chapter shall be guilty of a Class C felony, where the value of the property, assets, or resources or illegal services provided to a protected person by an unlicensed hospital exceeds one hundred dollars (\$100).

(h) Any person who exploits a person in violation of this chapter shall be guilty of a Class A misdemeanor, if the value of the property, assets, or resources or illegal services provided to a protected person by an unlicensed hospital does not exceed one hundred dollars (\$100).

(i) If a violation of this section is also a violation of any other Alabama criminal statute, then a conviction or acquittal under either statute bars prosecution under the remaining statute.

§ 38-9-8. Reports by physicians, etc., of physical, sexual, or emotional abuse, neglect, or exploitation -- Required; contents; investigation.

(a) All physicians and other practitioners of the healing arts or any caregiver having reasonable cause to believe that any protected person has been subjected to physical abuse, neglect, exploitation, sexual abuse, or emotional abuse shall report or cause a report to be made as follows:

(1) An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the county department of human resources or to the chief of police of the city or city and county, or to the sheriff of the county if the observation is made in an unincorporated territory, except that reports of a nursing home employee who abuses, neglects, or

misappropriates the property of a nursing home resident shall be made to the Department of Public Health. The requirements to report suspicion of suspected abuse, neglect, or misappropriation of property of a nursing home resident by an employee of a nursing home shall be deemed satisfied if the report is made in accordance with the rules of the State Board of Health.

(2) Within seven days following an oral report, an investigation of any alleged abuse, neglect, exploitation, sexual abuse, or emotional abuse shall be made by the county department of human resources or the law enforcement official, whichever receives the report, and a written report prepared which includes the following:

- a. Name, age, and address of the person.
- b. Nature and extent of injury suffered by the person.
- c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

(b) All reports prepared by a law enforcement official shall be forwarded to the county department of human resources within 24 hours.

(c) The county department of human resources shall not be required to investigate any report of abuse, neglect, exploitation, sexual abuse, or emotional abuse that occurs in any facility owned and operated by the Alabama Department of Corrections or the Alabama Department of Mental Health and Mental Retardation.

(d) Notwithstanding the foregoing, the Department of Public Health shall investigate all reports that a nursing home employee has abused or neglected a nursing home resident, or misappropriated the property of a nursing home resident, in accordance with the rules of the State Board of Health and the federal regulations and guidelines of the Medicaid and Medicare programs. The Department of Public Health shall investigate the complaints in accordance with the procedures and time frames established by the agency. A county department of human resources shall not be required to investigate the complaints.

§ 38-9-9. Reports by physicians, etc., of physical abuse, neglect or exploitation -- Immunity of reporter from civil and criminal liability.

Any person, firm or corporation making or participating in the making of a report pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

§ 38-9-10. Reports by physicians, etc., of physical abuse, neglect or exploitation -- Penalty.

Any physician or other practitioner of the healing arts who shall knowingly fail to make the report required by this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment for not more than six months or a fine of not more than \$500.00.

§ 38-9-11. Exemption of officers, agents and employees of department from civil liability.

Any officer, agent or employee of the department, in the good faith exercise of his duties under this chapter, shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or care to any person.

Chapter 9A. In-Home Services and Equipment for Persons with Developmental Disability, §§ 38-9A-1 through 38-9A-9.

§ 38-9A-1. Definitions.

As used in this chapter, the following definitions shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (a) ADULT. An individual 18 years of age or older with a developmental disability.
- (b) AGENCY. Any public state agency, including, but not limited to, the Department of Mental Health and Mental Retardation, Department of Public Health, and Department of Education.
- (c) CHILD. An individual under the age of 18 who has a developmental disability or who is at risk for a developmental disability. A child under the age of six is considered at risk for a developmental disability if the child has substantial developmental delay or specific congenital or acquired condition that has a high probability of resulting in a developmental disability if services are not provided.
- (d) COMMUNITY COUNCIL. A local council composed of people with a developmental disability and their family members who supervise the implementation of the program in its designated community consistently with the policies and procedures of the regional council.
- (e) DEVELOPMENTAL DISABILITY. A severe chronic disability of a person that:
 - (1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - (2) Is manifested before the person attains the age of 22, except in the case of traumatic brain injury in which age is not a factor.
 - (3) Is likely to continue indefinitely.
 - (4) Results in a substantial functional limitation in three or more of the following major life activities:
 - a. Capacity for independent living.
 - b. Economic self-sufficiency.
 - c. Learning.
 - d. Mobility.
 - e. Receptive and expressive language.
 - f. Self-care.
 - g. Self-direction.
 - (5) Reflects a need of the person for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended durations and are individually planned and coordinated.
- (f) FAMILY. The person or persons with whom the person with a developmental disability resides and who is primarily responsible for the physical care, health, and nurturing of the

individual with a developmental disability. The term does not include hospitals, sanitariums, nursing homes, group homes, or any other similar institution.

(g) **FINANCIAL ASSISTANCE.** A monetary payment to an eligible person with a developmental disability and the family of a child with a developmental disability needed to defray the cost of social services related to the disability. Financial assistance includes, but is not limited to, cash subsidies, cash allowances, cash vouchers, or reimbursement to enable eligible persons to acquire social services or medical services.

(h) **INDIVIDUAL AND FAMILY SUPPORTS.** Goods, services, and financial assistance to an individual with a developmental disability or the family of such an individual that are provided to meet the goals of: (i) Providing a quality of life comparable to the extent practicable, to that of similarly situated individuals not having a developmental disability and families not having an individual with a developmental disability; and (ii) preventing premature or inappropriate out-of-home placement. Individual and family support includes, but is not limited to, the following:

- (1) Communication services.
- (2) Counseling services.
- (3) Crisis intervention.
- (4) Day care.
- (5) Dental and medical care that are not otherwise covered.
- (6) Equipment and supplies.
- (7) Financial assistance.
- (8) Home and vehicle modifications.
- (9) Home health services.
- (10) Homemaker services.
- (11) Parent education and training.
- (12) Personal assistance services.
- (13) Recreation.
- (14) Respite care.
- (15) Self-advocacy training.
- (16) Service coordination.
- (17) Specialized diagnosis and evaluation.
- (18) Specialized nutrition and clothing.
- (19) Specified utility costs.
- (20) Therapeutic and nursing services.
- (21) Transportation.
- (22) Vocational and employment supports.

(i) **MEMORANDUM OF UNDERSTANDING.** A document which establishes or clarifies the specific details of an agreement between two or more parties.

(j) **PROGRAM.** The Individual and Family Support Program created in Section 38-9A-2.

(k) **REGIONAL SUPPORT COUNCIL.** A regional council composed of people with developmental disability and their family members that supervise the implementation of the program in its designated region.

§ 38-9A-2. Individual and Family Support Program.

(a) The Individual and Family Support Program is created and shall be administered through a system of regional support councils and their affiliated community councils and a state council. One regional support council is created and incorporated as a private nonprofit corporation in each of the mental retardation regions as defined by the Department of Mental Health and Mental Retardation. The regional support councils and their affiliated community councils may receive and accept funds, real estate, and other items of value from state agencies and other organizations, and enter into any necessary agreements and contracts for the purposes of implementing this chapter. Councils may employ adequate staff personnel including a state coordinator to implement the program. If staff personnel are employed through a fiscal agent or other entity apart from the council, a memorandum of understanding which defines the roles and responsibilities of the staff shall be required.

(b) The following principles shall be adhered to in developing programs to support individuals with developmental disabilities and their families:

- (1) Individuals with developmental disabilities and their families are best able to determine their own needs and should be empowered to make decisions concerning necessary, desirable, and appropriate services.
- (2) Families should receive the support necessary to care for their children at home.
- (3) Family support should be responsive to the needs of the entire family unit.
- (4) Supports should be sensitive to the unique needs and strengths of individuals and families.
- (5) Supports should build on existing social networks and natural sources of support.
- (6) Supports may be needed throughout the lifespan of the individual who has a developmental disability.
- (7) Supports should encourage the integration of people with developmental disabilities into the community.
- (8) Support services should be flexible enough to accommodate unique needs of individuals and families as they evolve over time.
- (9) Support services should be consistent with the cultural preferences and orientations of individuals and families.
- (10) Support services should be comprehensive and coordinated across the agencies that provide resources and services, or both, to individuals and families.
- (11) Family, individual, and community-based services should be based on the principles for sharing ordinary places, developing meaningful relationships, learning things that are useful, and making choices, as well as increasing the status and enhancing the reputation of the people served.
- (12) Supports should be developed in the state that are necessary, desirable, and appropriate to support individuals and families.
- (13) Developmental disabilities programs and policies should enhance the development of the individual with a developmental disability and the family.

(14) A comprehensive, coordinated system of supports to families effectively uses existing resources and minimizes gaps in supports to families and individuals in all areas of the state.

(15) Service coordination is a goal oriented process for coordination of the range of services needed and wanted by persons with developmental disabilities and their families, and is independent of service provision.

(c) State agencies and departments may enter into agreements, contracts, or grants with regional or affiliated community councils, families, caregivers, or individuals with a developmental disability to purchase or provide individual and family support.

(d) All volunteer council members shall be protected from liability stemming from the participation of the volunteer as provided in Section 6-5-336.

§ 38-9A-3. Regional support councils.

(a) Each regional support council shall be composed solely of individuals with developmental disabilities and their family members. Membership shall not exceed 20 members per council, with at least one member to be appointed from each of the affiliated councils, and at least two at-large members who are not members of any community council. A quorum of 40 percent of the membership shall be required to conduct business. Membership shall be distributed equitably throughout the geographic region and shall be representative of the prevalent developmental disabilities. Membership terms shall be for a period of three years. The regional councils shall develop policies for ensuring the implementation of the membership requirements in this section.

Successor members to fill expiring terms shall be made by the regional councils for a term of three years each.

(b) The members of each council shall serve on a voluntary basis, but shall be reimbursed for reasonable expenses incurred in council participation within the guidelines determined by the state council. The guidelines shall reflect the intent of this chapter to value and actively support a diversity of consumer and family participation.

(c) The regional councils shall adopt, subject to the approval of the State Support Council, policies and procedures within its respective region regarding:

(1) Development of a planning process that includes collection and evaluation of data and requests for the program that is coordinated with other service planning efforts.

(2) Development of appropriation requests for individual and family support within the region.

(3) Fiscal accountability procedures, including provisions for an annual independent audit.

(4) Program specifications for the region that shall include, but not be limited to, the following:

a. Criteria for allocation of funds to individuals, families, and support programs.

b. Eligibility determination for persons with developmental disabilities and families with whom an individual with a developmental disability resides.

- c. Methodologies for allocating resources to individuals and families within the funds available.
- (5) Coordination of the individual and family support program and the use of its funds equitably throughout the region, with other publicly funded programs.
- (6) Resolution of grievances and complaints filed pertaining to actions of the individual and family support program, and an appeals process.
- (7) Quality assurance and quality improvement guidelines pursuant to subsection (f) that include, at a minimum, a measurement of the extent of consumer and family satisfaction with the services and support of the program.
- (8) Annual evaluation of services, including, but not limited to, consumer satisfaction.
- (9) Development and implementation of a public awareness, education, and outreach program.
- (10) Development of a constitution and bylaws.
- (11) Sanction of the community council.

(d) The council shall meet at least quarterly.

(e)(1) The council may dispense financial assistance and individual and family support to eligible persons who have developmental disabilities, and to eligible families of those persons. Any financial assistance provided to individuals or families pursuant to this chapter based on funds provided by the Department of Mental Health and Mental Retardation shall be made in compliance with rules promulgated by the department.

(2) The council may also choose to fund support programs operated by local agencies.

(f) The councils shall adopt a quality improvement plan that does all of the following:

- (1) Adheres to the principles of Section 38-9A-2.
- (2) Addresses the policies and procedures required by subsection (c).
- (3) Includes fundamental quality assurance activities.
- (4) Incorporates concepts of continuous quality improvement.
- (5) Utilizes consumer and family satisfaction assessment data as a quality indicator.
- (6) Is evaluated annually to assess its effectiveness in improving the following:
 - a. Consumer and family satisfaction with the IFS services and support.
 - b. The efficiency and effectiveness of the councils in operations and performance.
 - c. The compliance of the councils with the requirements of this chapter.
- (7) Is revised annually based on results of subdivision (6).

§ 38-9A-4. Community councils.

(a) Each regional council shall sanction in accordance with state and regional council policies and procedures local area affiliate councils within its region, to be known as community councils, for the purpose of implementing the Individual and Family Support Program at the local community level.

(b) Each community council shall be composed solely of people with disabilities and their family members. Members shall be appointed by the respective community councils, within the criteria established by the regional councils. Membership shall be distributed equitably throughout the local community area and shall be representative of the prevalent developmental disabilities.

(c) Each community council shall perform the following duties:

- (1) Determine specific eligibility criteria within the broad criteria set by the regional council.
- (2) Receive applications for support funding from individuals, families, and service programs, and select recipients.
- (3) Authorize and disburse funding for approved recipients within the funds available.
- (4) Collect and evaluate support data, including consumer and family satisfaction, for planning purposes, and coordinate with other local and regional service planning efforts.
- (5) Adhere to the constitution and bylaws as developed by the regional council.
- (6) Adhere to the principles of subsection (b) of Section 38-9A-2.

§ 38-9A-5. State Support Council.

(a) The State Support Council is created and shall be comprised of not more than 15 consumer and family members. Of these, there will be three representatives appointed by each regional support council. These shall include a regional council officer, one other regional council member, and a community council member. Additionally, the following individuals or their designees shall serve as nonvoting advisory members: The Chair of the Developmental Disabilities Planning Council, the Commissioner of the Department of Human Resources, the Commissioner of the Department of Mental Health and Mental Retardation, the State Superintendent of Education, the Director of the Department of Rehabilitation Services, and the State Health Officer of the Department of Public Health. The State Support Council shall provide a forum for the development of a state plan for an individual and family support system reflecting the experiences and needs of each region which shall be updated at least every three years and a forum for the consolidation and presentation of the annual budget request. The State Support Council shall make an annual report to the Legislature that includes an evaluation of the program and recommendations for future policy in individual and family supports. The report shall also be distributed to the Governor for dissemination to state agencies.

(b) The state council shall also develop a code of ethics for the council, including a policy regarding potential conflicts of interest in membership, receipt of supports, and other areas as appropriate.

(c) The state council shall meet at least quarterly.

§ 38-9A-6. Plans and budgets.

(a) The local, regional, and state plans for individual and family supports developed by each

community and regional council and the State Support Council shall be developed in conjunction with the regional planning process of the Division of Mental Retardation of the Department of Mental Health and Mental Retardation. These plans and accompanying proposed budgets shall be considered by the Commissioner of the Department of Mental Health and Mental Retardation as a line item in the department's budget request that is annually submitted to the Governor's office.

(b) The minimum level of funding in any year in the line item shall be six hundred fifty thousand dollars (\$650,000) as a continuation of current funding from the Department of Mental Health and Mental Retardation, except that this amount may be reduced in a fiscal year in an amount equal to or less than any reduction applied to all other community-based programs and services of the Division of Mental Retardation in that same fiscal year. Provided, however, this exception shall not apply to federal maintenance of effort requirements. The councils may request the allocation of additional new funds in the budget of the Department of Mental Health and Mental Retardation for the Individual and Family Support Program and may also receive new funds from other state agencies and from the State General Fund.

(c) The state, regional, or affiliated community councils, as defined by this chapter, are exempted from any county and local and sales and use taxes.

§ 38-9A-7. Nothing in chapter to restrict other chapters.

(a) Nothing contained in this chapter shall limit, restrict, or alter the provisions of Chapter 51 of Title 22, regarding regional mental health programs and facilities.

(b) Nothing contained in this chapter shall limit, restrict, or alter the provisions of Chapter 50 of Title 22.

§ 38-9A-8. Individual and family support and financial assistance.

(a) Individual and family support is complementary to, but not supplemental to, other assistance or benefits available through other public or private assistance programs.

(b) Financial assistance, or the value of goods or services provided to eligible individuals or families shall not be deemed as income for any purpose, and is exempt from all state and local taxation and reporting.

(c) Financial assistance shall not be alienable by sale, assignment, garnishment, executions, or otherwise.

(d) The individual or family recipient shall decide how financial assistance is used subject to the following:

(1) The family or individual recipient shall submit an annual report stating generally how the assistance was used.

(2) The family or individual recipient shall report promptly any event or condition affecting continued eligibility for support including, but not limited to:

- a. Death of a family member.
- b. Death of the responsible family adult.
- c. Placement outside the home.
- d. Change of state of residence.

§ 38-9A-9. Continuation of chapter.

(a) It is the intent of the Legislature to continue the Individual and Family Support Program established pursuant to this chapter, commencing with Section 38-9A-1.

(b) This chapter is continued and shall be a permanent statute.

(c) Section 9 of Act 93-334, S.421, 1993 Regular Session (Acts 1993, p. 507), is amended to read as follows: "Section 9. This act shall become effective October 1, 1993."

Title 41 State Government

Chapter 13. Social Security Numbers, § 41-13-6.

§ 41-13-6. Use of Social Security numbers on documents available for public inspection.

Notwithstanding any other law to the contrary, a state department, licensing or regulatory board, agency, or commission is prohibited from placing or otherwise revealing the Social Security number of a person, including, but not limited to, full- or part-time employees thereof, on any document that is available for public inspection including, but not limited to, state personnel evaluation forms and any other forms related thereto unless otherwise required by law, without the express consent of the person with the number, or the consent of that person's parent, custodian, legal guardian, or legal representative. The foregoing prohibition shall not apply when a federal or state agency makes a request for or releases a Social Security number for a legitimate government purpose, or pursuant to a federal or state statute, regulation, or federally funded program or pursuant to an administrative or judicial subpoena or order. Nothing in this section is intended to create or establish a new cause of action for damages in any court. Nothing in this section shall be construed as a waiver of sovereign or qualified immunity. This section shall not be applicable to a document originating with any court or taxing authority, any document that when filed by law constitutes a consensual or nonconsensual lien or security lien or security interest, or any record of judgment, conviction, eviction, or bankruptcy. If express consent to reveal a Social Security number has not been obtained, a state department or agency shall redact, remove, cover, or otherwise excise the Social Security number of any person from any document that is available for public inspection so that the remaining portion of the document may be revealed.

Chapter 22. Act Administrative Procedures, §§ 41-22-2 through 41-22-27.

§ 41-22-2. Legislative intent and purpose; effect on substantive rights; applicability; authority to prescribe rules and regulations required in connection with this chapter.

(a) This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter is meant to discourage agencies from adopting procedures conferring additional rights upon the public; and, save for express provisions of this act to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are in addition to those provided herein.

(b) The purposes of the Alabama Administrative Procedure Act are:

- (1) To provide legislative oversight of powers and duties delegated to administrative agencies;
- (2) To increase public accountability of administrative agencies;
- (3) To simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions;
- (4) To increase public access to governmental information;
- (5) To increase public participation in the formulation of administrative rules;
- (6) To increase the fairness of agencies in their conduct of contested case proceedings; and
- (7) To simplify the process of judicial review of agency action as well as increase its ease and availability.

In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration.

(c) This chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

(d) Every state agency having express statutory authority to promulgate rules and regulations shall be governed by the provisions of this chapter and any additional provisions required by statute, and shall also have the authority to amend or repeal rules and regulations, and to prescribe methods and procedures required in connection therewith. Nothing in this chapter shall be construed as granting to any agency the authority to adopt or promulgate rules and regulations.

(e) All agencies whose rules or administrative decisions are subject to approval by the Supreme Court of Alabama and the Department of Insurance of the State of Alabama are exempted from the provisions of this chapter.

Section 41-22-3 Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have meanings respectively ascribed to them in this section, except when the context otherwise requires:

(1) **AGENCY.** Every board, bureau, commission, department, officer, or other administrative office or unit of the state, including the Alabama Department of Environmental Management, other than the Legislature and its agencies, the Alabama State Port Authority, the courts, the Alabama Public Service Commission, or the State Banking Department, whose administrative procedures are governed by Sections 5-2A-8 and 5-2A-9. The term shall not include boards of trustees of postsecondary institutions, counties, municipalities, or any agencies of local governmental units, unless they are expressly made subject to this chapter by general or special law.

(2) **COMMITTEE.** The Joint Committee on Administrative Regulation Review shall be the members of the Legislative Council.

(3) **CONTESTED CASE.** A proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing. The term shall not include intra-agency personnel actions; shall not include those hearings or proceedings in which the Alabama Board of Pardons and Paroles considers the granting or denial of pardons, paroles or restoration of civil and political rights or remission of fines and forfeitures; and which are exempt from Sections 41-22-12 through 41-22-21, relating to contested cases.

(4) **LICENSE.** The whole or part of any agency franchise, permit, certificate, approval, registration, charter, or similar form of permission required by law, but not a license required solely for revenue purposes when issuance of the license is merely a ministerial act.

(5) **LICENSING.** The agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(6) **PARTY.** Each person or agency named or admitted as a party or properly seeking and entitled as a matter of right, whether established by constitution, statute, or agency regulation or otherwise, to be admitted as a party, or admitted as an intervenor under Section 41-22-14. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(7) **PERSON.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(8) **QUORUM.** No less than a majority of the members of a multimember agency shall constitute a quorum authorized to act in the name of the agency, unless provided otherwise by statute.

(9) **RULE.** Each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation; provided, however, all forms shall be filed with the secretary of the agency and with the Legislative Reference Service and all forms, except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to Section 41-22-5, shall be published in the Agency Administrative Code. The term includes the amendment or repeal of all existing rules, but does not include any of the following:

a. Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public.

b. Declaratory rulings issued pursuant to Section 41-22-11.

c. Intergovernmental, interagency, and intra-agency memoranda, directives, manuals, or other communications which do not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. Determinations, decisions, orders, statements of policy, and interpretations that are made in contested cases.

e. An order which is directed to a specifically named person or to a group of specifically named persons which does not constitute a general class, and the order is served on the person or persons to whom it is directed by the appropriate means applicable thereto. The fact that the named person who is being regulated serves a group of unnamed persons who will be affected does not make the order a rule.

f. An order which applies to a specifically described tract of real estate.

g. Any rules or actions relating to any of the following:

1. The conduct of inmates of public institutions and prisoners on parole.

2. The curriculum of public educational institutions or the admission, conduct, discipline, or graduation of students of the institutions; provided, however, that this exception shall not extend to rules or actions of the State Department of Education.
3. Opinions issued by the Attorney General of the State of Alabama.
4. The conduct of commissioned officers, warrant officers, and enlisted persons in the military service.
5. Advisory opinions issued by the Alabama Ethics Commission.
6. Hunting and fishing seasons or bag or creel limits promulgated by the Commissioner of the Department of Conservation and Natural Resources.
- h. Standards, specifications, codes, plans, manuals, and publications used in the design, construction, repair, and maintenance of highways, roads, and bridges under the jurisdiction of the Department of Transportation.

§ 41-22-4. Adoption by agencies of rules governing organization, practice, etc.; public access to rules, orders, etc.; effect of rules, orders, etc., not made available to public.

(a) In addition to the other rulemaking requirements imposed by law, each agency shall:

- (1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;
- (2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;
- (3) Make available for public inspection and copying, at cost, all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;
- (4) Make available for public inspection and copying, at cost, and index by name and subject all final orders, decisions, and opinions which are issued after October 1, 1982, except those expressly made confidential or privileged by statute or order of court.

(b) No agency rule, order, or decision shall be valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection and indexed as required by this section and the agency has given all notices required

by Section 41-22-5. This provision is not applicable in favor of any person or party who has actual knowledge thereof, and the burden of proving such knowledge shall be on the agency.

§ 41-22-5. Notice of intent to adopt, amend, or repeal rules; submission of data, views, etc., by interested persons; procedure for adoption of emergency rules; effect of this section on other procedural requirements; validity of rules in substantial compliance with this section; limitation of proceedings to contest rules.

(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) Give at least 35 days' notice of its intended action. Date of publication in the Alabama Administrative Monthly shall constitute the date of notice. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, shall specify a notice period ending not less than 35 days or more than 90 days from the date of the notice, during which period interested persons may present their views thereon, and shall specify the place where, and the manner in which interested persons may present their views thereon. The notice shall be given to the chairman of the legislative committee, as provided in Section 41-22- 23, and mailed to all persons who pay the cost of such mailing and who have made timely request of the agency for advance notice of its rulemaking proceedings and shall be published, prior to any action thereon, in the Alabama Administrative Monthly. A complete copy of the proposed rule shall be filed with the secretary of the agency and the Legislative Reference Service.

(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if conflicting views are submitted on the proposed rule, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling any considerations urged against its adoption.

(b) Notwithstanding any other provision of this chapter to the contrary, if an agency finds that an immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 35 days' notice or that action is required by or to comply with a federal statute or regulation which requires adoption of a rule upon fewer than 35 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule shall become effective immediately, unless otherwise stated therein, upon the filing of the rule and a copy of the written statement of the reasons therefor with the Legislative Reference Service and the secretary of the agency. The rule may be effective for a period of not longer than 120 days and shall not be

renewable. An agency shall not adopt the same or a substantially similar emergency rule within one calendar year from its first adoption unless the agency clearly establishes it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely reoccur during the next nine months. The adoption of the same or a substantially similar rule by normal rule-making procedures is not precluded. In any subsequent action contesting the effective date of a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to justify its finding. Prior to indexing and publication, the agency shall make reasonable efforts to apprise the persons who may be affected by its rules of the adoption of the emergency rule.

(c) It is the intent of this section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in subsection (b) of this section, the provisions of this section are applicable to the exercise of any rulemaking authority conferred by any statute, but nothing in this section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof.

(d) No rule adopted after October 1, 1982, is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule; provided, however, that a proceeding to contest a rule based on failure to provide notice as herein required may be commenced at any time.

§ 41-22-6. Designation of agency secretary; filing of copies of rules with secretary; information as to authorship of rules; filing of copies of rules with Legislative Reference Service; maintenance of and public access to permanent registers of rules; effective dates of rules.

(a) Each agency shall have an officer designated as its secretary and shall file in the office of the secretary of the agency a certified copy of each rule adopted by it, including all rules, as defined in this chapter, existing on October 1, 1981. Each rule or regulation promulgated, whether the original or a revision, and all copies thereof, shall have the name or names of the author or authors, respectively, on its face. The secretary of the agency shall keep a permanent register of the rules open to public inspection.

(b) The secretary of each agency shall file in the office of the Legislative Reference Service, no later than 15 days after the filing with the secretary of the agency and within 90 days after completion of the notice, in a form and manner prescribed by the Legislative Reference Service,

a certified copy of each rule adopted by it. As used in this section, "completion of notice" means the end of the notice period specified pursuant to subdivision (1) of subsection (a) of Section 41-22-5. A rule that is not filed with the Legislative Reference Service within the time limits prescribed in this subdivision is invalid. The Legislative Reference Service shall keep a permanent register of the rules open to public inspection.

(c) Each rule hereafter adopted is effective 35 days after filing with the Legislative Reference Service, unless it is:

(1) A rule for which a later date is required by statute or specified in the rule.

(2) A rule for which an earlier date is required by statute.

(3) An emergency rule adopted pursuant to subsection (b) of Section 41-22-5.

(4) A rule which the committee disapproves of or proposes an amendment for pursuant to Section 41-22-23.

§ 41-22-7. Contents, publication, and availability of administrative material; duties of Legislative Reference Service.

(a) The secretary of the agency shall establish and maintain an official register of regulations which shall be compiled, indexed, published in loose-leaf form, and kept up to date by the secretary of the agency. This register of regulations shall be known as "The (name of the agency) Administrative Code," and it shall be made available, upon request, at cost to all persons for copying and inspection and to those persons who subscribe thereto. Supplementation shall be made as often as is practicable, but at least once every year. The secretary of the agency shall number and renumber rules to conform with a uniform numbering system devised by the Legislative Reference Service.

(b) The secretary of the agency may omit from its administrative code rules that are general in form, but are applicable to only one county or a part thereof. Rules so omitted shall be filed with the secretary of the agency, and exclusion from publication shall not affect their validity or effectiveness. The secretary of the agency shall publish a compilation of and index to all rules so omitted at least annually.

(c) The secretary of the agency shall make copies of the agency's administrative code available on an annual subscription basis, at cost.

(d) The secretary of the agency shall file with the Legislative Reference Service, not later than 15 days after filing with the secretary of the agency, all rules or amendments or repeal of rules promulgated by the agency. In addition, the secretary of the Alabama Public Service Commission and the Alabama State Port Authority shall file with the Legislative Reference Service, not later than 15 days after filing with the secretary of the commission, all rules or amendments or repeal of rules promulgated by that commission.

(e) The Legislative Reference Service shall establish and maintain an official register of regulations which shall be so compiled, indexed, published in loose-leaf form, and kept up to date by the Legislative Reference Service. The register of regulations shall be known as the "Alabama Administrative Code," and shall be made available at cost, upon request, to all persons for inspection and copying or who subscribe thereto. Supplementation shall be made as often as is practicable, but at least once every year. The Legislative Reference Service shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.

(f) The Legislative Reference Service shall publish a monthly bulletin entitled the "Alabama Administrative Monthly," which shall contain a statement of either the terms or substance of all rules filed during the preceding month, excluding rules in effect on October 1, 1982, together with other material required by law and such other material the agency or committee determines to be of general interest.

(g) The Legislative Reference Service may omit from the Alabama Administrative Monthly and the Alabama Administrative Code rules that are general in form, but are applicable to only one county or a part thereof. Rules so omitted shall be filed with the Legislative Reference Service, and exclusion from publication shall not affect their validity or effectiveness. The Legislative Reference Service shall publish a compilation of, and index to, all rules so omitted at least annually.

(h) The Legislative Reference Service shall make copies of the Alabama Administrative Code and copies of the Alabama Administrative Monthly available at cost on an annual subscription basis.

(i) The Legislative Reference Service shall charge each agency using the Alabama Administrative Monthly a space rate computed to cover all publishing or printing costs related to the Alabama Administrative Monthly and shall charge each agency a per page rate for each page published in the Alabama Administrative Code to cover costs incurred by the Legislative Reference Service in publishing the Alabama Administrative Code.

§ 41-22-8. Form for petition for adoption, amendment or repeal of rules; procedure upon submission of petition.

Each agency shall prescribe by rule the form for petition requesting the adoption, amendment or repeal of a rule and the procedure for submission, consideration, and disposition thereof. Within 60 days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Section 41-22-5; provided, however, an agency which has its next regularly scheduled meeting beyond said 60-day period, may by written notice extend said period for not more than 30 days during which it shall deny or initiate rule-making proceedings.

§ 41-22-9. Adoption by reference of codes, standards, and regulations of other agencies of this state or the United States or of other approved organizations; form of reference; availability from agency of information as to rules, etc., adopted by reference.

An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by any other agency of this state or any agency of the United States or by a generally recognized organization or association approved by the joint committee administrative regulation review. The reference shall fully identify the adopted matter by date and otherwise. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted.

§ 41-22-10. Action for declaratory judgment as to validity or applicability of rule; stay of enforcement of rule by injunction.

The validity or applicability of a rule may be determined in an action for a declaratory judgment or its enforcement stayed by injunctive relief in the circuit court of Montgomery County, unless otherwise specifically provided by statute, if the court finds that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. In passing on such rules the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with rule-making procedures provided for in this chapter.

§ 41-22-11. Petition for declaratory ruling as to validity of rule, as to applicability of any rule or statute enforceable by an agency, or as to meaning and scope of agency order; form and contents; binding effect of agency ruling; effect of failure to issue ruling; judicial review.

(a) On the petition of any person substantially affected by a rule, an agency may issue a declaratory ruling with respect to the validity of the rule or with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the agency. The petition seeking an administrative determination under this section shall be in writing and shall state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule. Each agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition, and shall prescribe in its rules the circumstances in which rulings shall or shall not be issued.

(b) A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by a court in a proper proceeding. Such rulings are subject to review in the Circuit Court of Montgomery County, unless otherwise specifically provided by the statute, in the manner provided in Section 41-22-20 for the review of decisions in contested cases. Failure of the agency to issue a declaratory ruling on the merits within 45 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

§ 41-22-12. Notice and opportunity for hearing in contested cases; contents of notice; power of presiding officer to issue subpoenas, discovery and protective orders; procedure upon failure of notified party to appear; presentation of evidence and argument; right to counsel; disposition by stipulation, settlement, etc.; contents of record; public attendance at oral proceedings; recordings and transcripts of oral proceedings.

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail, return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means, including, where permitted by existing statute, delivery by first class mail, postage prepaid, to be effective upon the deposit of the notice in the mail. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

(b) The notice shall include:

- (1) A statement of the time, place, and nature of the hearing;
 - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) A reference to the particular sections of the statutes and rules involved; and
 - (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
- (c) In a contested case, on motion of a party, the presiding officer conducting the hearing may issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure. The agency may set a reasonable fee by rule for the issuance of a subpoena to be paid by the moving party. Process issued pursuant to this subsection shall be enforced by a court in the same manner as process issued by the court. This subsection shall not apply to proceedings before the State Ethics Commission.
- (d) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.
- (e) Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved and to be represented by counsel at their own expense. Provided, where the statutory determinative process is a multi-level or multi-step procedure, the opportunity to present evidence need be afforded the parties at only one level or step in the determination process, unless otherwise provided by statute establishing such determination process.
- (f) Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing.
- (g) The record in a contested case shall include:
- (1) All pleadings, motions, and intermediate rulings;
 - (2) All evidence received or considered and all other submissions; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information;

- (3) A statement of all matters officially noticed;
- (4) All questions and offers of proof, objections, and rulings thereon;
- (5) All proposed findings and exceptions;
- (6) Any decision, opinion, or report by the hearing officer at the hearing; and
- (7) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, if such memoranda or data contains information of a proprietary and confidential nature, it shall be protected by the agency from public disclosure.
- (h) Oral proceedings shall be open to the public, unless private hearings are otherwise authorized by law. Oral proceedings shall be recorded either by mechanized means or by qualified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision and shall be made available for inspection by the public, except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.
- (i) Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

§ 41-22-13. Rules of evidence in contested cases.

In contested cases:

- (1) The rules of evidence as applied in nonjury civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Except as hereinafter provided, objections to evidentiary offers may be made and shall be noted in the record. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and

shall appear in the record. Subject to these requirements, when a hearing will be expedited and interests of the parties will not be prejudiced substantially, any part of the evidence may be received or may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness. The testimony of parties and witnesses shall be made under oath. Provided, however, in the hearing of a contested case where judicial review of the case is by trial de novo, the agency may announce that it shall not be necessary that objections be made during the hearing and upon such announcement, it shall not be required or necessary that objection to be made to any testimony or evidence which may be offered by either party, and on the consideration of such cases the agency shall consider only such testimony and evidence as is relevant, material, competent and legal, and shall not consider any testimony or evidence which is irrelevant, immaterial, incompetent or illegal, whether objection shall have been made thereto or not, and whether such testimony be brought out on direct, cross or re-direct examination, or is hearsay. The agency shall not be required to point out what testimony or evidence should be excluded or not considered. Either party, on submission, shall have the privilege of calling attention to any testimony or evidence which is deemed objectionable. If specific objection be made to any evidence and a ruling made thereon by the agency, this exception shall not apply to such evidence.

(2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.

(4) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

(5) The experience, technical competence, and specialized knowledge of the agency may be utilized in the evaluation of the evidence.

§ 41-22-14. Intervention in contested cases.

In contested cases, upon timely application, any person shall be permitted to intervene when a statute confers an unconditional right to intervene, or when the applicant has an individual interest in the outcome of the case as distinguished from a public interest and the representation of the interest of the applicant is inadequate.

§ 41-22-15. Majority requirement for adoption of final decision in contested cases; use of proposed orders in cases where any official is unfamiliar with the case; finality of proposed orders.

In a contested case, a majority of the officials of the agency who are to render the final order must be in accord for the decision of the agency to be a final decision. If any official of the agency who is to participate in the final decision has not heard the case or read the record and his vote would affect the final decision, the final decision shall not be made until a proposed order is prepared and an opportunity is afforded to each party adversely affected by the proposed order to file exceptions and present briefs and oral argument to the official not having heard the case or read the record. The proposed order shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision prepared by the person who conducted the hearing or one who read the record. The proposed order shall become the final decision of the agency without further proceedings, unless there are exceptions filed or an appeal to the agency within the time provided by rule. The parties by written stipulation may waive compliance with this section.

§ 41-22-16. Form and content of final order; when final order to be rendered; service of notice and copies of final order.

(a) The final order in a proceeding which affects substantial interests shall be in writing and made a part of the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 30 days:

- (1) After the hearing is concluded, if conducted by the agency;
- (2) After a recommended order, or findings and conclusions are submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer; or

(3) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing. The 30 day period may be waived or extended with the consent of all parties and may be extended by law with reference to specific agencies.

(b) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(c) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such findings in the final order, which shall be appealable or enjoinable from the date rendered.

(d) Parties shall be notified either personally or by certified mail return receipt requested of any order and, unless waived, a copy of the final order shall be so delivered or mailed to each party or to his attorney of record. Provided, however, that, except as hereinafter provided, notification of any order other than a final decision or order subject to judicial review may, where permitted by existing statute, be delivered by first class mail, postage prepaid, and delivery shall be effective upon deposit of the notice and, unless waived, the final order in the mail; provided, the notification of the final order subject to judicial review, together with a copy of the final order, shall be delivered either by personal service as in civil actions or by certified mail, return receipt requested.

§ 41-22-17. Filing of application for rehearing in contested cases; form and content; effect of application on final order; grounds for rehearing; service of application on parties of record; agency decision on application.

(a) Any party to a contested case who deems himself aggrieved by a final order and who desires to have the same modified or set aside may, within 15 days after entry of said order, file an application for rehearing, which shall specify in detail the grounds for the relief sought therein and authorities in support thereof.

b) The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the agency and shall continue in effect unless and until said application shall be granted or until said order shall

be superseded, modified, or set aside in a manner provided by law.

(c) Such application for rehearing will lie only if the final order is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) In violation of an agency rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(d) Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.

(e) Within 30 days from the filing of an application the agency may in its discretion enter an order:

- (1) Setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or
- (2) With reference to the application without a hearing; or
- (3) Granting or denying the application.

If the agency enters no order whatsoever regarding the application within the 30-day period, the application shall be deemed to have been denied as of the expiration of the 30-day period.

§ 41-22-18. Disqualification from participation in proposed order or final decision based upon conflict of interest or personal bias.

(a) No individual who participates in the making of any proposed order or final decision in a contested case shall have prosecuted or represented a party in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or

pending factually related controversy that may culminate in a contested case involving the same parties. Nor shall any such individual be subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties.

(b) A party to a contested case proceeding may file a timely and sufficient affidavit asserting disqualification according to the provisions of subsection (a) or asserting personal bias of an individual participating in the making of any proposed order or final decision in that case. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

§ 41-22-19. Grant, denial, renewal, etc., of licenses.

(a) The provisions of this chapter concerning contested cases shall apply to the grant, denial, revocation, suspension, or renewal of a license.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

(d) If the agency finds that danger to the public health, safety, or welfare requires emergency suspension of a license and states in writing its reasons for that finding, it may proceed without hearing or upon any abbreviated hearing that it finds practicable to suspend the license. The suspension shall become effective immediately, unless otherwise stated therein. The suspension may be effective for a period of not longer than 120 days and shall not be renewable. An agency shall not suspend the same license for the same or a substantially similar emergency within one calendar year from its first suspension unless the agency clearly establishes that it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a

formal suspension or revocation proceeding under subsection (c) of this section shall also be promptly instituted and acted upon.

§ 41-22-20. Judicial review of preliminary, procedural, etc., actions or rulings and final decisions in contested cases.

(a) A person who has exhausted all administrative remedies available within the agency, other than rehearing, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) All proceedings for review may be instituted by filing of notice of appeal or review and a cost bond with the agency to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the agency or the court on a showing of substantial hardship. A petition shall be filed either in the Circuit Court of Montgomery County or in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, in the circuit court of the county where a party other than an intervenor, resides or if a party, other than an intervenor, is a corporation, domestic or foreign, having a registered office or business office in this state, then in the county of the registered office or principal place of business within this state.

(c) The filing of the notice of appeal or the petition does not itself stay enforcement of the agency decision. If the agency decision has the effect of suspending or revoking a license, a stay or supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the reviewing court, upon petition of the agency, determines that a stay or supersedeas would constitute a probable danger to the public health, safety, or welfare. In all other cases, the agency may grant, or the reviewing court may order, a stay upon appropriate terms, but, in any event, the order shall specify the conditions upon which the stay or supersedeas is granted; provided, however, if the appeal or proceedings for review to any reviewing court is from an order of the agency increasing or reducing or refusing to increase rates, fares, or charges, or any of them, or any schedule or parts of any schedule of rates, fares, or charges, the reviewing court shall not direct or order a supersedeas or stay of the action or order to be reviewed without requiring, as a condition precedent to the granting of such supersedeas, that the party applying for supersedeas or stay shall execute and file with the clerk of the court a bond as provided for and required by statute or law. If the circuit court shall fail or refuse to grant supersedeas or stay, the party seeking such relief may petition the appropriate court to which the appeal or review lies to order a supersedeas or stay of the action or order of the agency from which review is sought. After the

required bond shall have been filed and approved by the clerk, such agency order shall be stayed and superseded, and it shall be lawful to charge the rates, fares, or charges which have been reduced, refused, or denied by the agency order, until the final disposition of the cause. The provisions of this subsection shall apply when applicable, anything in Rule 60 of the Alabama Rules of Civil Procedure restricting the provisions of this subsection to the contrary notwithstanding.

(d) The notice of appeal or review shall be filed within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner or, if a rehearing is requested under Section 41-22-17, within 30 days after the receipt of the notice of or other service of the decision of the agency thereon. The petition for judicial review in the circuit court shall be filed within 30 days after the filing of the notice of appeal or review. Copies of the petition shall be served upon the agency and all parties of record. Any person aggrieved who is not a party may petition to become a party by filing a motion to intervene as provided in Section 41-22-14. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the reviewing court may extend the time for filing, not to exceed an additional 30 days, or, within four months after the issuance of the agency order, issue an order permitting a review of the agency decision under this chapter notwithstanding such waiver. Any notice required herein which is mailed by the petitioner, certified mail return receipt requested, shall be deemed to have been filed as of the date it is postmarked. This section shall apply to judicial review from the final order or action of all agencies, and amends the judicial review statutes relating to all agencies to provide a period of 30 days within which to appeal or to institute judicial review.

(e) If there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt fact-finding proceeding under this chapter after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

(f) Unreasonable delay on the part of an agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency.

(g) Within 30 days after receipt of the notice of appeal or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record and transcript of the proceedings under review. With the permission of the court, the record of the proceedings under review may be shortened by stipulation of all parties to the review proceedings. Any party found by the reviewing court to have unreasonably refused to

stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(h) The petition for review shall name the agency as respondent and shall contain a concise statement of:

(1) The nature of the agency action which is the subject of the petition;

(2) The particular agency action appealed from;

(3) The facts and law on which jurisdiction and venue are based;

(4) The grounds on which relief is sought; and

(5) The relief sought.

(i) In proceedings for judicial review of agency action in a contested case, except where appeal or judicial review is by a trial de novo, a reviewing court shall not itself hear or accept any further evidence with respect to those issues of fact whose determination was entrusted by law to the agency in that contested case proceeding; provided, however, that evidence may be introduced in the reviewing court as to fraud or misconduct of some person engaged in the administration of the agency or procedural irregularities before the agency not shown in the record and the affecting order, ruling, or award from which review is sought, and proof thereon may be taken in the reviewing court. If, before the date set for hearing a petition for judicial review of agency action in a contested case, it is shown to the satisfaction of the court that additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may remand to the agency and order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modification, new findings, or decision with the reviewing court and mail copies of the new findings, or decision to all parties.

(j) The review shall be conducted by the court without a jury and, except as herein provided, shall in the review of contested cases be confined to the record and the additions thereto as may be made under subsection (i) of this section. Judicial review shall be by trial de novo in the circuit court where review is sought from tax assessments, tax determinations or tax redeterminations, rulings of the revenue department granting, denying, or revoking licenses, or rulings on petitions for tax refunds, or, unless a subsequent agency statute provides otherwise, where an agency statute existing on the effective date of Act No. 81-855, 1981 Acts of Alabama,

or thereafter enacted provides for a trial de novo on appeal to or review by the courts; provided, however, in the review of tax assessments, tax determinations, or tax redeterminations, rulings of the revenue department granting, denying, or revoking licenses, or rulings on petitions for tax refunds, the administrative record and transcript shall be transmitted to the reviewing court as provided in subsection (g) of this section, and, on motion of either party, shall be admitted into evidence in the trial de novo, subject to the rights of either party to assign errors, objections, or motions to exclude calling attention to any testimony or evidence in the administrative record or transcript which is deemed objectionable or inadmissible. Provided further that, with the consent of all parties, judicial review may be on the administrative record and transcript. The court, upon request, shall hear oral argument and receive written briefs.

(k) Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

- (1) In violation of constitutional or statutory provisions;
 - (2) In excess of the statutory authority of the agency;
 - (3) In violation of any pertinent agency rule;
 - (4) Made upon unlawful procedure;
 - (5) Affected by other error of law;
 - (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.
- (l) Unless the court affirms the decision of the agency, the court shall set out in writing, which writing shall become a part of the record, the reasons for its decision.

§ 41-22-21. Appeal of final judgment of circuit court under Section 41-22- 20.

An aggrieved party may obtain a review of any final judgment of the circuit court under Section 41-22-20 by appeal to the appropriate court to which the appeal or review lies. The appeal shall be taken within 42 days of the date of the entry of the judgment or order appealed from as in other civil cases, although the appeal may be taken regardless of the amount involved.

§ 41-22-22. Joint Committee on Administrative Regulation Review.

(a) There shall be a joint standing legislative committee known as the Joint Committee on Administrative Regulation Review, to review all agency rules. The committee shall consist of the members of the Legislative Council, including any member of the Legislative Council temporarily serving in the place of a permanent member, and shall meet on the call of the chair. The chair may name subcommittees to meet and review agency rules and report to the full committee. A quorum of the committee shall be the same as a quorum for the Legislative Council as set forth in Section 29-6-3. Members of the committee shall receive the same compensation, expenses, and transportation allowances for meetings as they receive for attendance at meetings of the Legislative Council. All compensation and expenses authorized by this section shall be paid from funds appropriated to the use of the Legislative Council.

(b) The committee shall do all of the following:

(1) Maintain a continuous review of the statutory authority on which each administrative rule is based, and whenever the authority is eliminated or significantly changed by repeal, amendment, or other factor, advise the agency concerned of the fact.

(2) Review administrative rules and advise the agencies concerned of its findings.

(3) Have the further duties prescribed in Section 41-22-23.

(4) The committee shall determine and report annually to the Legislature the total cost to the state allocated to the implementation of this chapter.

§ 41-22-23. Submission and review of proposed rules; fiscal note required for rules with economic impact.

(a) The notice required by subdivision (a)(1) of Section 41-22-5 shall be given, in addition to the persons therein named, to the chair of the legislative committee. The agency shall furnish the committee with 33 copies of the proposed rule or rules, and no rule, except an emergency rule issued pursuant to subsection (b) of Section 41-22-5 shall be effective until these copies are so

furnished. Any member of the Senate or House of Representatives who requests a copy of proposed agency rules from the Chair of the Joint Committee on Administrative Regulation Review shall be provided a copy and the agency proposing rules shall furnish additional copies of the proposed rule or rules immediately. The form of the proposed rule presented to the committee shall be as follows: New language shall be underlined and language to be deleted shall be typed and lined through.

(b) The committee shall study all proposed rules and may hold public hearings thereon. In the event the committee fails to give notice to the agency of either its approval or disapproval of the proposed rule within 35 days after filing of the adopted rule with the Legislative Reference Service pursuant to Section 41-22-6, the committee shall be deemed to have approved the proposed regulation for the purposes of this section. In the event the committee disapproves a proposed rule or any part thereof, it shall give notice of the disapproval to the agency. Any disapproved rule shall be suspended until the adjournment of the next regular session of the Legislature following the date of disapproval and suspension of the committee or until the Legislature shall revoke, by joint resolution, the suspension of the committee. The rule shall be reinstated on the adjournment of the legislative session in the event the Legislature, by joint resolution, fails to sustain the disapproval and suspension of the committee.

(c) The committee may propose an amendment to any proposed rule and may disapprove the proposed rule and return it to the agency with the suggested amendment. In the event the agency accepts the rule as amended, the agency may resubmit the rule as amended to the committee. In the event the agency does not accept the amendment, the proposed amended rule shall be submitted to the Legislature as disapproved, as provided in Section 41-22-24.

(d) An agency may withdraw a proposed rule by leave of the committee. An agency may resubmit a rule so withdrawn or returned under this section with minor modification. Such a rule is a new filing and subject to this section but is not subject to further notice as provided in subsection (a) of Section 41-22-5.

(e) The committee is authorized to review and approve or disapprove any rule adopted prior to October 1, 1982.

(f) A rule submitted to the committee which has an economic impact shall be accompanied by a fiscal note prepared by the agency in accordance with this subsection. Upon receiving the fiscal note, the committee may require additional information from the submitting agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the

committee. At a minimum, the fiscal note submitted with a proposed rule shall include the following:

- (1) A determination of the need for the regulation and the expected benefit of the regulation.
 - (2) A determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose.
 - (3) The effect of the regulation on competition.
 - (4) The effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented.
 - (5) The effect of the regulation on employment in the geographical area in which the regulation would be implemented.
 - (6) The source of revenue to be used for implementing and enforcing the regulation.
 - (7) A conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation.
 - (8) The uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens.
 - (9) The effect of the regulation on the environment and public health.
 - (10) The detrimental effect on the environment and public health if the regulation is not implemented.
- (g) In determining whether to approve or disapprove proposed rules, the committee shall consider the following criteria:
- (1) Would the absence of the rule or rules significantly harm or endanger the public health, safety, or welfare?
 - (2) Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

- (3) Is there another, less restrictive method of regulation available that could adequately protect the public?
- (4) Does the rule or do the rules have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (5) Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule or rules?
- (6) Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?
- (7) Any other criteria the committee may deem appropriate.

§ 41-22-24. Reconsideration of disapproved rules by the Legislature.

On the first day of each regular session of the Alabama Legislature the chairman of the committee shall submit a joint resolution sustaining the disapproval under Section 41-22-23 by the joint committee of any proposed regulation to each house of the Legislature for their study. Such resolution with the disapproved rule attached shall be referred by the Speaker of the House or the Lieutenant Governor or both to an appropriate committee or committees, other than the Joint Committee on Administrative Regulation Review, for consideration and such committee or committees shall schedule hearings thereon, if requested by an affected party or the submitting agency. The Legislature may, by joint resolution, sustain the disapproval of the committee under Section 41-22-23. In the event the Legislature fails to sustain such committee disapproval by the adjournment of the next regular session of the Legislature, the rule shall be reinstated.

§ 41-22-25. Construction and applicability of chapter.

(a) This chapter shall be construed broadly to effectuate its purposes. Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on the date of the passage of this chapter or thereafter enacted. If any other statute in existence on the date of the passage of this chapter or thereafter enacted diminishes any right conferred upon a person by this chapter or diminishes any requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

(b) Except as to proceedings in process on October 1, 1982, this chapter shall be construed to

apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

§ 41-22-26. Repeal of inconsistent laws.

It is the express intent of the Legislature to replace all provisions in statutes of this state relating to rule-making, agency orders, administrative adjudication, or judicial review thereof that are inconsistent with the provisions of this chapter. Therefore, all laws or parts of laws that conflict with this chapter are hereby repealed on October 1, 1982; provided, however, nothing contained in this section shall be construed to repeal or modify Sections 22-22-1, 22-22-4, 22-22-8 through 22-22-10, 22-22-12 and 22-22-14, authorizing the Water Improvement Commission as the state Water Pollution Control Agency to issue one stop permits for the state for all purposes of the federal Water Pollution Control Act, as amended.

§ 41-22-27. Effective date of chapter; validity, review, etc., of existing rules; disposition of adjudicative proceedings commenced prior to October 1, 1983; effective date and applicability as to Alabama Department of Environmental Management.

(a) This chapter shall take effect at 12:01 A.M., October 1, 1982; provided, however, that Section 41-22-22 shall take effect October 1, 1981. In order that the Legislative Reference Service may appoint and hire an aide to receive the rules and in order to promulgate the Alabama Administrative Code and the Alabama Administrative Monthly as soon as possible, subsections (a) and (b) of Section 41-22-6 and subsections (a) through (e) of Section 41-22-7 shall also become effective October 1, 1981. It shall be the duty of all agencies in existence on the passage of this chapter and all agencies created thereafter to cooperate with the office of the Legislative Reference Service in compiling the Alabama Administrative Code and the Alabama Administrative Monthly by submitting to the committee all rules now and hereafter in effect, and all proposed rules.

(b) All existing rules shall be indexed by October 1, 1983, and the administrative code of each agency shall be completed and up-to-date at that time and the Alabama Administrative Code shall be completed and up-to-date by November 15, 1983.

(c) Any rule in effect before 12:01 A.M., October 1, 1983, except those adopted following a public hearing that was required by statute, shall forthwith be reviewed by the agency concerned on the written request of a person substantially affected by the rule involved. The agency concerned shall initiate the rule making procedures provided by this chapter within 90 days after

receiving such written request. If the agency concerned fails to initiate the rule making procedures within 90 days, the operation of the rule shall be suspended. The right of review established by this subsection shall be exercisable no earlier than October 1, 1983.

(d) All rules in effect on September 30, 1983, shall be and become invalid on October 1, 1983, unless:

(1) Such rules are properly filed, indexed, and included within the administrative code of the agency in accordance with all the provisions of this chapter; and

(2) Such rules adopted prior to October 1, 1982, were validly adopted under procedures in effect prior to those provided in this chapter, or were readopted pursuant to the requirements of this chapter; or

(3) Such rules adopted on or subsequent to October 1, 1982, were validly adopted pursuant to the requirements of this chapter.

(e) All contested cases and other adjudicative proceedings conducted pursuant to any provision of the statutes of this state that were begun prior to October 1, 1983, shall be continued to a conclusion, including judicial review, under the provisions of such statutes, except that contested cases and other adjudicative proceedings that have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceedings, be conducted in accordance with the provisions of this chapter as nearly as feasible.

(f) Sections 41-22-1 through 41-22-11 and 41-22-22 through 41-22-27 shall take effect with regard to the Alabama Department of Environmental Management at 12:01 A.M. on October 1, 1986. All rules which were validly adopted by the Alabama Department of Environmental Management prior to October 1, 1986, under procedures in effect at the times such rules were adopted shall be valid, and all such rules adopted by the aforesaid department shall be properly filed, indexed and included within the administrative code of the aforesaid department in accordance with all the provisions of this chapter by October 1, 1987. The Alabama Department of Environmental Management shall be exempt from the provisions of Sections 41-22-12 through 41-22-19. Except as provided in subdivision (6) of subsection (c) of section 22-22A-7, judicial review of any order of the environmental management commission modifying, approving or disapproving an administrative action of the Alabama Department of Environmental Management shall be in accordance with the provisions for review of final agency decisions of contested cases in Sections 41-22-20 and 41-22-21.