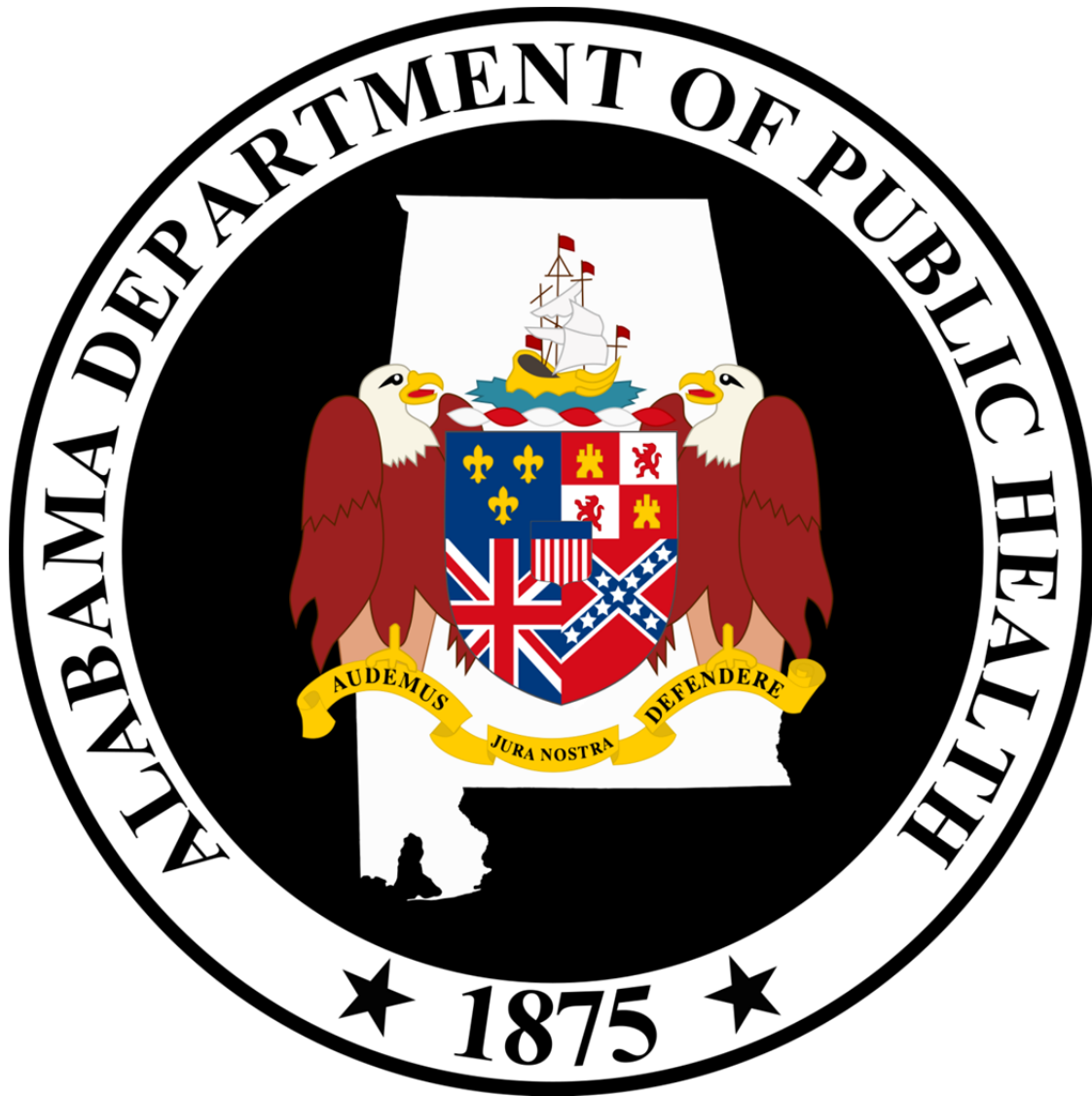


# Public Health Laws of Alabama



Laws current through 2016 Legislative session

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### Title 3, Animals Chapter 7A, Rabies

#### § 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.

(Acts 1990, No. 90-530, p. 816, § 1; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 2; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 3; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 4.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 5; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 6.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 7; Act 2009-636, p. 1949, § 1.)

### **§ 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



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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.

(Acts 1990, No. 90-530, p. 816, § 8; Act 2009-636, p. 1949, § 1.)

### **§ 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.

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(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.

(Acts 1990, No. 90-530, p. 816, § 9; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 10; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 11; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 12; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 13.)

### **§ 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.

(Acts 1990, No. 90-530, p. 816, § 14; Act 2009-636, p. 1949, § 1.)

### **§ 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.

(Acts 1990, No 90-530, p. 816, § 15.)

### **§ 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.

(Act 2009-636, p. 1949, § 2.)

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### Title 9, Conservation and Natural Resources Chapter 12, Marine Resources Article 2, Seafoods

#### **§ 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.

(Acts 1989, No. 89-875, p. 1752, §§ 1-4.)

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### **Title 11, Counties and Municipal Corporations Chapter 47, Powers, Duties and Liabilities Generally Article 2, Cemeteries and Burial Grounds**

#### **§ 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.

(Acts 1957, No. 389, p. 523, § 1; Acts 1965, No. 155, p. 224, § 2.)

#### **§ 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.

(Acts 1957, No. 389, p. 523, § 2.)

#### **§ 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.

(Acts 1957, No. 389, p. 523, § 3; Acts 1965, No. 155, p. 224, § 3.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 4.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 14; Acts 1965, No. 155, p. 224, § 4.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 5.)

**§ 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.



(Acts 1957, No. 389, p. 523, § 10.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 6.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 11.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 13.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 7.)

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

(a) 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.

(b) 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.

(Acts 1957, No. 389, p. 523, § 8.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 12.)

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

(a) 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.

(b) 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.

(Acts 1957, No. 389, p. 523, § 9.)

### **§ 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.

(Acts 1957, No. 389, p. 523, § 15.)

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### Title 12, Courts Chapter 15, Juvenile Proceedings Article 5, Multiple Needs Child Provisions

#### **§ 12-15-501. Definitions.**

For purposes of this article, the following words and phrases shall have the following meanings:

- (1) COUNTY TEAM. A county children's services facilitation team.
- (2) MULTIPLE NEEDS CHILD. A child coming to the attention of the juvenile court or one of the entities listed herein who is at imminent risk of out-of-home placement or a placement in a more restrictive environment, and whose needs require the services of two or more of the following entities: Department of Youth Services, public school system (services for exceptional needs), Department of Human Resources, Department of Public Health, juvenile probation officers, or Department of Mental Health.
- (3) STATE TEAM. The Alabama Children's Services Facilitation Team.

(Act 2008-277, p. 441, § 25.)

#### **§ 12-15-502. Referral of multiple needs child case to county team.**

After the filing of a petition alleging that a child is delinquent, dependent, or in need of supervision, or after the filing of a petition seeking mental commitment of a minor or child pursuant to Article 4, the juvenile court, on its own motion or motion of a party, may refer the above-referenced child to the county team for recommendation if the petition alleged or evidence reveals to the juvenile court that the child may be a multiple needs child. If the case involves a child in need of supervision, or a status offender as defined in subdivision (4) of Section 12-15-201, who is at imminent risk of being placed in the legal or physical custody of the Department of Human Resources, the juvenile court shall refer the case to the county team. This referral may occur prior to any hearing, or the juvenile court may suspend proceedings during the hearing or prior to disposition to review the findings and recommendations of the county team. Upon referral to the county children's services facilitation team, the juvenile probation officer shall continue to provide case management to the status offender unless the county children's services facilitation team appoints another person to act as case manager. The juvenile probation officer shall participate in county children's services facilitation team meetings and share records information and reports on the status offender with the county children's services facilitation team.

(Act 2008-277, p. 441, § 25.)

#### **§ 12-15-503. Recommendation by county team; decision by juvenile court of multiple needs child.**

(a) Within 21 days of receipt of a juvenile court referral or within another time specified by the juvenile court, the county team shall present to the juvenile court a plan of services addressing the needs of the child referred to the county team and the respective responsibilities of departments, agencies, and organizations composing this county team. Upon receipt of this plan, the juvenile court may find the child a multiple needs child. When

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the juvenile court finds it is in the best interests of the multiple needs child, the juvenile court may order the use of any dispositional alternative or service available for dependent children, delinquent children, or children in need of supervision, children who are emotionally disturbed, children with an intellectual disability or mental illness, or children who need specialized educational services, or children who need health services, or any combination thereof. The departments, agencies, or organizations shall be responsible for the implementation of the service plan adopted by the juvenile court.

(b) No multiple needs child, unless alleged or adjudicated delinquent, shall be placed in secure custody, except as provided in Section 12-15-208.

(c) The juvenile court may appoint a guardian ad litem for a multiple needs child.

(d) The provisions of subsections (a), (b), and (c) which require new or additional services beyond those already provided by the departments or agencies which are members of the State Team are mandated only to the extent that additional funds are appropriated to the State Multiple Needs Children Fund to implement its provisions. Nothing in the provisions relating to multiple needs children shall prohibit or restrict departments or agencies charged with the duty of providing services for children and families from working cooperatively and providing financial assistance to address needs which have been identified prior to a case being referred to a county team.

(Act 2008-277, p. 441, § 25.)

### **§ 12-15-504. Creation of Executive Council of the State Team; membership; duties.**

There is created an Executive Council of the State Team consisting of the heads of the following departments or agencies: Department of Education, Department of Human Resources, Department of Mental Health, Department of Public Health, and the Department of Youth Services. The Executive Council shall exercise general supervision and oversight over the State Team, approve its state plan and its budget, oversee all financial arrangements, approve all policies and procedures, as well as amendments thereto, and establish minimum standards for the operation of county teams.

(Acts 1993, No. 93-256, p. 367, § 2; § 12-15-170; amended and renumbered by Act 2008-277, p. 441, § 26.)

### **§ 12-15-505. State Team established; membership; term; duties; hiring authority.**

(a) The State Team is created and shall consist of a representative appointed by the head of the following departments, agencies, or organizations: The Department of Education, the Department of Human Resources, the Department of Mental Health, the Department of Public Health, the Department of Youth Services, and the Alabama Chief Probation Officers Association.

(b) The appointments to the State Team shall be for a term of three years beginning October 1, 1993, and each three years thereafter and until their successors are appointed, except that the initial appointments of the representatives of the Department of Human Resources and the Department of Mental Health shall be for three years; the initial appointments of the representatives of the Department of Education and the Department of Youth Services shall be for two years; and the initial appointments of representatives of the Department of Public Health and the Alabama Chief Probation Officers Association shall be for one year. Any vacancies in the

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appointed positions shall be filled in like manner as their predecessors and shall serve for the remainder of the term of their predecessors and until a successor is appointed. Representatives may be reappointed for additional terms.

(c) The State Team shall annually select one of its members to serve as chair and may select other officers as needed.

(d) The State Team shall meet at least monthly at a time and place that is mutually agreeable.

(e) The State Team shall:

- (1) Develop and implement interagency plans for statewide services for multiple needs children.
- (2) Develop guidelines, policies, and procedures for the allocation of available resources for services to multiple needs children. These guidelines, policies, and procedures shall be approved by the Executive Council of the State Team.
- (3) Be authorized to exchange records, documents, and information among members of the state and county teams as well as the departments or agencies the members represent for the purposes of assessment, planning, and delivery of services to children.
- (4) Consult with the county teams to ensure that all efforts to provide services locally and in the least restrictive environment are exhausted before a case is referred to the State Team. Upon receiving a referral, the State Team shall develop a plan which shall be binding on the county team. The State Team may allocate resources to implement the plan for services and treatment in accordance with the budget approved by the Executive Council of the State Team.
- (5) The State Team may accept and use funds available to it from all sources, including, but not limited to, grants, appropriations, gifts, and donations for the purpose of implementing this section. All these funds shall be deposited into the State Multiple Needs Children Fund, which shall be under the management of the State Team. Moneys of the fund may be withdrawn by vouchers authorized by the Director of the Multiple Needs Child Office in accordance with the operations plan approved by the Executive Council of the State Team.
- (6) The State Team shall report periodically to the Alabama Children's Policy Council on the services available within the state, the number of cases upon which the State Team has been consulted or requested to formulate a service plan, and budgetary needs or constraints affecting delivery of services.

(f) The State Team may employ staff, conditioned upon appropriation of funds, to carry out the duties of the State Team. Employment may be through contract or appointment pursuant to the State Merit System, utilizing one of the member departments or agencies as the appointing or contracting authority. Supervision of the Director of the Multiple Needs Child Office shall be by the chair of the State Team.

(Acts 1993, No. 93-256, p. 367, § 3; § 12-15-171; amended and renumbered by Act 2008-277, p. 441, § 26.)

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### § 12-15-506. County teams established; appointments; meetings; duties.

- (a) A county team is created in each county of the state. The county team shall consist of a representative appointed by the head of the following departments, agencies, or organizations: The local education agency or agencies, the county department of human resources, the Department of Mental Health, the Department of Youth Services, and a juvenile probation officer appointed by the presiding juvenile court judge.
- (b) Appointments to the county team shall be for a term of three years beginning October 1, 1993, and each three years thereafter and until their successors are appointed, except that the initial appointments of the representatives of the county department of human resources and the Department of Mental Health shall be for three years; the initial appointments of the representatives of the local education agency or agencies and the Department of Youth Services shall be for two years; and the initial appointment of the juvenile probation officer shall be for one year. Any vacancies in the appointed positions shall be filled in like manner as their predecessors and shall serve for the remainder of the term of their predecessors and until a successor is appointed. Representatives may be reappointed for additional terms.
- (c) The county team shall annually select one of its members to serve as chair and may select other officers as needed.
- (d) Meetings of the county team may be held as needed. The county team shall meet during its normally scheduled time when a case is referred by a juvenile court or from notice of a member that there is a need for the county team to develop a service plan.
- (e) The county team shall:
- (1) Comply with the guidelines, policies, and procedures promulgated by the State Team and approved by the Executive Council of the State Team.
  - (2) Be authorized to develop guidelines, policies, and procedures, not in conflict with the minimum standards established by the State Team, for the county team.
  - (3) Be authorized to exchange records, documents, and information among members of the county and State Teams, as well as the departments or agencies the members represent, for the purposes of assessment, planning, and delivery of services to children.
  - (4) By consensus, develop an individualized service plan to meet the needs of each child who is accepted by the county team.
  - (5) Consult with the State Team whenever the county team is unable to reach an agreement as to a service plan. In the event a county team requests assistance of the State Team because of an inability to agree on a plan or needs assistance developing or implementing a plan, the service plan developed by the State Team shall be binding on the county team, as well as the departments, agencies, or organizations represented.
  - (6) Work with the county children's policy council to ensure that appropriate local services are developed, modified, or expanded as the needs of children within the community are identified.



- (7) Be authorized to accept and use funds available to it from all sources, including, but not limited to, grants, appropriations, gifts, and donations for the purpose of implementing this section. All these funds shall be deposited into the county multiple needs children fund, which shall be under the management of the county team. Moneys of the fund may be withdrawn by vouchers or checks authorized by the chair of the county team in accordance with the operations plan approved by the county team.

(Acts 1993, No. 93-256, p. 367, § 4; § 12-15-172; amended and renumbered by Act 2008-277, p. 441, § 26.)

### **§ 12-15-507. Reimbursement available for team member expenses.**

The members of the state and county teams shall be entitled to be reimbursed for their expenses, including travel, lodging, food, and other expenses at the same rate as state employees. The expenses shall be paid by their respective departments, agencies, or organizations. Travel expenses of members of the team not otherwise reimbursed by the respective departments, agencies, or organizations may be paid from funds available to the teams.

(Acts 1993, No. 93-256, p. 367, § 5; § 12-15-173; amended and renumbered by Act 2008-277, p. 441, § 26.)

### **§ 12-15-508. State Multiple Needs Children Fund established; use; limitations; accounting system to be maintained; provisions for yearly audit.**

(a) There is established in the State Treasury a fund to be known as the State Multiple Needs Children Fund which shall be administered by the agency designated by the Executive Council of the State Team. This fund shall consist of all moneys appropriated for these purposes from the State General Fund, the Alabama Education Trust Fund, or the Children First Trust Fund, donations, grants, bequests, loans, or any other sources, either public or private, relating to providing services for children identified as multiple needs children.

(b) The State Multiple Needs Children Fund shall be used to provide services not otherwise provided by state departments or agencies for multiple needs children. Administrative costs connected with the expenditures of state multiple needs children funds shall not exceed a percentage amount established by the Executive Council of the State Team.

(c) All funds now or hereafter deposited to the credit of the State Multiple Needs Children Fund shall be expended for the purposes of carrying out this article; provided, however, that no funds shall be withdrawn nor expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriations bill for any specific fiscal year.

(d) The Chief Examiner of the Department of Public Accounts shall develop a uniform accounting system for the State Multiple Needs Children Fund conforming to generally accepted accounting principles. County teams and programs shall establish and maintain the uniform accounting system.

(e) The annual reports and all records of accounts and financial records of all funds received by the State Multiple Needs Children Fund by grant, contract, or otherwise from state, local, or federal sources, shall be subject to audit annually by the Chief Examiner of the Department of Public Accounts. All audits shall be completed as soon as practicable after the end of the fiscal year of the team.

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(Acts 1993, No. 93-256, p. 367, § 6; § 12-15-174; amended and renumbered by Act 2008-277, p. 441, § 26.)

**§ 12-15-509. Executive Council to adopt allocation guidelines; granting role of State Team; eligible recipients; prerequisites to maintaining funding; penalty for noncompliance; reporting requirement.**

(a) The Executive Council of the State Team shall adopt policies and procedures relating to the allocation of available resources for providing services for multiple needs children; for granting funds for programs and services on individuals; and for monitoring, evaluating, and reviewing services provided by programs where funds are provided. Funds available to provide services for multiple needs children may be allocated by the State Team:

- (1) To counties, or groups of counties, based on detailed proposals, for establishing new, needs-based local services or expanding existing programs.
- (2) To provide treatment for individual children.
- (3) For other activities consistent with the purposes of this article.

(b) The State Team, with approval of the Executive Council, shall determine the amount and duration of grants made for new programs provided for one or more counties. The State Team shall also determine the amount of funding to be awarded and the duration in individual cases where local resources have been exhausted. The State Team may select projects which meet the criteria and are compatible with the purposes of the multiple needs children program for financial awards.

(c) In order to remain eligible for continued grant funding, a recipient shall substantially comply with the standards and administrative regulations defining program effectiveness which shall be promulgated by the Executive Council of the State Team. Each recipient shall participate in an evaluation to determine local and state program effectiveness. The form of this evaluation shall be a part of the promulgated policies and procedures.

(d) Continued grant funding shall be based on demonstrated effectiveness in providing services to meet the identified needs.

(e) If it is determined that there are reasonable grounds to believe that a participating county team is not complying with its plan or the minimum standards, the State Team shall give 30 days' written notice to the participating entity. If the State Team finds that a participating entity is not complying with its plan or the established minimum standards, the State Team shall require the entity to provide a letter of intent as to how and when specific deficiencies identified will be corrected. If no letter is submitted to the State Team within the time limit specified, or if the deficiencies are not corrected within 45 days after the letter has been submitted to the entity, the funding may be suspended in part or in whole until compliance is achieved.

(f) A quarterly report shall be submitted to the Alabama Children's Policy Council showing the awards initiated by the State Team during the quarter and the cumulative totals for each new services awards and awards for each special project. An annual report shall also be compiled.

(Acts 1993, No. 93-256, p. 367, § 7; § 12-15-175; amended and renumbered by Act 2008-277, p. 441, § 26.)

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### Title 13A, Criminal Code Chapter 12, Offenses Against Public Health and Morals

#### **§ 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.

(Code 1896, § 5336; Code 1907, § 6466; Code 1923, § 3567; Code 1940, T. 14, § 95; Code 1975, § 13-6-5.)

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### Title 15, Criminal Procedure Chapter 23, Alabama Crime Victims Article 4, Testing of Person Charged with Certain Sex Crimes Upon Request of Alleged Victim

#### § 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.

(Act 2006-572, p. 1504, § 1.)

#### § 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.

(Act 2006-572, p. 1504, § 2.)

#### § 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.

(Act 2006-572, p. 1504, § 3.)

### **§ 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.

(Act 2006-572, p. 1504, § 4.)

### **§ 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.

(Act 2006-572, p. 1504, § 5.)

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### Title 16, Education Chapter 28, School Attendance

#### § 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 the 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.

(School Code 1927, § 304; Code 1940, T. 52, § 301; Acts 1947, No. 676, p. 517, § 1; Acts 1971, No. 2484, p. 3965, § 1; Act 2009-564, p. 1648, § 1.)

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### Chapter 30, Immunization of School Children

#### § 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.

(Acts 1973, No. 1269, p. 2113, § 1; Acts 1979, No. 79-677, p. 1208, § 1.)

#### § 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.

(Acts 1973, No. 1269, p. 2113, § 2.)

#### § 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.

(Acts 1973, No. 1269, p. 2113, § 3.)

#### § 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.

(Acts 1973, No. 1269, p. 2113, § 4; Acts 1979, No. 79-677, p. 1208, § 2.)

**§ 16-30-5. Rules and regulations.**

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

(Acts 1973, No. 1269, p. 2113, § 5.)



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### Title 17, Elections Chapter 4, Voter Registration Lists Article 1, County Voter Registration Lists

#### § 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.

(Acts 1989, No. 89-649, p. 1279, § 3; Act 2003-313, p. 733, § 2; § 17-4-212; amended and renumbered by Act 2006-570, p. 1331 § 16.)

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### Title 20, Foods, Drugs, and Cosmetics Chapter 1, Standards, Labeling, and Adulteration Article 7, Identification of Drug Products

#### **§ 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.

(Acts 1981, No. 81-389, p. 595, § 1.)

#### **§ 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.

(Acts 1981, No. 81-389, p. 595, § 2.)

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

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

(Acts 1981, No. 81-389, p. 595, § 3.)

#### **§ 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.

(Acts 1981, No. 81-389, p. 595, § 4.)

#### **§ 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.

(Acts 1981, No. 81-389, p. 595, § 5.)

### Chapter 2, Controlled Substances

#### Article 1, General Provisions

##### § 20-2-1. Short title.

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

(Acts 1971, No. 1407, p. 2378, § 511.)

##### § 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.

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(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:

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- 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.

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(Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

### **§ 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.

(Acts 1985, No. 85-239, p. 138.)

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### Chapter 2, Controlled Substances 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.

(Acts 1971, No. 1407, p. 2378, § 201; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 202.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 203.)

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

(a) The Legislature finds the following:

- (1) New synthetic substances are being created which are not controlled under the provisions of existing state law but which have a potential for abuse similar to or greater than that for substances controlled under existing state law. These new synthetic substances are called “synthetic controlled substances or synthetic controlled substance analogues” and can be designed to produce a desired pharmacological effect and to evade the controlling statutory provisions. Synthetic controlled substances or synthetic controlled substance analogues are being manufactured, distributed, possessed, and used as substitutes for controlled substances.
- (2) The hazards attributable to the traffic in and use of a synthetic controlled substance or synthetic controlled substance analogues are increased because their unregulated manufacture produces variations in purity and concentration.
- (3) Many new synthetic substances are untested, and it cannot be immediately determined whether they have useful medical or chemical purposes.
- (4) The uncontrolled importation, manufacture, distribution, possession, or use of controlled substance analogues has a substantial and detrimental impact on the health and safety of the people of this state.
- (5) Synthetic controlled substances or synthetic controlled substance analogues can be created more rapidly than they can be identified and controlled by action of the Legislature. There is a need for a speedy determination of their proper classification under existing law. It is therefore necessary to



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identify and classify new substances that have a potential for abuse, so that they can be controlled in the same manner as other substances controlled under existing state law.

(b) 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;
- b. Allylprodine;
- c. Alphacetylmethadol;
- d. Alphameprodine;
- e. Alphamethadol;
- f. Benzethidine;
- g. Betacetylmethadol;
- h. Betameprodine;
- i. Betamethadol;
- j. Betaprodine;
- k. Clonitazene;
- l. Dextromoramide;
- m. Dextrophan;
- n. Diampromide;
- o. Diethylthiambutene;
- p. Dimenoxadol;
- q. Dimepheptanol;
- r. Dimethylthiambutene;
- s. Dioxaphetyl butyrate;
- t. Dipipanone;
- u. Ethylmethylthiambutene;
- v. Etonitazene;
- w. Etoxidine;
- x. Furethidine;
- y. Hydroxypethidine;
- z. Ketobemidone;
- aa. Levomoramide;
- bb. Levophenacetylmorphan;
- cc. Morpheridine;
- dd. Noracetylmethadol;
- ee. Norlevorphanol;
- ff. Normethadone;
- gg. Norpipanone;
- hh. Phenadoxone;
- ii. Phenampromide;
- jj. Phenomorphan;
- kk. Phenoperidine;

ll. Pir tramide;  
mm. Proheptazine;  
nn. Properidine;  
oo. Racemoramide;  
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;  
b. Acetyldihydrocodeine;  
c. Benzylmorphine;  
d. Codeine methylbromide;  
e. Codeine-N-Oxide;  
f. Cyprenorphine;  
g. Desomorphine;  
h. Dihydromorphine;  
i. Etorphine;  
j. Heroin;  
k. Hydromorphanol;  
l. Methyldesorphine;  
m. Methyldihydromorphine;  
n. Morphine methylbromide;  
o. Morphine methylsulfonate;  
p. Morphine-N-Oxide;  
q. Myrophine;  
r. Nicocodeine;  
s. Nicomorphine;  
t. Normorphine;  
u. Pholcodine;  
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:

a. 3,4-methylenedioxy amphetamine;  
b. 5-methoxy-3,4-methylenedioxy amphetamine;  
c. 3,4,5-trimethoxy amphetamine;  
d. Bufotenine;  
e. Diethyltryptamine;  
f. Dimethyltryptamine;  
g. 4-methyl-2,5-dimethoxy amphetamine;  
h. Ibogaine;

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- i. Lysergic acid diethylamide;
  - j. Marihuana;
  - k. Mescaline;
  - l. Peyote;
  - m. N-ethyl-3-piperidyl benzilate;
  - n. N-methyl-3-piperidyl benzilate;
  - o. Psilocybin;
  - p. Psilocyn;
  - q. Tetrahydrocannabinols.
- (4) a. A synthetic controlled substance that is any material, mixture, or preparation that contains any quantity of the following chemical compounds, 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 or compound:
- 1. 3,4-Methylenedioxy-methcathinone (Methylone), some trade or other names:  
3,4-methylenedioxy-N-methylcathinone.
  - 2. 3,4-Methylenedioxy-pyrovalerone, some other trade names: (MDPV).
  - 3. 4-Methylmethcathinone (Mephedrone), some trade or other names: 4-methylephedrone.
  - 4. 4-Methoxymethcathinone (Methedrone), some trade or other names: bk-PMMA.
  - 5. 3-Fluoromethcathinone, some trade or other names: 3-FMC.
  - 6. 4-Fluoromethcathinone (Flephedrone), some trade or other names: 4-FMC.
  - 7. 1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone, some trade or other names: AM-694.
  - 8. 1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone, some trade or other names:  
AM-2201.
  - 9. (6aR, 10aR)-9-(hydroxymethyl)-6,  
6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, some trade or other  
names: HU-210.
  - 10. (6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]c  
hromen-1-ol, some trade or other names: HU-211, Dexanabinol.
  - 11. 1-Pentyl-2-methyl-3-(1-naphthoyl)indole, some trade or other names: JWH-007.
  - 12. (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone, some trade or other names: JWH-015.
  - 13. Naphthalen-1-yl-(1-pentylindol-3-yl)methanone, some trade or other names: JWH-018.
  - 14. 1-Hexyl-3-(naphthalen-1-oyl)indole, some trade or other names: JWH-019.
  - 15. Naphthalen-1-yl-(butylindol-3-yl)methanone, some trade or other names: JWH-073.
  - 16. 4-Methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone, some trade or other names: JWH-081.
  - 17. 4-Methoxynaphthalen-1-yl-(1-pentyl-2-methylindol-3-yl) methanone, some trade or other names:  
JWH-098.
  - 18. 4-Methylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone, some trade or other names: JWH-122.
  - 19. (1-(2-Morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone, some trade or other names:  
JWH-200.
  - 20. 2-(2-Chlorophenyl)-1-(1-pentylindol-3-yl)ethanone, some trade or other names: JWH-203.
  - 21. 4-Ethyl-naphthalen-1-yl-(1-pentylindol-3-yl)methanone, some trade or other names: JWH-210.
  - 22. 2-(2-Methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone, some trade or other names: JWH-250.
  - 23. 5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone, some trade or other names:  
JWH-307.

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24. 1-Pentyl-3-(4-Chloro-1-naphthoyl)indole, some trade or other names: JWH-398.
25. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (Cannabicyclohexanol), some trade or other names: CP 47, 497, and homologues.
26. 2-(2-Methoxyphenyl)-1-[1-(2-cyclohexylethyl)indol-3-yl]ethanone, some trade or other names: RCS-8, SR-18.
27. 2-(4-Methoxyphenyl)-1-(1-pentyl-indol-3-yl)methanone, some trade or other names: RCS-4.
28. (R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone, some trade or other names: WIN 55,212-2.
29. (4-Methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone, some trade or other names: WIN 48,098, Pravadoline.

b. In addition to any material, mixture, or preparation that contains any quantity of the chemical compounds listed in paragraph a., a synthetic controlled substance also includes the following chemical compounds, 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 or compound:

1. 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole, some trade or other names: (AM-2233).
2. 1-Pentyl-3-(1-adamantoyl)indole, some trade or other names: (AB001).
3. [1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-1-naphthalenyl-methanone, some trade or other names: (AM1220).
4. 1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole, some trade or other names: (XLR11).
5. 1-Pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole, some trade or other names: (UR-144).
6. 6-Methyl-2[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one, some trade or other names: (URB 754).
7. [1,1'-biphenyl]-3-yl-carbamic acid, cyclohexyl ester, some trade or other names: (URB 602).
8. (3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-cyclohexylcarbamate, some trade or other names: (URB597).
9. 1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole, some trade or other names: (MAM2201).
10. 1-naphthalenyl[4-(pentyloxy)-naphthalenyl]methanone, some trade or other names: (CB-13).
11. 1-(5-Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole, some trade or other names: (5-Chloro-UR-144).
12. 1-(5-Fluoropentyl)-N-tricyclo[3,3,1,13,7]dec-1-yl-1H-indole-3-carboxamide, some trade or other names: (STS-135).
13. 1[(N-Methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl)indole, some trade or other names: (AM1248).
14. N-Adamantyl-1-pentyl-1H-indole-3-carboxamide, some trade or other names: (SDB-001, 2NE1).
15. 1-Pentyl-N-tricyclo[3,3,1,13,7]dec-1-yl-1H-indazole-3-carboxamide, some trade or other names: (AKB48, APINACA).
16. 3-Naphthoylindole.
17. 1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropyl)indole, some trade or other names: (A 796,260).
18. 1-[(tetrahydropyran-4-ylmethyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone, some trade or other names: (A 834,735).
19. 1-(Pent-4-en-1-yl)-3-(4-methyl-1-naphthoyl)indole, some trade or other names: (JWH-122 4-pentenyl analog).
20. N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide, some trade or other names: (AB-FUBINACA).

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21. [1-(5-bromopentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, some trade or other names: (5-Bromo-UR-144)
22. 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexylphenol, some trade or other names: (CP-47,497 C8 homolog).
23. 1-(5-Fluoropentyl)-N-tricyclo[3,3,1,13,7]dec-1-yl-1H-indazole-3-carboxamide, some trade or other names: (5F-AKB48, 5F-APINACA).
24. 1-(penta-4-ene)-3-(1-naphthoyl)indole, some trade or other names: (JWH-022).
25. 1-(5-Chloropentyl)-3-(1-naphthoyl)indole, some trade or other names: (Chloro-AM-2201, JWH-018 N-5-chloropentyl analog).
26. 1-(5-Hydroxypentyl)-3-(1-naphthoyl)indole, some trade or other names: (Hydroxy-AM-2201).
27. N-[(2E)-3-(2-Methoxyethyl)4,5-dimethyl-1,3-thiazole-2(3H)-ylidene]-2,2,3,3-tetramethylcyclopropane carboxamide, some trade or other names: (A 836,339).
28. 1-Pentyl-3-(2-iodobenzoyl)indole, some trade or other names: (AM 679).
29. 1-Pentyl-3-(2-methylphenacetyl)indole, some trade or other names: (JWH-251).
30. 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester, some trade or other names: (PB-22, QUPIC).
31. 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester, some trade or other names: (5F-PB-22).
32. 1-pentyl-N-(naphthalen-1-yl)-1H-indole-3-carboxamide, some trade or other names: (MN-24, NNE1).
33. 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester, some trade or other names: (BB-22, QUCHIC).
34. N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-pentyl-1H-indazole-3-carboxamide, some trade or other names: (AB-PINACA).
35. 7-methoxy-1-(2-morpholinoethyl)-N-((1S,2S,4R)-1,3,3-trimethylbicyclo[2.2.1]heptan-2-yl)-1H-indole-3-carboxamide, some trade or other names: (MN-25).
36. ADB-PINACA.
37. FUB-AKB-48.
38. FUB-PB-22.
39. Heptyl-UR144.
40. THJ-018.
41. THJ-2201.
42. 1-heptyl-3-(1-naphthoyl)indole, some trade or other names: (JWH-20).
43. Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone, some trade or other names: (JWH-072).
44. (6aR,10aR)-3-(1, 1-Dimethylbutyl)-6a, 7, 10, 10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran, some trade or other names: (JWH-133).
45. 3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole, some trade or other names: (JWH-175).
46. 1-pentyl-3-(4-methoxyphenylacetyl)indole, some trade or other names: (JWH-201).
47. 1-pentyl-3-(3-methoxyphenylacetyl)indole, some trade or other names: (JWH 302).
48. [(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol, some trade or other names: (HU-308).
49. 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione, some trade or other names: (HU-331).
50. N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide, some trade or other names: (CB-25)
51. N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide, some trade or other names: (CB-52).
52. 2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol, some trade or other names: (CB-55,940)(CB-55).
53. 4-Methylethylcathinone, some trade or other names: (4-MEC, 4-Methylethcathinone).

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54. 4'-Methyl-alpha-pyrrolidinopropiophenone, some trade or other names: (MPPP, ZZ-1).
55. (RS)-1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one, some trade or other names: (Naphyrone).
56. alpha,alpha-Diphenyl-2-piperidinemethanol, some trade or other names: (Pipradrol, Meratran).
57. (RS)-1-(4-methylphenyl)-2-(1-pyrrolidinyl)pentan-1-one, some trade or other names: (Pyrovalerone).
58. 3,4-Dimethylmethcathinone, some trade or other names: (3,4-DMMC).
59. 4-Fluoroamphetamine, some trade or other names: (4-FA).
60. 4-Fluoromethamphetamine, some trade or other names: (4-FMA).
61. Butylone, some trade or other names: (bk-MBDB).
62. alpha-Pyrrolidinopentiophenone, some trade or other names: (alpha-PVP).
63. beta-keto-Dimethylbenzodioxylbutanamine, some trade or other names: (bk-DMBDB).
64. 2-(methylamino)-1-phenylbutan-1-one, some trade or other names: (Buphedrone).
65. (RS)-2-ethylamino-1-phenylpropan-1-one, some trade or other names: (N-Ethylcathinone).
66. 2-Fluoroamphetamine, some trade or other names: (2-FA).
67. Methoxetamine, some trade or other names: (MXE).
68. 2-Methylamino-1-phenylpentan-1-one, some trade or other names: (Pentedrone).
69. 3,4-Methylenedioxcathinone, some trade or other names: (MDC).
70. 2-Fluoromethamphetamine, some trade or other names: (2-FMA).
71. 4-methylmethamphetamine, some trade or other names: (4-MMA).
72. 4-Fluoroisocathinone, some trade or other names: (4-FIC).
73. 3-Fluoromethamphetamine, some trade or other names: (3-FMA).
74. Methiopropamine, some trade or other names: (MPA).
75. alpha-Pyrrolidinobutiophenone, some trade or other names: (alpha-PBP).
76. 4-Methoxy-N-methylcathinone, some trade or other names: (Methedrone, bk-PMMA).
77. alpha-Pyrrolidinopropiophenone, some trade or other names: (alpha-PPP).
78. (RS)-2-benzhydrylpiperidine, some trade or other names: (Desoxy pipradrol).
79. 3,4-Methylenedioxyethylcathinone, some trade or other names: (MDEC).
80. 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone, some trade or other names: (MDPBP).
81. 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Pentylone, bk-MBDP).
82. 3-Fluoroamphetamine, some trade or other names: (3-FA).
83. 3-Fluoromethcathinone, some trade or other names: (3-FMC).
84. 2-Fluoromethcathinone, some trade or other names: (2-FMC).
85. 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)propan-1-one (bk-MDDMA).
86. N,N-Diethylcathinone, some trade or other names: (Amfepramone, DEC).
87. 1,3-Dimethylamylamine, some trade or other names: (DMAA).
88. N, N-Dimethylcathinone, some trade or other names: (DMC).
89. N-Ethyl-3,4-methylenedioxcathinone, some trade or other names: (bk-MDEA).
90. N-Ethylamphetamine, some trade or other names: (EMA).
91. N-Ethylcathinone, some trade or other names: (EC).
92. 2-Ethylethcathinone, some trade or other names: (2-EEC).
93. 4-Ethyl-N-ethylcathinone, some trade or other names: (4-EEC).
94. 2-(5-Methoxy-1-benzofuran-3-yl)-N,N-dimethylethanamine, some trade or other names: (Dimembfe).
95. 2-(5-Methoxy-1-benzofuran-3-yl)N-ethylethamine.
96. 4-Methoxymethamphetamine, some trade or other names: (PMMA).
97. 4-Methoxy-N-ethylamphetamine, some trade or other names: (PMEA).
98. 4-Methoxy-N-ethylcathinone, some trade or other names: (ETHEDRONE).

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99. 3-Methylmethcathinone, some trade or other names: (3-MMC).
100. 4-Methyl-alpha-pyrrolidinobutiophenone, some trade or other names: (MPBP).
101. 2-Methylethcathinone, some trade or other names: (2-MEC).
102. 3-Methylethcathinone, some trade or other names: (3-MEC).
103. 2-Ethylethcathinone, some trade or other names: (2-EEC).
104. 3-Ethylethcathinone, some trade or other names: (3-EEC).
105. 3-Ethylmethcathinone, some trade or other names: (3-EMC).
106. 3',4'-Methylenedioxy-alpha-pyrrolidinopropiophenone, some trade or other names: (MDPPP).
107. alpha-Pyrrolidinopentiothiophenone, some trade or other names: (alpha-PVT).
108. 3-Methoxymethcathinone, some trade or other names: (3-MeOMC).
109. N-Methyl-1,3-benzodioxolylbutanamine, some trade or other names: (MBDB).
110. Ethcathinone, some trade or other names: (ETHYLPROPION, ETH-CAT).
111. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
112. N-N-Diethyl-3,4-methylenedioxycathinone.
113. 3,4-methylenedioxy-propiofenone.
114. 2-Bromo-3,4-methylenedioxypropiofenone.
115. 3,4-methylenedioxy-propiofenone-2-oxime.
116. N-Acetyl-3,4-methylenedioxycathinone.
117. N-Acetyl-N-Methyl-3,4-methylenedioxycathinone.
118. N-Acetyl-N-Ethyl-3,4-methylenedioxycathinone.
119. 4-Bromomethcathinone.
120. 3-Bromomethcathinone.
121. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
122. 4'-Methoxy-alpha-pyrrolidinopropiophenone, some trade or other names: (MOPPP).
123. 4'-Methyl-alpha-pyrrolidinohexiophenone, some trade or other names: (MPHP).
124. Benocyclidine (BCP) or Benzothiophenylcyclohexylpiperidine, some trade or other names: (BTCP).
125. 4-Fluoro-(methylamino)butyrophenone, some trade or other names: (F-MABP).
126. 3-Methyl-4-Methoxymethacathinone, some trade or other names: (3-Me-4-MeO-MCAT).
127. 4-Methyl-(ethylamino)-butyrophenone, some trade or other names: (Me-EABP).
128. 4-Ethyl-methcathinone, some trade or other names: (4-EMC).
129. 4-methoxy-N-ethylcathinone (bk-PMC; p-methox-ethcathinone).
130. 4'-Methoxy-alpha-pyrroldino-propiofenone (MeOPPP; 4'-MeO-PPP).
131. 3-Fluorocathinone (3-FC).
132. 4-Fluorocathinone (4-FC).
133. 4-methyl-buphedrone (4-MeMABP; 4MeBP; BZ-6378).
134. 3,4-Methylenedioxy-N-benzylcathinone, some trade or other names: (BMDP).
135. N-Benzyl-butylone, some trade or other names: (BMDB).
136. N-Hydroxy-3,4-methylenedioxymethcathinone.
137. N-ethylbuphedrone, some trade or other names: (NEB).
138. 4-Fluorobuphedrone, some trade or other names: (4-FBP).
139. 4-Methoxy-pyrrolidinbutrophenone (4-MeO-PBP).
140. 4-Ethyl-pyrrolidinobutrophenone, some trade or other names: (4-Et-PBP).
141. 5-(2-aminopropyl)indole, some trade or other names: (5-IT).
142. 1-phenyl-2-(piperidin-1-yl)butan-1-one.
143. 2,4,5-Trimethyl-methacathinone, some trade or other names: (2,4,5-TMMC).
144. alpha-pyrrolidino-heptiophenone, some trade or other names: (alpha-PHpP).

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145. 4-Methylamphetamine (4-MA: pTAP; PAL-313; 4-MeA; PmeA).
146. N-Ethyl-methamphetamine.
147. 4-(2-Aminopropyl)benzofuran, some trade or other names: (4-APB).
148. 5-(2-Aminopropyl)-2,3-dihydro-1H-indene (5-APDI; IAP; AIP; indanylaminoporpane).
149. 6,7-Methylenedioxy-2-aminotetralin, some trade or other names: (MDAT).
150. 4-Methylthioamphetamine (4-MTA; P1882).
151. 4-Chloroamphetamine (p-chloro-amphetamine).
152. 2,4,6-Trimethoxyamphetamine, some trade or other names: (TMA-6).
153. 2,4,5-Trimethoxyamphetamine, some trade or other names: (TMA-2).
154. 2,5-Dimethylamphetamine, some trade or other names: (2,5-DMA).
155. 3,4-Dimethylamphetamine, some trade or other names: (3,4-DMA).
156. N-propylamphetamine.
157. 4-Hydroxyamphetamine.
158. 3-Hydroxyamphetamine.
159. Methylenedioxydimethylamphetamine, some trade or other names: (MDDM).
160. 2-Aminoindane, some trade or other names: (2-AI).
161. 5,6-Methylenedioxy-N-methyl-aminoindane, some trade or other names: (MDMAI).
162. 2C-T-21.
163. 2C-B-Fly.
164. 3,4-dimethyl-2,5-dimethoxyphenethylamine (2C-G).
165. 25D-NBOMe.
166. 25G-NBOMe.
167. 25N-NBOMe.
168. Bromo-benzylidifuranyl-isopropylamine, some trade or other names: (Bromo Dragon Fly).
169. 3C-B fly.
170. 2,5-Dimethoxy-4-ethylthioamphetamine, some trade or other names: (Aleph-2).
171. 1-[(4-ethoxy-2,5-dimethoxy)phenyl]propan-2-amine, some trade or other names: (MEM).
172. 1-[2,5-dimethoxy-4-(propylthio)phenyl]propan-2-amine, some trade or other names: (Aleph-7).
173. N-benzyl-2-phenylethylamine.
174. N,N-dimethyl-2-phenylethylamine.
175. 6-chloro-2-aminotetralin, some trade or other names: (6-CAT).
176. 2-phenylpropan-1-amine, some trade or other names: (B-Me-PEA).
177. 2-Phenethylamine, some trade or other names: (2-PEA).
178. 1-methylamino-1-(3,4-methylenedioxyphenyl)propane, some trade or other names: (M-ALPHA).
179. Amphetamine.
180. Methoxyphenamine.
181. 4-methylaminorex, some trade or other names: (4-MAR; 4-MAX; U4Euh; Euphoria; Ice).
182. (1-thiophen-2-yl)propan-2-amine (Thienoamphetamine).
183. Dimethocaine.
184. 4-Fluoroephedrine.
185. 4-methylaminorex (p-methyl derivative).
186. 1-[(N-methylpiperidin-2-yl)methyl]-2-methyl-3-(naphthalen-1-yl)-6-nitroindole (AM1221).
187. (1-butyl-1H-indol-3-yl)(4-methoxyphenyl)-methanone (RCS-4 (C4) homolog).
188. 5-[3-(1-naphthoyl)-1H-indole-1-yl]pentanenitrile, some trade or other names: (AM2232).
189. 1-(Pentyl)-3-(4-bromo-1-naphthoyl)-indole, some trade or other names: (JWH-387).
190. 1-(Pentyl)-3-(4-fluoro-1-naphthoyl)-indole, some trade or other names: (JWH-412).



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191. 1-(5-chloropentyl)-3-(2-iodobenzoyl)indole, some trade or other names: (AM694 Derivative).
192. (2-iodo-5-nitrophenyl)-[1-[(1-methylpiperidin-2-yl)methyl]1H-indol-3-yl]-methanone, some trade or other names: (AM1241).
193. 1-Pentyl-3-[1-(4-propyl)naphthoyl]indole, some trade or other names: (JWH-182).
194. JWH-081 2-methoxynaphthyl isomer, some trade or other names: (JWH-267).
195. (3-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone, some trade or other names: (RCS-4 3-methoxy isomer).
196. [1-(5-fluoropentyl)-1H-indol-3-yl](4-ethyl-1-naphthalenyl)-methanone (EAM-2201).
197. ADB-FUBINACA.
198. ADBICA.
199. AM-279.
200. JWH-370.
201. NNE-1.
202. MAM-2201 chloropentyl derivative.
203. 1-(5-fluoropentyl)-3-(2-methyl-benzoyl)indole.
204. 1-(5-fluoropentyl)-3-(2-ethylbenzoyl)indole.
205. AB-005.
206. AB-005 Azepane isomer.
207. 4-hydroxy-3,3,4-trimethyl-1-(1-pentyl-1H-indol-3-yl)pentan-1-one (4-HTMPIPO).
208. UR-12.
209. 5-Fluoro-ADBICA.
210. BAY-38-7271; KN 38-7271.
211. JTE-907.
212. Org 27569.
213. Org 27759.
214. Org 29647.
215. LY 2183240.
216. JTE 7-31.
217. URB 937.
218. 3-methoxy-eticyclidine, some trade or other names: (3-MeO-PCE).
219. 1-Phenylcyclohexanamine, some trade or other names: (PCA).
220. 4-Methyl-phencyclidine, some trade or other names: (4-Me-PCP).
221. 4-Methoxy-eticyclidine, some trade or other names: (4-MeO-PCE).
222. 4-Methoxyphencyclidine, some trade or other names: (Methoxydine; 4MeO-PCP).
223. 3-Methoxyphencyclidine, some trade or other names: (3-MeO-PCP).
224. 1-phenyl-N-propylcyclohexanamine, some trade or other names: (PCPr).
225. N-(2-methoxyethyl)-1-phenylcyclohexanamine, some trade or other names: (PCMEA).
226. N-(2-ethoxyethyl)-1-phenylcyclohexanamine, some trade or other names: (PCEEA).
227. N-(3-methoxypropyl)-1-phenylcyclohexanamine, some trade or other names: (PCMPA).
228. 3-Hydroxy-phencyclidine, some trade or other names: (3-OH-PCP).
229. Methoxyketamine, some trade or other names: (2-MeO-2-deschloro-ketamine).
230. Tiletamine, some trade or other names: (TCE).
231. N-ethylnorketamine.
232. N-Methyltryptamine, some trade or other names: (NMT).
233. N-Methyl-N-isopropyltryptamine, some trade or other names: (MiPT; MIPT).
234. 4-hydroxy-N,N-methylisopropyltryptamine, some trade or other names: (4-OH-MiPT).

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235. 4-Acetoxy-N,N-diisopropyl-tryptamine (4-AcO-DiPT; 4-AcO-DIPT; 4-Acetoxy-MiPT).
236. 4-Methoxy-N,N-dimethyltryptamine, some trade or other names: (4-MeO-DMT).
237. 5-Hydroxytryptamine, some trade or other names: (5-HT).
238. 5-acetoxy-N,N-dimethyltryptamine, some trade or other names: (5-AcO-DMT).
239. 5-Methoxy-N,N-dipropyltryptamine, some trade or other names: (5-MeO-DPT).
240. d-Lysergic acid amide, some trade or other names: (LSA; ergine).
241. 2,5-dimethoxy-4-chloroamphetamine, some trade or other names: (DOC).
242. N-(2-Methoxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, some trade or other names: (25I-NBOMe).
243. 4-Ethyl-2,5-dimethoxyphenethylamine, some trade or other names: (2C-E).
244. 2,5-Dimethoxy-4-iodophenethylamine, some trade or other names: (2C-I).
245. 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, some trade or other names: (6-APDB).
246. 6-(2-Aminopropyl)benzofuran, some trade or other names: (6-APB).
247. 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, some trade or other names: (5-APDB).
248. 5-(2-Aminopropyl)benzofuran, some trade or other names: (5-APB).
249. 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, some trade or other names: (2C-T-7).
250. 2,5-Dimethoxy-4-(n)-propylphenethylamine, some trade or other names: (2C-P).
251. 2,5-Dimethoxy-4-bromoamphetamine, some trade or other names: (DOB).
252. 2,5-Dimethoxy-4-bromobenzylpiperazine, some trade or other names: (2C-B-BZP).
253. 2,5-Dimethoxy-4-bromophenethylamine, some trade or other names: (2C-B).
254. 2,5-Dimethoxy-4-chlorophenethylamine, some trade or other names: (2C-C).
255. 2,5-Dimethoxy-(4-ethylthio)phenethylamine, some trade or other names: (2C-T-2).
256. 2,5-Dimethoxy-4-iodoamphetamine, some trade or other names: (DOI).
257. 2,5-Dimethoxy-4-methylamphetamine, some trade or other names: (DOM).
258. 2,5-Dimethoxyphenethylamine, some trade or other names: (2C-H).
259. 2-(2,5-Dimethoxyphenyl-4-bromo)-N-(2-methoxybenzyl)ethanamine, some trade or other names: (25B-NBOMe).
260. 2-(2,5-Dimethoxyphenyl-4-chloro)-N-(2-methoxybenzyl)ethanamine, some trade or other names: (25C-NBOMe).
261. 2-(2,5-Dimethoxyphenyl-4-ethyl)-N-(2-methoxybenzyl)ethanamine, some trade or other names: (25E-NBOMe).
262. 2-Ethylmethcathinone, some trade or other names: (2-EMC).
263. 2-(2,5-Dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, some trade or other names: (25H-NBOMe).
264. BZP (Benzylpiperazine).
265. para-Fluorophenylpiperazine.
266. 1-(4-Methylphenyl)piperazine.
267. meta-Chlorophenylpiperazine.
268. para-Methoxyphenylpiperazine.
269. DBZP (1,4-dibenzylpiperazine).
270. TFMPP (3-Trifluoromethylphenylpiperazine).
271. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
272. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
273. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).
274. 2C-N 2,5-Dimethoxy-4-nitrophenethylamine.
275. 5-methoxy-N,N-diallyltryptamine, some trade or other names: (5-MeO-DALT).

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276. 5-Methoxy-N,N-Diisopropyltryptamine, some trade or other names: (5-MeO-DIPT).
277. 5-Methoxy-alpha-methyltryptamine, some trade or other names: (5-MeO-AMT).
278. 4-Acetoxy-N,N-dimethyltryptamine, some trade or other names: (4-AcO-DMT).
279. 4-Hydroxy-N,N-diethyltryptamine, some trade or other names: (4-HO-DET).
280. 4-Hydroxy-N,N-diisopropyltryptamine, some trade or other names: (4-HO-DIPT).
281. 4-Hydroxy-N-methyl-N-ethyltryptamine, some trade or other names: (4-OH-MET).
282. 5-Methoxy-N,N-diethyltryptamine, some trade or other names: (5-MeO-DET).
283. 5-Methoxy-N-methyl-N-isopropyltryptamine, some trade or other names: (5-MeO-MIPT).
284. 4-Acetoxy-N,N-diethyltryptamine, some trade or other names: (4-AcO-DET).
285. 4-Acetoxy-N-methyl-N-isopropyltryptamine, some trade or other names: (4-AcO-MIPT).
286. N,N-Dipropyltryptamine, some trade or other names: (DPT).
287. N,N-Diisopropyltryptamine, some trade or other names: (DIPT).
288. 4-Methoxy-N-methyl-N-isopropyltryptamine, some trade or other names: (4-MeO-MIPT).
289. Tyramine (4-Hydroxyphenethylamine).
290. 5-Hydroxy-alpha-methyltryptamine.
291. 5-Hydroxy-N-methyltryptamine.
292. 5-Methoxy-N,N-dimethyltryptamine.
293. 5-Methyl-N,N-dimethyltryptamine.
294. Diphenylprolinol, some trade or other names: (D2PM; diphenyl-2-pyrrolidinemethanol).
295. 3,4 Dichloromethylphenidate, some trade or other names: (3,4-CTMP).
296. 3-chloromethyl-phenidate, some trade or other names: (3-CTMP).
297. 4-Methylmethylphenidate.
298. 4-Fluoromethyl-phenidate, some trade or other names: (4-FTMP).
299. Ethylphenidate.
300. Etizolam (Etilaam, Etizola, Sedekopan, Pasaden, Depas).
301. Phenazepam.
302. Pyrazolam.
303. CL-218,872.
304. Zopiclone.
305. Salvinorin A.
306. AH-7921.
307. O-Desmethyltramadol, some trade or other names: (O-DT; ODT).
308. Desmorphine (Dihydrodesoxymorphine; permonid; krokodil; crocodile).
309. Acetyl Fentanyl (desmethylyfentanyl).
310. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45).
311. 1-(2-methoxyphenyl)piperazine, some trade or other names: (MOPIP).
312. 1-(4-Chlorophenyl)piperazine, some trade or other names: (pCPP).
313. para-Methoxyphenyl-piperazine, some trade or other names: (MBZP).
314. Methylmethaqualone.
315. Etaqualone.
316. 5-Iodo-2-aminoindane, some trade or other names: (5-IAI).
317. 5,6-(Methylenedioxy)-2-aminoindane, some trade or other names: (5,6-MDAI).
318. 4,5-(Methylenedioxy)-2-aminoindane, some trade or other names: (4,5-MDAI).
319. MMAI.
320. W-15.
321. W-18.

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322. Mitragynine.

323. Hydroxymitragynine.

- (5) a. A synthetic controlled substance analogue, being a material, mixture, or preparation that contains any chemical structure of which is chemically similar to the chemical structure of any other controlled substance in Schedule I or Schedule II or that satisfies any one of the following:
1. Has a stimulant, depressant, or hallucinogenic effect on the central nervous system that mimics or is similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or Schedule II.
  2. With respect to a particular person, if the person represents or intends that the substance have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or Schedule II and the substance is actually capable of producing a stimulant, depressant, or hallucinogenic effect on the central nervous system that mimics, is similar to, or is greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or Schedule II.
  3. Has been demonstrated to have binding activity at one or more cannabinoid receptors.
  4. Is capable of exhibiting cannabinoid-like activity.
  5. Any compound structurally analogous to, mimicking, or derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  6. Any compound structurally analogous to, mimicking, or derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  7. Any compound structurally analogous to, mimicking, or derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  8. Any compound structurally analogous to, mimicking, or derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the

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indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

9. Any compound structurally analogous to, mimicking, or derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.
10. Any compound structurally analogous to, mimicking, or derived from 3-(2,2,3,3-tetramethylcyclopropyl)indole or 1H-indol-3-yl-(2,2,3,3-tetramethylcyclopropyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent.
11. Any compound structurally analogous to, mimicking, or derived from 3-(adamant-1-yl)indole or 1H-indol-3-yl-(1-adamantyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent.
12. Any compound structurally analogous to, mimicking, or derived from N-(1-naphthalenyl)indole-3-carboxamide or 1H-indol-(N-naphthyl)-3-carboxamide by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
13. Any compound structurally analogous to, mimicking, or derived from N-(adamantan-1yl)indole-3-carboxamide or 1H-indol-3-carboxamide-(1-adamantyl) by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent.
14. Any compound structurally analogous to, mimicking, or derived from N-(adamantan-1yl)indazole-3-carboxamide or 1H-indazole-3-carboxamide-(1-adamantyl) by substitution at the nitrogen atom of the indazole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indazole ring to any extent.
15. Any compound structurally analogous to, mimicking, or derived from N-[(1S)-1-(aminocarbonyl)-2-methylpropoyl]indazole-3-carboxamide or 1H-indazole-3-carboxamide-N-[(1S)-1-(aminocarbonyl)-2-methylpropoyl] by substitution at the nitrogen atom of the indazole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl,

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aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indazole ring to any extent.

16. Any compound structurally analogous to, mimicking, or derived from 3-(1-naphthoyl)indazole or 1H-indazole-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indazole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indazole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  17. Any compound structurally analogous to, mimicking, or derived from 3-(carboxylic acid 8-quinolinyl ester)indole or 1H-indol-3-carboxylic acid-(8-quinolinyl)ester by substitution at the nitrogen atom of the indole ring by alkyl, alkyl halide, aryl halide, alkyl aryl halide, alkenyl, aliphatic alcohol, cycloalkylmethyl, cycloalkylethyl, (N-alkylpiperidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, or 2-(4-morpholinyl)ethyl whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent.
  18. Any compound structurally related to 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine by substitution of the iodo moiety (4 position) with other halides, alkyl, alkyl halides, thioalkyl, cycloalkyl, cycloalkylhalides and/or substitution at the nitrogen atom of the ethanamine with alkyl, alkyl halide, alkenyl, cycloalkylmethyl, cycloalkylethyl, phenyl, benzyl whether or not further substituted in the (either) phenyl ring to any extent.
  19. Any compound structurally related to 2,5-dimethoxy-4-chloroamphetamine by substitution of the chloro moiety (4 position) with other halides, alkyl, alkyl halides, thioalkyl, cycloalkyl, cycloalkylhalides and/or substitution at the nitrogen atom with alkyl, alkyl halide, alkenyl, cycloalkylmethyl, cycloalkylethyl, phenyl, benzyl whether or not further substituted in the (either) phenyl ring to any extent.
  20. Any compound structurally related to 2-amino-1-phenyl-1-propanone (cathinone) by substitution of the amine with alkyl, alkyl halide, alkenyl, cycloalkylmethyl, cycloalkylethyl, phenyl, benzyl whether or not further substituted in the (either) phenyl ring to any extent.
  21. Any compound structurally related to a-pyrrolidinopentiophenone (a-pvp) whether or not further substituted in the phenyl ring to any extent, whether or not further substituted in the pyrrolidine ring to any extent.
- b. A synthetic controlled substance or analogue in subdivision (4) or this subdivision does not include any of the following:
1. Any substance for which there is an approved new drug application under the Federal Food, Drug, and Cosmetic Act.
  2. With respect to a particular person, any substance, if an exemption is in effect for investigational use, for that person, as provided by 21 U.S.C. § 355, and the person is registered as a controlled

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substance researcher as required under section 152.12, subdivision 3, to the extent conduct with respect to the substance is pursuant to the exemption and registration.

c. A controlled substance analogue is treated as a controlled substance in Schedule I.

d. After the Alabama Department of Forensic Sciences has determined a substance to be a synthetic controlled substance analogue under this section, the department shall notify the Alabama Department of Public Health with information relevant to scheduling as provided by Section 20-2-20.

(Acts 1971, No. 1407, p. 2378, § 204; Act 2012-267, p. 517, §§ 1, 2; Act 2014-184, p. 530, § 2; Act 2015-316, § 1(b)(1); Act 2015-368, § 1(b)(1); Act 2016-279, § 1.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 205.)

### **§ 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.

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

(Acts 1971, No. 1407, p. 2378, § 206.)

### § 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.

(Acts 1971, No. 1407, p. 2378, § 207.)

### § 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



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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. Methyprylon;
- 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.

(Acts 1971, No. 1407, p. 2378, § 208.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 209.)

### **§ 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:
  - a. Barbitol;
  - b. Chloral betaine;
  - c. Chloral hydrate;
  - d. Ethchlorvynol;
  - e. Ethinamate;
  - f. Methohexital;
  - g. Meprobamate;
  - h. Methylphenobarbital;
  - i. Paraldehyde;

- j. Petrichloral;
- k. Phenobarbital.

(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.

(Acts 1971, No. 1407, p. 2378, § 210.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 211.)

### **§ 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.

(Acts 1971, No. 1407, p. 2378, § 212.)

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

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

(Acts 1971, No. 1407, p. 2378, § 213.)

### Chapter 2, Controlled Substances 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.

(Act 2004-443, p. 781, § 1.)

#### § 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.

(Act 2004-443, p. 781, § 2.)

### **§ 20-2-212. Controlled substances prescription database program; powers and duties of department; trust fund; committee membership and meetings.**

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 Medicaid Agency.
  - l. The Alabama Podiatry Association.
  - m. The Alabama Department of Mental Health.
- (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.
- (7) Members of the Controlled Substances Prescription Database Advisory Committee may participate in a meeting by means of conference telephone, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes, including the establishment of a quorum. Telephone or video conference or similar communications equipment shall also allow members of the public the opportunity to simultaneously listen to or observe the meetings.

(Act 2004-443, p. 781, § 3; Act 2010-539, p. 928, § 1; Act 2010-581, p. 1297, § 1; Act 2013-256, p. 666, § 1.)

### **§ 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):

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- (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, or optometrists who dispense Class II, Class III, Class IV, and Class V controlled substances directly to patients, 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.
- (8) Method of payment and third-party payor identification of the controlled substance dispensed.

(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.



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(Act 2004-443, p. 781, § 4; Act 2013-256, p. 666, § 1; Act 2016-315, § 1.)

### **§ 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 information concerning the licensees of the certifying board; however, authorized representatives from the Board of Medical Examiners may access the database to inquire about certified registered nurse practitioners (CRNPs), or certified nurse midwives (CNMs) that hold a Qualified Alabama Controlled Substances Registration Certificate (QACSC).
- (2) A licensed practitioner approved by the department who has authority to prescribe, dispense, or administer controlled substances. The licensed practitioner's access shall be limited to information concerning himself or herself, registrants who possess a Qualified Alabama Controlled Substances Registration Certificate over whom the practitioner exercises physician supervision or with whom they have a joint practice agreement, a certified registered nurse practitioner and a certified nurse midwife with a Qualified Alabama Controlled Substances Registration Certificate over whom the practitioner exercises professional oversight and direction pursuant to an approved collaborative practice agreement, a current patient of the practitioner, and individuals seeking treatment from the practitioner. Practitioners shall have no requirement or obligation, under this article, 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. However, the applicable licensing boards, in their discretion, may impose such a requirement or obligation by regulations.
- (3) A licensed physician approved by the department who has authority to prescribe, dispense, or administer controlled substances may designate up to two employees who may access the database on the physician's behalf.
- (4) A licensed certified registered nurse practitioner or a licensed certified nurse midwife 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 registered nurse practitioner or certified nurse midwife.
- (5) 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 patient of the assistant to the physician or an individual seeking treatment from the assistant to physician.
- (6) 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.

- (7) 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 a declaration that probable cause exists for the use of the requested information.
- (8) Employees of the department and consultants engaged by the department for operational and review purposes.
- (9) 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.
- (10) Authorized representatives of the Alabama Medicaid Agency; provided, however, that access shall be limited to inquiries concerning possible misuse or abuse of controlled substances by Medicaid recipients.

(Act 2004-443, p. 781, § 5; Act 2009-489, p. 891, § 2; Act 2010-539, p. 928, § 1; Act 2010-581, p. 1297, § 1; Act 2013-223, p. 531, § 3; Act 2013-256, p. 666, § 1.)

### **§ 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, and any reproduction or copy of that information 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.

(Act 2004-443, p. 781, § 6; Act 2013-256, p. 666, § 1.)

### **§ 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.

(Act 2004-443, p. 781, § 7.)

### **§ 20-2-217. Surcharge on controlled substance registration certificate.**

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 (QACSC) of each licensed assistant to physician, certified registered nurse practitioner, or certified nurse midwife. This surcharge shall be effective for every practitioner certificate and every Qualified Alabama Controlled Substances Registration Certificate (QACSC) issued or renewed, 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.

(Act 2004-443, p. 781, § 8; Act 2009-489, p. 891, § 2; Act 2010-539, p. 928, § 1; Act 2010-581, p. 1297, § 1; Act 2013-223, p. 531, § 3.)

### **§ 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.

(Act 2004-443, p. 781, § 9.)

### **§ 20-2-219. Database funding.**

The department may make deposits into the fund from any source, public or private, including grants or contributions of money or other items of value, which it determines necessary to carry out the purpose of the program. Notwithstanding amounts contained in the fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated in future years.

(Act 2004-443, p. 781, § 10; Act 2013-256, p. 666, § 1.)

### **§ 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

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person for any claim of damages as a result of the act of reporting the information and no lawsuit may be predicated thereon.

(Act 2004-443, p. 781, § 11.)

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### Chapter 2, Controlled Substances Article 13, Opioid Antagonist Administration

#### § 20-2-280. Opioid antagonist prescriptions; administration; liability.

(a) For the purposes of this section, “opioid antagonist” means naloxone hydrochloride or other similarly acting drug that is approved by the federal Food and Drug Administration for the treatment of an opioid overdose.

(b) A physician licensed under Article 3 of Chapter 24 of Title 34, or dentist licensed under Chapter 9 of Title 34, acting in good faith may directly or by standing order prescribe, and a pharmacist licensed under Chapter 23 of Title 34, or a registered nurse in the employment of the State Health Department or a county health department, may dispense, an opioid antagonist to either of the following:

- (1) An individual at risk of experiencing an opiate-related overdose.
- (2) A family member, friend, member of a fire department, rescue squad, volunteer fire department personnel, or other individual, including law enforcement, in a position to assist an individual at risk of experiencing an opiate-related overdose.

(c) As an indicator of good faith, the physician or dentist, prior to prescribing an opioid antagonist under this section, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

- (1) The individual seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.
- (2) The individual other than the individual at risk of experiencing an opiate-related overdose and who is seeking the opioid antagonist is in relation to the individual at risk of experiencing an opiate-related overdose as a family member, friend, or otherwise in the position to assist the individual.

(d) An individual who receives an opioid antagonist that was prescribed pursuant to subsection (b) may administer an opioid antagonist to another individual if he or she has a good faith belief that the other individual is experiencing an opiate-related overdose and he or she exercises reasonable care in administering the opioid antagonist. Evidence of exercising reasonable care in administering the opioid antagonist shall include the receipt of basic instruction and information on how to administer the opioid antagonist.

(e) All of the following individuals are immune from any civil or criminal liability for actions authorized under this article:

- (1) A physician or dentist who prescribes an opioid antagonist pursuant to subsection (b) and who has no managerial authority over the individuals administering the opioid antagonist or the State Health Officer or any county health officer who issues standing orders or other requirements pursuant to subsection (b).
- (2) An individual who administers an opioid antagonist pursuant to subsection (d).

- (3) A pharmacist, or registered nurse in the employment of the State Health Department or a county health department, who dispenses an opioid antagonist pursuant to subsection (b).

(Act 2015-364, § 1; Act 2016-307, § 3.)

### **§ 20-2-281. Individuals under age of 21 seeking medical assistance for another.**

(a) Notwithstanding any other law to the contrary, an individual under 21 years of age may not be prosecuted for the possession or consumption of alcoholic beverages if law enforcement, including campus safety police, became aware of the possession or consumption of alcohol solely because the individual was seeking medical assistance for another individual under this article.

(b) Excluding Section 32-5A-191, an individual may not be prosecuted for a misdemeanor controlled substance offense if law enforcement became aware of the offense solely because the individual was seeking medical assistance for another individual under this article.

(c) This section shall apply if, when seeking medical assistance on behalf of another, the individual did all of the following:

- (1) Acted in good faith, upon a reasonable belief that he or she was the first to call for assistance.
- (2) Used his or her own name when contacting authorities.
- (3) Remained with the individual needing medical assistance until help arrived.

(Act 2015-364, § 2.)

### **§ 20-2-282. Training of law enforcement officers to carry and administer opioid antagonists.**

On or before January 1, 2016, the Alabama Department of Public Health shall approve a specific training curriculum for completion by law enforcement officers who elect to carry and administer opioid antagonists.  
(Act 2015-364, § 3.)

### **§ 20-2-283. Publication of standing orders, etc., for dispensing opioid antagonists.**

The State Health Officer or the respective county health officers shall have authority to publish the standing order or orders, including any necessary guidelines or other requirements that shall be followed, for dispensing opioid antagonists under Section 20-2-280.

(Act 2016-307, § 1.)

### **§ 20-2-284. Authority to dispense opioid antagonists.**

Any individual dispensing an opioid antagonist pursuant to Section 20-2-280 who is otherwise qualified, including a registered nurse in the employment of the State Health Department or a county health department,

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and who complies with the standing order or orders and other requirements of the State Health Office or a county health officer shall have authority to dispense an opioid antagonist as provided under Section 20-2-280.

(Act 2016-307, § 2.)

### Chapter 3, Donation of Drugs to Charitable Clinics

#### § 20-3-1. Short title.

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

(Act 2002-498, p. 1288, § 1.)

#### § 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.



(Act 2002-498, p. 1288, § 2.)

### **§ 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

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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.

(Act 2002-498, p. 1288, § 3.)

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### Title 22, Health, Mental Health, and Environmental Control Chapter 1, General Provisions

#### § 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.

(Code 1907, § 732; Code 1923, § 1155; Code 1940, T. 22, § 94.)

#### § 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.

(Code 1876, § 1543; Code 1886, § 1286; Code 1896, § 2433; Code 1907, § 701; Acts 1919, No. 658, p. 909; Code 1923, § 1050; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 6.)

#### § 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.

(Code 1876, § 1542; Code 1886, § 1285; Code 1896, § 2432; Code 1907, § 727; Code 1923, § 1150; Code 1940, T. 22, § 89.)

#### § 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.

(Acts 1965, 1st Ex. Sess., No. 253, p. 368.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1113; Code 1940, T. 22, § 57.)

### **§ 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.

(Code 1907, § 721; Code 1923, § 1141; Acts 1927, No. 640, p. 774; Acts 1935, No. 443, p. 918; Code 1940, T. 22, § 80.)

### **§ 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.

(Code 1907, § 7058; Code 1923, § 4360; Code 1940, T. 22, § 104.)

### **§ 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.

(Code 1907, § 729; Code 1923, § 1152; Code 1940, T. 22, § 91.)

### **§ 22-1-12. Cardiac arrest survival.**

(a) The Department of Public Health shall establish a comprehensive cardiac arrest survival plan for the training,

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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.

(Act 99-372, p. 600, §§ 1, 3.)

### **§ 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.

(Act 2006-526, p. 1222, § 1.)

### **§ 22-1-15. Certification card for persons diagnosed with autism spectrum disorder.**

(a) Upon the request of a person medically diagnosed with autism spectrum disorder, or the guardian or caregiver of the person, the Alabama Department of Public Health shall issue a certification card denoting that the person has been medically diagnosed with autism spectrum disorder. The certification card and the person's driver's license may be presented to law enforcement as necessary.

(b) The Alabama Department of Public Health shall establish by rule the proof required to be produced by a person medically diagnosed with autism spectrum disorder who requests a certification card under subsection (a).

(c) The department may collect a reasonable fee for the issuance of the certification card as determined by the department.

(Act 2014-344, p. 1284, § 3.)

### **§ 22-1-16. Prescribing, dispensing, and administering auto-injectable epinephrine; liability; reports; rulemaking authority.**

(a) As used in this section, the following words shall have the following meanings:

- (1) ADMINISTER. The direct application of an epinephrine auto-injector to the body of an individual.
- (2) AUTHORIZED ENTITY. Any entity or organization other than a K-12 public school subject to Section 16-1-48, in connection with or at which allergens capable of causing anaphylaxis may be present, including, but not limited to, recreation camps, colleges and universities, day care facilities, youth sport leagues, amusement parks, restaurants, places of employment, and sports arenas.
- (3) EPINEPHRINE AUTO-INJECTOR. A single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.
- (4) MEDICAL PRACTITIONER. A physician or other individual licensed under Title 34 authorized to treat, use, or prescribe medicine and drugs for sick and injured humans in this state.
- (5) PROVIDE. The supply of one or more epinephrine auto-injectors to an individual. As used in this section, the term should not be construed to include any managerial authority on behalf of the medical practitioner.

(b) A medical practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists and medical providers may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of any authorized entity. A prescription issued pursuant to this section shall be valid for two years.

(c) An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Epinephrine auto-injectors shall be stored in a location readily accessible in an emergency and in accordance with the epinephrine auto-injector's instructions for use and any additional requirements that may be established by the State Board of Health. An authorized entity shall designate employees or agents who have completed training required by this section to be responsible for the storage, maintenance, control, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

(d) An employee or agent of an authorized entity, or other individual who has completed the training required by this section, may use epinephrine auto-injectors prescribed pursuant to this section to do either of the following:

- (1) Provide an epinephrine auto-injector to an individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, or the parent, guardian, or caregiver of the individual, for immediate administration, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.
- (2) Administer an epinephrine auto-injector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

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(e) An employee, agent, or other individual described in subsection (c) or (d) shall complete an initial anaphylaxis training program and shall complete subsequent training programs at least every two years thereafter. Training shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the Department of Public Health. The Department of Public Health may approve specific entities or individuals or may approve classes of entities or individuals to conduct training. The entity that conducts the training shall issue a certificate, on a form developed by the Department of Public Health, to each individual who successfully completes the anaphylaxis training program. Training may be conducted online or in person and, at a minimum, shall cover all of the following:

- (1) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis.
- (2) Standards and procedures for the storage and administration of an epinephrine auto-injector.
- (3) Emergency follow-up procedures.

(f) The following persons shall not be liable for any injuries or related damages that result from any act or omission taken pursuant to this section; provided, however, this immunity does not apply to an act or omission constituting willful or wanton conduct:

- (1) An authorized entity that possesses and makes available epinephrine auto-injectors and its employees, agents, and other individuals.
- (2) An individual or entity that conducts the training described in this section, but only to the extent the injuries or related damages arise from the training conducted by the individual or entity. Notwithstanding subsection (g), a health care provider who or which administers an epinephrine auto-injector shall be subject to and afforded the protections provided by the Alabama Medical Liability Act, Sections 6-5-480 to 6-5-488, inclusive, and Sections 6-5-540 to 6-5-552, inclusive, and any amendments thereto. The immunity provided in this subsection does not affect a manufacturer's liability regarding the design, manufacture, instructions regarding the use of, or training regarding the use of an epinephrine auto-injector.

(g) All of the following individuals are immune from any civil or criminal liability for actions authorized under this section:

- (1) A physician who prescribes or dispenses an epinephrine auto-injector pursuant to this section, or who is consulted pursuant to this section, and who has no managerial authority over the individual administering the epinephrine auto-injector.
- (2) A pharmacist who dispenses an epinephrine auto-injector pursuant to this section and who has no managerial authority over the individual administering the epinephrine auto-injector.

(h) The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine, except for licensed health care professionals, nor is it the practice of another profession that otherwise requires licensure. This section does not alter or replace any other immunity or defense that may be available under state law.

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- (i) (1) An authorized entity that possesses and makes available epinephrine auto-injectors shall submit to the Department of Public Health, on a form developed by the Department of Public Health, a report of each incident on the authorized entity's premises that involves the administration of an epinephrine auto-injector pursuant to subsection (c). The Department of Public Health shall annually publish a report that summarizes and analyzes all reports submitted to it under this subsection.  
  
(2) The State Board of Health may adopt rules necessary to carry out the intent of this section.

(Act 2016-193, § 1.)



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### Chapter 2, State Board of Health and Ancillary Committees and Officers

#### § 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.

(Code 1907, § 698; Acts 1919, No. 658, p. 909; Code 1923, § 1046; Code 1940, T. 22, § 1.)

#### § 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.

(Code 1907, § 702; Acts 1919, No. 658, p. 909; Code 1923, § 1051; Acts 1927, No. 640, p. 774; Code 1940, T. 22, § 7; Acts 1965, No. 796, p. 1496, § 2.)

### **§ 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.

(Code 1907, § 705; Code 1923, § 1054; Code 1940, T. 22, § 11.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1047; Code 1940, T. 22, § 2; Acts 1973, No. 762, p. 1141, § 1; Acts 1985, 2nd Ex. Sess., No. 85-931, p. 230, § 1.)

### **§ 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.

(Acts 1973, No. 762, p. 1141, § 5.)

### **§ 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.

(Code 1896, § 2424; Code 1907, § 699; Acts 1919, No. 658, p. 909; Code 1923, § 1048; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 3; Acts 1965, No. 796, p. 1496, § 1.)

### **§ 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.

(Acts 1973, No. 762, p. 1141, § 6.)

### **§ 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.

(Acts 1943, No. 122, p. 123; Acts 1961, Ex. Sess., No. 208, p. 2190; Acts 1973, No. 762, p. 1141, § 4.)

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### **§ 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

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(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.

(Acts 1973, No. 762, p. 1141, § 2.)

**§ 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.

(Acts 1973, No. 762, p. 1141, § 3; Acts 1985, 2nd Ex. Sess., No. 85-931, p. 230, § 2.)

### **§ 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.

(Acts 1935, No. 334, p. 771; Code 1940, T. 22, § 10.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1089; Code 1940, T. 22, § 44.)

### **§ 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.

(Code 1907, § 728; Code 1923, § 1151; Code 1940, T. 22, § 90.)

### **§ 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.

(Code 1907, § 7073; Acts 1919, No. 658, p. 909; Code 1923, § 4375; Code 1940, T. 22, § 103.)

### Chapter 2A, Joint Purchase Program for Certain State Agencies

#### § 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.

(Act 2002-494, p. 1262, § 1.)

#### § 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, 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, 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.

(Act 2002-494, p. 1262, § 2.)

#### § 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.

(Act 2002-494, p. 1262, § 3.)

### **§ 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.

(Act 2002-494, p. 1262, § 4.)

### **§ 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.

(Act 2002-494, p. 1262, § 5.)

### **§ 22-2A-6. Medicaid Agency exempt.**

The Medicaid Agency shall be exempt from this chapter.

(Act 2002-494, p. 1262, § 6.)

### **§ 22-2A-7. Disposition of funds.**

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

(Act 2002-494, p. 1262, § 7.)



### Chapter 3, Local Health Authorities

#### § 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.

(Code 1907, § 700; Acts 1919, No. 658, p. 909; Code 1923, § 1049; Code 1940, T. 22, § 4.)

#### § 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,

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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.

(Code 1907, § 703; Acts 1919, No. 658, p. 909; Code 1923, § 1052; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 8.)

### **§ 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.

(Acts 1949, No. 306, p. 440.)

### **§ 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

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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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1055; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 12.)

### **§ 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;

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- (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

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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.

(Code 1907, § 706; Acts 1915, No. 707, p. 782; Acts 1919, No. 658, p. 909; Code 1923, § 1058; Acts 1927, No. 640, p. 774; Acts 1935, No. 443, p. 918; Code 1940, T. 22, § 14.)

### **§ 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.

(Code 1907, § 707; Acts 1919, No. 658, p. 909; Code 1923, § 1059; Acts 1927, No. 640, p. 774; Code 1940, T. 22, § 15.)

### **§ 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.

(Code 1907, § 708; Code 1923, § 1061; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 17.)

### **§ 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.

(Code 1907, § 710; Acts 1919, No. 658, p. 909; Code 1923, § 1063; Acts 1927, No. 143, p. 102; Acts 1935, No. 443, p. 918; Code 1940, T. 22, § 18.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1102; Code 1940, T. 22, § 56.)

### **§ 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.

(Acts 1935, No. 239, p. 631; Code 1940, T. 22, § 5.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1056; Code 1940, T. 22, § 13.)

### **§ 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.

(Code 1923, § 1060; Code 1940, T. 22, § 16.)

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### Chapter 4A, Family Practice Rural Health Board

#### **§ 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.

(Acts 1990, No. 90-714, § 1.)

#### **§ 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.

(Acts 1990, No. 90-714, § 2.)

#### **§ 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.

(Acts 1990, No. 90-714, § 3.)



### **§ 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.

(Acts 1990, No. 90-714, § 4; Act 2006-535, p. 1231, § 1.)

### **§ 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.

(Acts 1990, No. 90-714, § 5.)

### **§ 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.

(Acts 1990, No. 90-714, § 6.)

### **§ 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.

(Acts 1990, No. 90-714, § 8.)

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### Chapter 4B, Nursing Degree Loans and Incentives

#### § 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.

(Acts 1991, No. 91-616, p. 1154, § 1.)

#### § 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.

(Acts 1991, No. 91-616, p. 1154, § 2.)

#### § 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.

(Acts 1991, No. 91-616, p. 1154, § 3.)

**§ 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

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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.

(Acts 1991, No. 91-616, p. 1154, § 4.)

### **§ 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.

(Acts 1991, No. 91-616, p. 1154, § 5.)

### **§ 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.

(Acts 1991, No. 91-616, p. 1154, § 6.)

**§ 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.

(Acts 1991, No. 91-616, p. 1154, § 7.)

### Chapter 5B, Alabama Lifespan Respite Resource Network Act

#### § 22-5B-1. Short title.

This chapter shall be known and may be cited as the “Alabama Lifespan Respite Resource Network Act.”

(Act 2012-410, p. 1115, § 1.)

#### § 22-5B-2. Legislative findings.

(a) The legislative findings, purpose, and intent of this chapter are to develop the infrastructure for a statewide network of lifespan respite programs in Alabama and for Alabama Respite to be the statewide entity to address issues relating to respite care in our state.

(b) The Alabama Legislature makes the following findings:

- (1) Respite is short term temporary relief that can make a world of difference for family caregivers of both children and adults with disabilities and other health care needs.
- (2) Respite is one of the home and community-based services most requested by family caregivers, yet remains in short supply.
- (3) As of 2012, over 818,000 adults in Alabama are caregivers for a family member.
- (4) Respite helps preserve families by reducing stress, supporting stability, preventing situations that can lead to abuse and neglect, and reducing the incidence of divorce and out-of-home placement.
- (5) Respite is a simple, cost-effective solution for situations that can otherwise devastate families.
- (6) A state lifespan respite program simplifies and accelerates the process for accessing respite services and is recognized by service providers, families, and policymakers, in Alabama as well as nationwide, as the best practice in the provision of respite care in the most cost-effective way.
- (7) Federal legislation was passed in Congress that would provide a mechanism to fund states that have collaborative systems of lifespan respite provision in place.

(Act 2012-410, p. 1115, § 2.)

#### § 22-5B-3. Definitions.

When used in this chapter, the following words shall have the following meanings:

- (1) **ADULT WITH SPECIAL NEED.** A person 19 years of age or older who requires care or supervision to meet the person's basic needs or prevent physical self-injury or injury to others, or avoid placement in an institutional facility.

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- (2) AGING AND DISABILITY RESOURCE CENTER. An entity that provides a coordinated system for providing information on long-term care programs and options, personal counseling, and consumer access to publicly support long-term care programs.
- (3) CHILD WITH SPECIAL NEED. A person under age 19 who requires care or supervision beyond that required for children generally to meet the child's basic needs or prevent physical injury to self or others.
- (4) ELIGIBLE STATE AGENCY. A state agency that administers the Older Americans Act or the state's Medicaid program or one designated by the Governor, and is an aging and disability resource center working in collaboration with a state respite coalition or organization.
- (5) FAMILY CAREGIVER. Family members, foster parents, or other adults providing ongoing unpaid care for an adult or child with special needs.
- (6) LIFESPAN RESPITE CARE. Coordinated systems of accessible, community-based respite care services for family caregivers of children or adults with special needs.
- (7) RESPITE. Planned or emergency care provided to a child or adult with a special need in order to provide temporary relief to the family caregiver of that child or adult.
- (8) RESPITE PROVIDER. An individual who provides a temporary break or period of relief to family caregivers.
- (9) SPECIAL NEED. A disability or chronic illness as defined in Public Law 109-442.
- (10) STAKEHOLDER. A person, group, organization, or system that affects or can be affected by an organization's actions.

(Act 2012-410, p. 1115, § 3.)

### **§ 22-5B-4. Alabama Lifespan Respite Resource Network.**

There is created the Alabama Lifespan Respite Resource Network as the statewide entity that shall do the following:

- (1) Address issues relating to respite care in our state.
- (2) Maintain a statewide system that facilitates the availability and use of high quality, cost-effective lifespan respite services that provide caregivers the break they need from caring for a loved one with disability or chronic illness.
- (3) Develop and coordinate the Alabama Lifespan Respite Coalition.
- (4) Work in collaboration with the eligible state agency and the Governor's Office to access funding through

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the federal Lifespan Respite Care Act of 2006 (PL109-442).

- (5) Identify statewide respite care providers.
- (6) Maintain a directory of respite services in Alabama and link family caregivers with respite care providers and other types of respite-related programs.
- (7) Provide technical assistance to community-based organizations and other entities that wish to develop a respite care program.
- (8) Provide voucher respite funding to eligible primary caregivers as funds are available.
- (9) Provide information and referral services.
- (10) Provide an easy to access and/or interactive information avenue, such as a toll-free number or informational website like [www.alabamarespite.org](http://www.alabamarespite.org), to share current news about respite including new resources, training opportunities, and information for caregivers.
- (11) Offer family caregiver training through partnership with other agencies or other organizations or advocacy groups.

(Act 2012-410, p. 1115, § 4.)

### **§ 22-5B-5. Alabama Lifespan Respite Coalition.**

(a) There is created the Alabama Lifespan Respite Coalition composed of members who shall be culturally, economically, and geographically diverse and representative of the state demographics and appointed by the Governor or his or her designee. The membership may include, but is not limited to, the following:

- (1) The Chair of the House Ways and Means Committee on Education.
- (2) The Chair of the Senate Judiciary Committee.
- (3) The Chair of the House of Representatives Health Committee.
- (4) The Chair of the Senate Health Committee.
- (5) A member from the Governor's Office on Disability.
- (6) A member from the Department of Senior Services.
- (7) A member from the Department of Medicaid.
- (8) A member from the Department of Rehabilitation Services.
- (9) A member from the Department of Human Resources.



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- (10) A member from the Alabama Health Department.
- (11) A member from the Department of Child Abuse and Neglect Prevention.
- (12) A member from the Department of Mental Health.
- (13) A member from the Alabama Council for Developmental Disabilities.
- (14) A representative from a United Cerebral Palsy affiliate in Alabama.
- (15) A representative from a statewide advocacy or support group.
- (16) A representative from a community respite initiative or program.
- (17) A representative from a collaborative training partner.
- (18) Two family caregivers representing diverse special needs populations.
- (19) Two respite care providers.
- (20) A representative from the Autism Society of Alabama.
- (21) A representative from the Alabama Hospice Organization.
- (22) A representative from the American Association of Retired Persons.

(b) The members of the coalition shall meet at least twice a year, and at such other times as the chair of the coalition deems appropriate. Members shall serve without compensation. A chair of the coalition shall be elected by the membership at the first meeting of the coalition. Members shall be appointed for three-year terms and may be eligible to succeed themselves for one additional term. Members shall be appointed to the coalition by August 30, 2012. Any member who fails to attend three consecutive meetings or at least one-half of all coalition meetings held during the calendar year shall be deemed to have resigned. Vacant positions shall be filled for any expired term by the respective appointing authorities.

(c) The coalition shall have the following responsibilities:

- (1) Build partnerships and coordinate respite care efforts statewide, and prepare Alabama to compete for federal funding as the Lifespan Respite Act is funded.
- (2) Provide public awareness about respite to the citizens of Alabama.
- (3) Identify, coordinate, and develop community/funding resources for respite services.
- (4) Build local partnerships and collaborations regarding respite services.

(Act 2012-410, p. 1115, § 5.)

### **§ 22-5B-6. Meetings; coordination of activities; funding.**

(a) The Alabama Lifespan Respite Resource Network shall be designated as the entity to facilitate a minimum of two meetings per year for the Alabama Lifespan Respite Coalition and to coordinate activities and initiatives of the coalition and that the Alabama Lifespan Respite Coalition shall be the statewide respite coalition referred to in the Federal Lifespan Respite Care Act of 2006 (PL109-442). Alabama Respite will work in coordination with the eligible state agency, as mandated by the act, to develop a Memorandum of Agreement with the eligible state agency in order to allow Alabama to compete for federal funding.

(b) Should funding be obtained through the act, the coalition will support Alabama Respite's efforts to actively develop and continue respite-related services with funds utilized for the following mandated purposes:

- (1) Development or enhancement of lifespan respite programs at state and local levels.
- (2) Direct respite care services for family caregivers caring for children or adults.
- (3) Respite worker and volunteer training and recruitment.
- (4) Provision of information to caregivers about available respite services.
- (5) Assistance to caregivers in gaining access to such services.

Optional uses of the funds may include:

- (1) Training programs for Alabama's family caregivers to assist them in making informed decisions about respite care services.
- (2) Other services essential to the provision of respite care as specified in the proposal process.
- (3) Training and education for new caregivers.

(Act 2012-410, p. 1115, § 6.)

### Chapter 5C, Palliative Care and Quality of Life

#### § 22-5C-1. Purpose.

The purpose of this chapter is to improve consumer awareness of patient centered and family focused palliative care in this state by establishing a State Advisory Council on Palliative Care and Quality of Life within the State Health Department and to provide for the establishment within the department of a palliative care consumer and professional information and education program.

(Act 2015-207, § 1.)

#### § 22-5C-2. State Advisory Council on Palliative Care and Quality of Life.

(a) Not later than November 23, 2015, the State Health Department shall establish a State Advisory Council on Palliative Care and Quality of Life within the department.

(b) The council membership shall be appointed by the State Health Officer and shall include interdisciplinary palliative care medical, nursing, social work, pharmacy, and spiritual professional expertise; patient and family caregiver advocate representation, and any other relevant appointees the State Health Officer determines appropriate. The State Health Officer shall consider the racial, gender, geographic, urban/rural, and economic diversity of the state when appointing members. Membership shall specifically include health professionals having palliative care work experience or expertise in palliative care delivery models in a variety of inpatient, outpatient, and community settings such as acute care, long-term care, and hospice and with a variety of populations, including pediatric, youth, and adults. At least one council member shall be a board-certified hospice and palliative medicine physician and one member a licensed Certified Registered Nurse Practitioner. At least one council member shall be designated by the Alabama Hospital Association, at least one council member shall be designated by the Alabama Nursing Home Association, at least one council member shall be designated by the Home Care Association of Alabama, at least one council member shall be designated by the Alabama Durable Medical Equipment Association, at least one council member shall be designated by the Alabama Pharmacy Association, and at least one council member shall be designated by the Alabama Hospice and Palliative Care Organization. Council members shall be appointed for a term of three years, but may be replaced at the discretion of the State Health Officer. The members shall elect a chair and vice chair whose duties shall be established by the council. The council shall fix a time and place for regular meetings and shall meet not less than twice yearly.

(c) Council members shall receive no compensation for their services.

(d) The State Advisory Council on Palliative Care and Quality of Life shall consult with and advise the State Health Officer and the department on matters related to the establishment, maintenance, and operation of palliative care initiatives in this state.

(Act 2015-207, § 2.)

### § 22-5C-3. Palliative Care Information and Education Program.

(a) There is created a statewide Palliative Care Information and Education Program in the State Health Department. The purpose of the palliative care information and education program is to maximize the effectiveness of palliative care initiatives in the state by ensuring that comprehensive and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. The department shall publish on its website information and resources, including links to external resources, about palliative care for the public, health care providers, and health care facilities. This information shall include, but not be limited to, continuing educational opportunities for health care providers; information about palliative care delivery in the home and in other primary, secondary, and tertiary environments; and consumer educational materials and referral information for palliative care, including hospice. The department may develop and implement any other initiatives regarding palliative care services and education that the department determines would further the purposes of this section.

(b) The department shall consult with the State Advisory Council on Palliative Care and Quality of Life in implementing this section.

(c) The information gathered by the State Advisory Council on Palliative Care and Quality of Life, and any information published by the State Department of Public Health pursuant to this chapter, shall not be construed to establish a standard of care for physicians and hospitals, as hospitals are defined in Section 22-21-20, or otherwise modify, amend, or supersede any provision of the Alabama Medical Liability Act of 1987 or the Alabama Medical Liability Act of 1996, commencing with Section 6-5-540, or any amendment thereto, or any judicial interpretation thereof. A physician or hospital shall not have legal liability or responsibility for claims resulting or derived from any of the information produced or disseminated pursuant to this chapter.

(Act 2015-207, § 3.)

### Chapter 7, Fees for Home Health Services

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

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.

(Acts 1967, No. 374, p. 938, § 1.)

#### **§ 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.

(Acts 1967, No. 374, p. 938, § 2.)

#### **§ 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.

(Acts 1967, No. 374, p. 938, § 3.)

#### **§ 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.

(Acts 1967, No. 374, p. 938, § 4.)

#### **§ 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.

(Acts 1967, No. 374, p. 938, § 5.)

#### **§ 22-7-6. Rules and regulations.**

The State Board of Health is authorized to promulgate reasonable rules and regulations prescribing the home

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health services which may be performed and other rules necessary or proper for the operation of this chapter.

(Acts 1967, No. 374, p. 938, § 6.)

### Chapter 8, Consent for Health Services

#### **§ 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.

(Acts 1971, No. 2281, p. 3681, § 6.)

#### **§ 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.

(Acts 1971, No. 2281, p. 3681, § 5.)

#### **§ 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.

(Acts 1971, No. 2281, p. 3681, § 4.)

#### **§ 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.

(Acts 1971, No. 2281, p. 3681, § 1.)

#### **§ 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.

(Acts 1971, No. 2281, p. 3681, § 2.)

**§ 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.

(Acts 1971, No. 2281, p. 3681, § 3.)

**§ 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.

(Acts 1971, No. 2281, p. 3681, § 7.)

**§ 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.

(Acts 1971, No. 2281, p. 3681, § 8.)

**§ 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.

(Acts 1981, No. 81-225, p. 301.)



**§ 22-8-10. Authorization of medical treatment for mental health services of certain minors by parent or legal guardian.**

The parent or legal guardian of a minor who is at least 14 years of age and under 19 years of age may authorize medical treatment for any mental health services even if the minor has expressly refused such treatment services if the parent or legal guardian and a mental health professional determine that clinical intervention is necessary and appropriate. Access to the mental health records of the minor will follow the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191.

(Act 2015-476, § 1.)

### Chapter 8A, Termination of Life-Support Procedures

#### § 22-8A-1. Short title.

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

(Acts 1981, No. 81-772, p. 1329, § 1.)

#### § 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 and to allow a health care provider to follow certain portable physician orders provided for in this chapter.

(Acts 1981, No. 81-772, p. 1329, § 2; Acts 1997, No. 97-187, p. 281, § 1; Act 2016-96, § 1.)

#### § 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

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responsibility for the treatment and care of the patient.

- (5) **CARDIOPULMONARY CESSATION.** A lack of pulse or respiration.
- (6) **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.
- (7) **DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER.** A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND." A do not attempt resuscitation order must be entered with the consent of the person, if the person is competent; or in accordance with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or with the consent of a health care proxy or surrogate functioning under the provisions in this chapter; or instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in Section 22-8A-4(b)(1).
- (8) **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.
- (9) **HEALTH CARE PROXY.** Any person designated to act on behalf of an individual pursuant to Section 22-8A-4.
- (10) **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.
- (11) **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.
- (12) **PERMANENT UNCONSCIOUSNESS.** A condition that, to a reasonable degree of medical certainty:
  - a. Will last permanently, without improvement; and
  - b. In which cognitive thought, sensation, purposeful action, social interaction, and awareness of self

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and environment are absent; and

- c. Which condition has existed for a period of time sufficient, in accordance with applicable professional standards, to make such a diagnosis; and
- d. Which condition is confirmed by a physician who is qualified and experienced in making such a diagnosis.

(13)PERSON. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(14)PHYSICIAN. A person licensed to practice medicine and osteopathy in the State of Alabama.

(15)PORTABLE PHYSICIAN DNAR ORDER. A DNAR order entered in the medical record by a physician using the required form designated by the State Board of Health and substantiated by completion of all sections of the form.

(16)RESUSCITATIVE MEASURES. Those measures used to restore or support cardiac or respiratory function in the event of cardiopulmonary cessation.

(17)SURROGATE. Any person appointed to act on behalf of an individual pursuant to Section 22-8A-11.

(18)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.

(Acts 1981, No. 81-772, p. 1329, § 3; Acts 1997, No. 97-187, p. 281, § 1; Act 2016-96, § 1.)

### **§ 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

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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

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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.

### 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

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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":

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.

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.

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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":

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



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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: \_\_\_\_\_

(Acts 1981, No. 81-772, p. 1329, § 4; Acts 1997, No. 97-187, p. 281, § 1; Act 2001-658, p. 1352, § 1.)

### § 22-8A-4.1. Validity of DNAR orders; adoption of rules.

(a) A completed DNAR order that is properly entered and received is deemed a valid order.

(b) (1) The State Board of Health shall adopt by rule the form to be used for a portable DNAR order.

(2) The State Board of Health and the Board of Medical Examiners may adopt rules to implement this section and the amendments made to Sections 22-8A-2, 22-8A-3, 22-8A-7, and 22-8A-8 by Act 2016-96. Notwithstanding the foregoing, the Board of Medical Examiners shall have exclusive authority to adopt rules relating to physicians in implementing this section and the amendments made to Sections 22-8A-2,

22-8A-3, 22-8A-7, and 22-8A-8 by Act 2016-96.

(Act 2016-96, § 2.)

### **§ 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.

(Acts 1981, No. 81-772, p. 1329, § 5; Acts 1997, No. 97-187, p. 281, § 1.)

### **§ 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.

(Acts 1981, No. 81-772, p. 1329, § 6; Acts 1997, No. 97-187, p. 281, § 1.)

### **§ 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 issues or follows a portable physician DNAR order entered in the medical record pursuant to this chapter or 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.

(Acts 1981, No. 81-772, p. 1329, § 7; Acts 1997, No. 97-187, p. 281, § 1; Act 2016-96, § 1.)

### **§ 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 or who refuses to honor a portable physician DNAR order executed in compliance with the directives of this chapter and using the form designated by the State Board of Health 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 portable physician DNAR order, living will, health care proxy, or surrogate. During the time for the transfer, all life-sustaining treatments, including resuscitation efforts in the event of cardiopulmonary cessation and 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 resuscitative measures or 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 resuscitative measures or life-sustaining treatment.

(c) Any person who willfully conceals, cancels, defaces, obliterates, or damages the portable physician DNAR order or 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 portable physician DNAR order or advance directive for health care of

another, or willfully conceals or withholds personal knowledge of the revocation of a portable physician DNAR order or advance directive for health care, with the intent to cause a withholding or withdrawal of resuscitative measures or 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.

(Acts 1981, No. 81-772, p. 1329, § 8; Acts 1997, No. 97-187, p. 281, § 1; Act 2016-96, § 1.)

**§ 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.

(Acts 1981, No. 81-772, p. 1329, § 9; Acts 1997, No. 97-187, p. 281, § 1.)

### **§ 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.

(Acts 1981, No. 81-772, p. 1329, § 10; Acts 1997, No. 97-187, p. 281, § 1.)

### **§ 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

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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.

(Acts 1997, No. 97-187, p. 281, § 2.)

### **§ 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.

(Acts 1997, No. 97-187, p. 281, § 3.)

### **§ 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.

(Acts 1997, No. 97-187, p. 281, § 4; Act 2001-658, p. 1352, § 2.)

### **§ 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



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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.

(Act 2006-413, p. 1026, §§ 1, 2.)

### Chapter 9A, Vital Statistics

#### § 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.

(Acts 1992, No. 92-607, p. 1255, § 1.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 2.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 3.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 4.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 5.)

### **§ 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.

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(Acts 1992, No. 92-607, p. 1255, § 6.)

### § 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

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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).

(Acts 1992, No. 92-607, p. 1255, § 7.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 8.)

### § 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.

(Acts 1992, No. 92-607, p. 1255, § 9.)

### **§ 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.



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(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.

(Acts 1992, No. 92-607, p. 1255, § 10.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 11.)

### **§ 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.

(Act 2012-179, p. 283, § 2.)

**§ 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.

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(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.

(Acts 1992, No. 92-607, p. 1255, § 12; Act 2000-794, p. 1869, §1.)

### **§ 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.

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- (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, 2012, 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.

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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 (6).

(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).

(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 (5).

(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.

(Acts 1992, No. 92-607, p. 1255, § 13; Act 2011-672, p. 1784, § 6; Act 2012-363, p. 904, § 1(b)(2).)



### § 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.

(Act 2011-706, p. 2187, § 1.)

### § 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.

(Acts 1992, No. 92-607, p. 1255, § 14.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 15.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 16.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 17.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 18.)

### **§ 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

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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.

(Acts 1992, No. 92-607, p. 1255, § 19.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 20.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 21.)

### **§ 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.



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- (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.

(Acts 1992, No. 92-607, p. 1255, § 22.)

### **§ 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

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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.

(Acts 1992, No. 92-607, p. 1255, § 23; Act 2009-569, p. 1671, § 1.)

### **§ 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.

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(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.

(Acts 1992, No. 92-607, p. 1255, § 24.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 25.)

### § 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 or 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.

(Acts 1992, No. 92-607, p. 1255, § 26.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 27.)

### **§ 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.

(Acts 1992, No. 92-607, p. 1255, § 28.)

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### Chapter 10, Nuisances Menacing Public Health

#### § 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.

(Code 1907, § 718; Acts 1919, No. 658, p. 909; Code 1923, § 1136; Code 1940, T. 22, § 75.)

#### § 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1137; Code 1940, T. 22, § 76.)

**§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1138; Code 1940, T. 22, § 77.)

### Chapter 11A, Reporting Notifiable Diseases 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.

(Acts 1987, No. 87-574, p. 904, § 1.)

#### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 2.)

#### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 3.)



### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 4.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 5.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 6.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 7.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 8.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 9.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 10.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 11.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 12.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 13.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 14.)

**§ 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

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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.

(Acts 1987, No. 87-574, p. 904, § 16; Acts 1990, No. 90-629, p. 1148, § 2; Act 2004-246, p. 338, § 1.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 17; Acts 1990, No. 90-629, p. 1148, § 3; Acts 1993, No. 93-723, p. 1424, § 1.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 18; Acts 1990, No. 90-629, § 4.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 19.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 20.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 21.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 22.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 23.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 24.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 25.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 26.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 27.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 28.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 29.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 30.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 31; Acts 1990, No. 90-629, p. 1148, § 5.)

**§ 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.

(Acts 1987, No. 87-574, p. 904, § 32.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 33.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 34.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 35.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 36.)

### **§ 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.

(Acts 1987, No. 87-574, p. 904, § 37.)

### **§ 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.

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(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.

(Acts 1988, 2nd Ex. Sess., No. 88-983, p. 708, §§ 1-9; Acts 1993, No. 93-341, p. 527, § 1.)

### **§ 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.

(Acts 1990, No. 90-552.)

### **§ 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.

(Acts 1990, No. 90-629, § 6.)

### **§ 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.

(Acts 1990, No. 90-629, § 7.)

### 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.

(Acts 1991, No. 91-120, p. 140, § 1.)

#### § 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).

(Acts 1991, No. 91-120, p. 140, § 2(a), (b).)

#### § 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.

(Acts 1991, No. 91-120, p. 140, § 2(c).)

**§ 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.

(Acts 1991, No. 91-120, p. 140, § 2(d).)

**§ 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.

(Acts 1991, No. 91-120, p. 140, § 2(e).)



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### 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) **HEPATITIS C VIRUS (HCV) INFECTION.** The presence of the HCV as determined by the presence of antibodies to HCV or by other means as determined by rules of the State Board of Health.
- (5) **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.
- (6) **INFECTED HEALTH CARE WORKER.** A health care worker infected with HIV, HBV, HCV, or other disease designated by the State Board of Health by a rule adopted pursuant to the Alabama Administrative Procedure Act.
- (7) **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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 1; Act 2015-467, § 1.)

### **§ 22-11A-61. Reporting of infected worker to State Health Officer.**

(a) Any health care worker infected with HIV, HBV, HCV, or other disease designated by the State Board of Health 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 2; Act 2015-467, § 1.)

### **§ 22-11A-62. Performing invasive procedures.**

No health care worker having knowledge that he or she is infected with HIV, HBV, HCV, or other disease designated by the State Board of Health 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 3; Acts 1995, No. 95-255, p. 427, § 1; Act 2015-467, § 1.)

### **§ 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.

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- (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, HBV, HCV, or other disease designated by the State Board of Health.
- (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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 4; Act 2015-467, § 1.)

### **§ 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.

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(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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 5.)

### **§ 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 6.)

### **§ 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, HBV, HCV, or other disease designated by the State Board of Health if the infected health care worker is found to be practicing in violation of this article.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 7; Act 2015-467, § 1.)

### **§ 22-11A-67. Records and information necessary to assist investigation.**

(a) Any health care worker found to have HBV, HIV, or HCV, or other disease designated by the State Board of Health 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, HBV, HCV, or other disease designated by the State Board of Health.

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- (2) The administrator of any health facility having knowledge of a health care worker diagnosed as infected with HIV, HBV, HCV, or other disease designated by the State Board of Health.
- (3) Any person serving as the guardian of or the conservator of any health care worker diagnosed with HIV, HBV, HCV, or other disease designated by the State Board of Health, or any person who is the administrator or executor of the estate of any health care worker diagnosed with HIV, HBV, or HCV, or other disease designated by the State Board of Health.
- (4) Any person serving as the custodian of patient records of any HBV, HIV, or HCV, or other disease designated by the State Board of Health, infected health care worker.
- (5) Any facility employing a worker diagnosed with HIV, HBV, or HCV, or other disease designated by the State Board of Health.

(c) The hospital or other individual or organization providing records may collect the usual fee for copies of records or documents.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 8; Act 2015-467, § 1.)

### **§ 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

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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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 9; Acts 1995, No. 95-541, p. 1125, § 1.)

### **§ 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 10.)

### **§ 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 11.)

### **§ 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 12.)

### **§ 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 13.)

### **§ 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, HBV, HCV, or other disease designated by the State Board of Health 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.

(Acts 1993, 1st Ex. Sess., No. 93-846, p. 57, § 14; Act 2015-467, § 1.)

### 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.”

(Act 2009-490, p. 900, § 1.)

#### § 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 Preventions 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.

(Act 2009-490, p. 900, § 2.)

#### § 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.

(Act 2009-490, p. 900, § 3.)

### **§ 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.

(Act 2009-490, p. 900, § 4.)

### **§ 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.

(Act 2009-490, p. 900, § 5.)

### **§ 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.

(Act 2009-490, p. 900, § 6.)

### **§ 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.

(Act 2009-490, p. 900, § 7.)

### § 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.

(Act 2009-490, p. 900, § 8.)

### § 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.

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(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.

(Act 2009-490, p. 900, § 9.)

### **§ 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.

(Act 2009-490, p. 900, § 10.)

### **§ 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.

(Act 2009-490, p. 900, § 11.)

### **§ 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.

(Act 2009-490, p. 900, § 12.)

### **§ 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.

(Act 2009-490, p. 900, § 13.)

### **§ 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.

(Act 2009-490, p. 900, § 14.)

### **§ 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.

(Act 2009-490, p. 900, § 15.)

### Chapter 11B, Exchange of Immunization Status Data

#### **§ 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.

(Acts 1995, No. 95-530, p. 1075, § 1.)

#### **§ 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.

(Acts 1995, No. 95-530, p. 1075, § 2.)

#### **§ 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.

(Acts 1995, No. 95-530, p. 1075, § 3.)

**§ 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.

(Acts 1995, No. 95-530, p. 1075, § 4.)



### Chapter 11C, Alabama Head and Spinal Cord Injury Registry Act

#### § 22-11C-1. Short title.

This chapter shall be known and may be cited as the “Alabama Head and Spinal Cord Injury Registry Act.”

(Act 98-611, p. 1343, § 1.)

#### § 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.

(Act 98-611, p. 1343, § 2.)

#### § 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.

(Act 98-611, p. 1343, § 3.)

### **§ 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.

(Act 98-611, p. 1343, § 4.)

### **§ 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.

(Act 98-611, p. 1343, § 5.)

### **§ 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.

(Act 98-611, p. 1343, § 6.)

### **§ 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.

(Act 98-611, p. 1343, § 7.)

### **§ 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.

(Act 98-611, p. 1343, § 8.)

### **§ 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.

(Act 98-611, p. 1343, § 9.)

### **§ 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.

(Act 98-611, p. 1343, § 10.)

### **§ 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.

(Act 98-611, p. 1343, § 11.)

### **§ 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.

(Act 98-611, p. 1343, § 12.)

### Chapter 11D, Statewide Trauma Advisory Council

#### § 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.

(Act 2007-299, p. 541, § 1; Act 2012-526, p. 1556, § 1.)

#### § 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.

(Act 2007-299, p. 541, § 2; Act 2012-526, p. 1556, § 1.)

### **§ 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.

(Act 2007-299, p. 541, § 3; Act 2012-526, p. 1556, § 1.)

### **§ 22-11D-4. Verification and certification of trauma or health care 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.

(Act 2007-299, p. 541, § 4; Act 2012-526, p. 1556, § 1.)

### § 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.

(Act 2007-299, p. 541, § 5; Act 2012-526, p. 1556, § 1.)

### **§ 22-11D-6. Statewide registries.**

(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.

(Act 2007-299, p. 541, § 6; Act 2012-526, p. 1556, § 1.)

### **§ 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.

(Act 2007-299, p. 541, § 7; Act 2012-526, p. 1556, § 1.)



### § 22-11D-8. Rules and regulations.

(a) 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 or ill people are promptly transported and treated at designated 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 and health care 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.

(b) 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.

(Act 2007-299, p. 541, § 8; Act 2012-526, p. 1556, § 1.)

### **§ 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.

(Act 2007-299, p. 541, § 9; Act 2012-526, p. 1556, § 1.)

### **§ 22-11D-10. Statewide Health System Fund.**

(a) The Statewide Health System Fund is created. The department shall distribute funding allocated to the department for the purpose of creating, administering, maintaining, or enhancing the statewide health 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 health 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. Fund allocation to health care centers shall be based upon the designated level of health care and the number of qualified patients directed through the health care 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 other designated health care center.

(Act 2012-526, p. 1556, § 2.)

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### Chapter 12, Quarantine Laws and Regulations

#### **§ 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.

(Code 1907, § 736; Code 1923, § 1202; Code 1940, T. 22, § 141.)

#### **§ 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.

(Code 1907, § 742; Code 1923, § 1208; Code 1940, T. 22, § 173.)

#### **§ 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.

(Code 1907, § 737; Code 1923, § 1203; Code 1940, T. 22, § 143; Acts 1981, No. 81-439, p. 757, § 14.)

#### **§ 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.

(Code 1907, § 738; Code 1923, § 1204; Code 1940, T. 22, § 144; Acts 1981, No. 81-439, p. 757, § 15.)

#### **§ 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.

(Code 1907, § 744; Code 1923, § 1210; Code 1940, T. 22, § 154.)

#### **§ 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.

(Code 1907, § 739; Code 1923, § 1208; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 145.)

### **§ 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.

(Code 1907, § 740; Code 1923, § 1206; Code 1940, T. 22, § 147.)

### **§ 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.

(Code 1852, § 965; Code 1867, § 1216; Code 1876, § 4225; Code 1886, § 4090; Code 1896, § 5347; Code 1907, § 7060; Code 1923, § 4362; Code 1940, T. 22, § 148.)

### **§ 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.

(Code 1896, § 5350; Code 1907, § 7063; Code 1923, § 4365; Code 1940, T. 22, § 149.)

### **§ 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.

(Code 1852, § 962; Code 1867, § 1213; Code 1876, § 4223; Code 1886, § 4088; Code 1896, § 5345; Code 1907, § 7057; Code 1923, § 4359; Code 1940, T. 22, § 142.)

### **§ 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.

(Code 1907, § 748; Code 1923, § 1214; Code 1940, T. 22, § 160.)

### **§ 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.

(Code 1907, § 749; Code 1923, § 1215; Code 1940, T. 22, § 161.)

### **§ 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.

(Code 1907, § 750; Code 1923, § 1216; Code 1940, T. 22, § 162.)

### **§ 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.

(Code 1907, § 751; Code 1923, § 1217; Code 1940, T. 22, § 163.)

### **§ 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.

(Code 1907, § 752; Code 1923, § 1218; Code 1940, T. 22, § 164.)

### **§ 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.

(Code 1907, § 754; Code 1923, § 1220; Code 1940, T. 22, § 165.)

### **§ 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.

(Code 1852, § 967; Code 1867, § 1218; Code 1876, § 4226; Code 1886, § 4091; Code 1896, § 5348; Code 1907, § 7061; Code 1923, § 4363; Code 1940, T. 22, § 150.)

### **§ 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.

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(Code 1852, § 959; Code 1867, § 1210; Code 1876, § 1507; Code 1886, § 1263; Code 1896, § 2398; Code 1907, § 741; Code 1923, § 1207; Code 1940, T. 22, § 151.)

### **§ 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.

(Code 1852, § 966; Code 1867, § 1217; Code 1876, § 1511; Code 1886, § 1267; Code 1896, § 2402; Code 1907, § 753; Code 1923, § 1219; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 152.)

### **§ 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.

(Code 1907, § 745; Code 1923, § 1211; Code 1940, T. 22, § 155.)

### **§ 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.

(Code 1907, § 7068; Code 1923, § 4370; Code 1940, T. 22, § 156.)

### **§ 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.

(Code 1907, §§ 755, 7067; Code 1923, §§ 1221, 4369; Code 1940, T. 22, §§ 166, 167.)

### **§ 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.

(Code 1907, § 743; Code 1923, § 1209; Code 1940, T. 22, § 153.)

### **§ 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.

(Code 1907, § 7070; Code 1923, § 4372; Code 1940, T. 22, § 170.)

### **§ 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) Any 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.

(Code 1907, §§ 747, 7065; Code 1923, §§ 1213, 4367; Code 1940, T. 22, §§ 158, 159.)



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### Chapter 12A, Perinatal Health Care

#### § 22-12A-1. Short title.

This chapter may be cited as the Alabama Perinatal Health Act.

(Acts 1980, No. 80-761, p. 1586, § 1.)

#### § 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.

(Acts 1980, No. 80-761, p. 1586, § 2; Acts 1981, 3rd Ex. Sess., No. 81-1140, p. 417, § 1.)

#### § 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.

(Acts 1980, No. 80-761, p. 1586, § 3; Acts 1981, 3rd Ex. Sess., No. 81-1140, p. 417, § 1.)

### **§ 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.

(Acts 1980, No. 80-761, p. 1586, § 4.)

### **§ 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.

(Acts 1980, No. 80-761, p. 1586, § 5.)

### **§ 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.

(Acts 1980, No. 80-761, p. 1586, § 6; Acts 1981, 3rd Ex. Sess., No. 81-1140, p. 417, § 1.)

### Chapter 12B, Mothers and Babies Indigent Care Trust Fund

#### **§ 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.

(Acts 1987, No. 87-707, p. 1245, § 1.)

#### **§ 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.

(Acts 1987, No. 87-707, p. 1245, § 2.)

#### **§ 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.

(Acts 1987, No. 87-707, p. 1245, § 3.)

#### **§ 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.

(Acts 1987, No. 87-707, p. 1245, § 4.)

### Chapter 12C, Administration of Women, Infants and Children Program

#### § 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.

(Acts 1993, No. 93-642, p. 1100, § 1.)

#### § 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.

(Acts 1993, No. 93-642, p. 1100, § 2.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 3.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 4.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 5; Acts 1996, No. 96-481, p. 609, § 2.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 6.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 7.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 8.)

### **§ 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.

(Acts 1993, No. 93-642, p. 1100, § 9.)

### Chapter 12D, Office of Women's Health

#### § 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:



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- 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.

(Act 2002-141, p. 384, § 1.)

### **§ 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.

(Act 2002-141, p. 384, § 2.)

### **§ 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.

(Act 2002-141, p. 384, § 3.)

### **§ 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.

(Act 2002-141, p. 384, § 4.)

### **§ 22-12D-5. Funding.**

The provisions of this chapter shall be carried out to the extent that funds are available.

(Act 2002-141, p. 384, § 5.)

### Chapter 13, Cancer Article 1, General Provisions

#### **§ 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.

(Acts 1943, No. 425, p. 395, § 2.)

#### **§ 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.

(Acts 1949, No. 185, p. 215, § 2; Acts 1995, No. 95-275, p. 485, § 7.)

#### **§ 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.

(Acts 1949, No. 185, p. 215, § 1; Acts 1995, No. 95-275, p. 485, § 7.)

#### **§ 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.

(Acts 1949, No. 185, p. 215, § 10.)

### 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.”

(Acts 1995, No. 95-275, p. 485, § 1.)

#### § 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.

(Acts 1995, No. 95-275, p. 485, § 2; Act 2004-396, p. 666, § 1.)

#### § 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.

(Acts 1995, No. 95-275, p. 485, § 3; Act 2004-396, p. 666, § 1.)

### **§ 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.

(Acts 1995, No. 95-275, p. 485, § 4; Act 2004-396, p. 666, § 1.)

### **§ 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.

(Acts 1995, No. 95-275, p. 485, § 5.)

### **§ 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.

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(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.

(Acts 1995, No. 95-275, p. 485, § 6; Act 2004-396, p. 666, § 1.)

### Article 3, Breast, Cervical, and Colorectal Cancer Awareness

#### § 22-13-50. 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.

(Act 2010-587, p. 1318, § 1.)

#### § 22-13-51. 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.

(Act 2010-587, p. 1318, § 2.)

#### § 22-13-52. 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.

(Act 2010-587, p. 1318, § 3.)

### **§ 22-13-53. 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.

(Act 2010-587, p. 1318, § 4.)

### **§ 22-13-54. Administration of article.**

The board shall establish such rules, guidelines, policies, and protocols as may be necessary to implement and administer this article.

(Act 2010-587, p. 1318, § 5.)

### **§ 22-13-55. Implementation of article.**

This article shall be implemented only to the extent that sufficient funds are made available for its implementation and administration.

(Act 2010-587, p. 1318, § 6.)



### Article 4, Breast Cancer Education

#### **§ 22-13-70. Standardized summary of treatment methods, reconstruction options, and availability of coverage.**

(a) The Alabama Department of Public Health shall develop a standardized written summary, in plain nontechnical language, which shall contain all of the following:

- (1) An explanation of the alternative medically viable methods of treating breast cancer including, but not limited to, hormonal, radiological, chemotherapeutic, or surgical treatments, or combinations thereof.
- (2) Information on breast reconstructive surgery including, but not limited to, the use of breast implants, their side effects, risks, and other pertinent information to aid a person in deciding on a course of treatment.
- (3) An explanation of the special provisions relating to mastectomy, lymph node dissection, lumpectomy, and breast reconstructive surgery coverage, and second opinion coverage, including out-of-network options, under the insurance law, Section 22-6-10, Section 22-6-11, and Chapter 50, Title 27, and suggest that patients undergoing such procedures check their health plans or insurance policies, or both, for the details of their coverage.
- (4) Any other information the department deems necessary.

(b) The standardized written summary for alternative breast cancer treatments shall be provided by a physician to each person under his or her care who has been diagnosed to be afflicted with breast cancer upon diagnosis, or as soon thereafter as practicable. Hospitals that provide mastectomy surgery, lymph node dissection, or a lumpectomy shall also provide the information developed by the department.

(c) The summary shall be updated as is necessary.

(d) Nothing in this article shall be construed to create a cause of action for lack of informed consent. Nothing in this article shall be construed to establish a standard of care for physicians or otherwise modify, amend, or supersede any provision of the Alabama Medical Liability Act of 1987 or the Alabama Medical Liability Act of 1996, commencing with Section 6-5-540, or any amendment thereto, or any judicial interpretation thereof.

(Act 2013-284, p. 959, § 1.)

#### **§ 22-13-71. Mammography results, notification requirements; dense breast tissue.**

(a) If the mammogram of a patient demonstrates dense breast tissue, the physician issuing the report of the mammography results shall provide notification to the patient that includes, but is not limited to, the following statement:

“Your mammogram shows that your breast tissue is dense. Dense breast tissue is very common and is not abnormal. However, dense breast tissue may make it harder to find cancer on a mammogram and may also be

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associated with an increased risk of breast cancer. This information about the result of your mammogram is given to you to raise your awareness. Use this information to talk to your doctor about your own risks for breast cancer. At that time, ask your doctor if more screening tests might be useful, based on your risk. A report of your results was sent to your physician.”

(b) For the purposes of this section, dense breast tissue means heterogeneously dense or extremely dense tissue as defined in nationally recognized guidelines or systems for breast imaging reporting of mammography screening including, but not limited to, the breast imaging reporting and data system of the American College of Radiology, and any equivalent new terms, as such guidelines or systems are updated.

(Act 2013-284, p. 959, § 2.)

### Chapter 13A, Osteoporosis Prevention and Treatment Education Act

#### § 22-13A-1. Short title.

This chapter may be cited as the “Osteoporosis Prevention and Treatment Education Act of 1995.”

(Acts 1995, No. 95-259, p. 435, § 1.)

#### § 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.

(Acts 1995, No. 95-259, p. 435, § 2.)

### **§ 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.

(Acts 1995, No. 95-259, p. 435, § 3.)

### **§ 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.

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(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.

(Acts 1995, No. 95-259, p. 435, § 4.)

### **§ 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.

(Acts 1995, No. 95-259, p. 435, § 5.)

### **§ 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.

(Acts 1995, No. 95-259, p. 435, § 6.)

### **§ 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.

(Acts 1995, No. 95-259, p. 435, § 7.)

### **§ 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.

(Acts 1995, No. 95-259, p. 435, § 8.)

**§ 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.

(Acts 1995, No. 95-259, p. 435, § 9.)

**§ 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.

(Acts 1995, No. 95-259, p. 435, § 10.)

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### Chapter 14, Radiation 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.**

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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.

(Acts 1963, No. 582, p. 1269, § 3.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 1.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 2.)

### § 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;

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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.

(e) Commencing on February 25, 2014, the State Radiation Control Agency is no longer an enumerated agency subject to review by the Alabama Sunset Committee.

(Acts 1963, No. 582, p. 1269, § 4; Act 2014-73, p. 120, § 3.)

### **§ 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 this article and the rules and regulations issued thereunder.

(Acts 1963, No. 582, p. 1269, §§ 6, 14; Act 2010-146, p. 212, § 3.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 7.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 8.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 9.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 10.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 12.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 13.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 15.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 16; Acts 1988, No. 88-535, p. 817, § 1.)

### **§ 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.

(Acts 1963, No. 582, p. 1269, § 11.)

### **§ 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,

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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.

(Acts 1979, No. 79-105, p. 126; Acts 1981, No. 81-702, p. 1179.)

### Article 1a, Registration 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.

(Acts 1988, No. 88-535, p. 817, § 2(a).)

#### **§ 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.

(Acts 1988, No. 88-535, p. 817, § 2(b).)

#### **§ 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.

(Acts 1988, No. 88-535, p. 817, § 2(c).)

### 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.

(Acts 1979, No. 79-805, p. 1483, § 1.)

#### **§ 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 State Law Enforcement Agency 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 State Law Enforcement Agency Operating Fund.

(Acts 1979, No. 79-805, p. 1483, § 2.)

#### **§ 22-14-32. Submission of fingerprint cards to F.B.I.**

The Alabama State Law Enforcement Agency 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.

(Acts 1979, No. 79-805, p. 1483, § 3.)

#### **§ 22-14-33. Liability of department.**

The Alabama State Law Enforcement Agency 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.

(Acts 1979, No. 79-805, p. 1483, § 4.)

**§ 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.

(Acts 1979, No. 79-805, p. 1483, § 5.)

**§ 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.

(Acts 1979, No. 79-805, p. 1483, § 6.)

### Chapter 15A, Alabama Clean Indoor Air Act

#### § 22-15A-1. Short title.

This chapter shall be known and may be cited as the “Alabama Clean Indoor Air Act.”

(Act 2003-314, p. 770, § 1.)

#### § 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.

(Act 2003-314, p. 770, § 2.)

#### § 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.

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- (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.

(Act 2003-314, p. 770, § 3.)

### **§ 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.

(Act 2003-314, p. 770, § 4.)

### **§ 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.

(Act 2003-314, p. 770, § 5.)

### **§ 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.

(Act 2003-314, p. 770, § 6.)

### **§ 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.

(Act 2003-314, p. 770, § 7.)

### **§ 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

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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.

(Act 2003-314, p. 770, § 8.)

### **§ 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.

(Act 2003-314, p. 770, § 9.)

### **§ 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.

(Act 2003-314, p. 770, § 11.)

### Chapter 17A, Regulation of Tattooing, Branding, and Body Piercing

#### § 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.

(Act 2000-321, p. 512, § 1.)

#### § 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.

(Act 2000-321, p. 512, § 2.)

### § 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.

(Act 2000-321, p. 512, § 3.)

### § 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.

(Act 2000-321, p. 512, § 4.)

### § 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.

(Act 2000-321, p. 512, § 5.)

### **§ 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.

(Act 2000-321, p. 512, § 6.)

### **§ 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.

(Act 2000-321, p. 512, § 7.)

### **§ 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.

(Act 2000-321, p. 512, § 8.)

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### Chapter 18, Ambulances 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 by 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.

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- (9) EMERGENCY MEDICAL TECHNICIAN (EMT). Any person 18 years of age or older who satisfies all of the following:
- a. Has successfully completed the basic emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health.
  - b. Has passed the state EMT examination.
  - 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, satisfies all of the following:
- a. Has successfully completed the intermediate emergency medical technician course of instruction, or its equivalent, as approved by the Board of Health.
  - b. Has passed the state EMT Intermediate examination, as well as having met the requirements for becoming a licensed emergency medical technician.
  - 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.

(Acts 1971, No. 1590, p. 2717, § 1; Acts 1995, No. 95-276, p. 488, § 1; Act 2010-584, p. 1304, § 1.)



### **§ 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.

(Acts 1971, No. 1590, p. 2717, § 6; Acts 1973, No. 526, p. 767; Acts 1975, 4th Ex. Sess., No. 120, p. 2815, § 1; Acts 1977, No. 526, p. 698; Acts 1981, No. 81-774, p. 1335; Act 2010-584, p. 1304, § 1.)

### **§ 22-18-3. Rules and regulations.**

(a) In the manner provided in this section, the Board of Health 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.

(Acts 1971, No. 1590, p. 2717, § 3; Acts 1995, No. 95-276, p. 488, § 1; Act 2010-584, p. 1304, § 1; Act 2016-394, § 1.)

### **§ 22-18-4. Fees of licenses; disposition of funds; qualifications for EMSP licensure.**

(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 for each license valid for a period of 24 months issued to the EMSP and a fee of \$25 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 or her 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 rules 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.

(Acts 1971, No. 1590, p. 2717, § 2; Acts 1995, No. 95-276, p. 488, § 1; Act 2010-584, p. 1304, § 1.)

### **§ 22-18-6. Violations; good Samaritan provisions; scope of privilege; control of emergency scene; penalties.**

(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 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 subsection (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:

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- 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 section 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.

(Acts 1971, No. 1590, p. 2717, § 5; Acts 1995, No. 95-276, p. 488, § 1; Act 2010-584, p. 1304, § 1.)

### **§ 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.

(Acts 1971, No. 1590, p. 2717, § 8.)

### **§ 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.

(Acts 1996, No. 96-626, p. 997, § 2; Act 2002-424, p. 1090, § 1; Act 2010-584, p. 1304, § 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.

(Acts 1993, No. 93-663, p. 1146, § 3(a).)

#### § 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.

(Acts 1993, No. 93-663, p. 1146, § 3(b).)

#### § 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.

(Acts 1993, No. 93-663, p. 1146, § 3(c).)

#### § 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.

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(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.

(Acts 1993, No. 93-663, p. 1146, § 3(d).)

### 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 EMS region 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.

(Acts 1995, No. 95-276, p. 488, § 3; Act 2010-584, p. 1304, § 2.)

**§ 22-18-41. Advanced life support techniques; procurement, carriage, and use of drugs and fluids; 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 a 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 hold a current medical direction number.

(Acts 1995, No. 95-276, p. 488, § 4; Act 2006-563, p. 1305, § 1; Act 2010-584, p. 1304, § 2.)

**§ 22-18-42. Regulation of certain types 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 nontransport 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.

(Acts 1995, No. 95-276, p. 488, § 5; Act 2006-563, p. 1305, § 1; Act 2010-584, p. 1304, § 2.)



**§ 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.

(Acts 1995, No. 95-276, p. 488, § 6.)

**§ 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.

(Acts 1995, No. 95-276, p. 488, § 7.)

### Chapter 19, Dead Bodies 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.

(Code 1907, § 725; Code 1923, § 1148; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 87; Acts 1959, No. 578, p. 1455.)

#### **§ 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.

(Acts 1951, No. 320, p. 612; Acts 1959, No. 291, p. 859.)

#### **§ 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

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- (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.

(Acts 1919, No. 658, p. 909; Code 1923, § 3870; Code 1940, T. 14, § 114; Code 1975, § 13-6-86.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 3871; Code 1940, T. 14, § 115; Code 1975, § 13-6-87.)

### **§ 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.

(Act 2006-608, p. 1672, p. 1672, § 1.)

### 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1288; Code 1940, T. 22, § 174; Acts 1980, No. 80-140, p. 210.)

#### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1289; Code 1940, T. 22, § 175.)

#### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1290; Code 1940, T. 22, § 176; Acts 1980, No. 80-140, p. 210.)

#### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1291; Code 1940, T. 22, § 177.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1292; Code 1940, T. 22, § 178.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1293; Code 1940, T. 22, § 179.)

### **§ 22-19-26. Preservation of bodies for 60 days by schools pending claims therefor.**

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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1294; Code 1940, T. 22, § 180.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1295; Code 1940, T. 22, § 181.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1296; Code 1940, T. 22, § 182.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 1297; Code 1940, T. 22, § 183.)

### **§ 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.

(Acts 1923, No. 360, p. 381; Code 1923, § 4376; Code 1940, T. 22, § 184.)

### Chapter 20, Miscellaneous Health Laws

#### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1133; Acts 1935, No. 444, p. 926; Code 1940, T. 22, § 72.)

#### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 1115; Code 1940, T. 22, § 58; Acts 1981, No. 81-439, p. 757, § 16.)

#### **§ 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.

(Acts 1965, No. 885, p. 1664; Acts 1979, No. 79-437, p. 703; Acts 1987, No. 87-672, p. 1202; Acts 1991, 1st Ex. Sess., No. 91-793, p. 188, § 1.)

### **§ 22-20-3.1. Educational information on pertussis to be provided prior to discharge of newborn child.**

(a) During the postpartum period, before discharging a newborn child, a hospital shall provide parents with educational information on pertussis disease. The information provided to parents shall contain the following statement:

Pertussis, whooping cough, can cause serious illness in infants, children, and adults and can even be life-threatening, especially in infants. According to the Centers for Disease Control and Prevention (CDC), the most effective way to prevent pertussis is through vaccination of both children and parents. For more information on protecting your child by obtaining the pertussis vaccination please contact your physician, county health department, or the Alabama Department of Public Health.

(b) Nothing in this section shall require any hospital to provide or pay for any vaccination against pertussis.

(c) Nothing in this section shall be construed to establish a standard of care for hospitals or physicians or otherwise modify, amend, or supersede any provision of the Alabama Medical Liability Act of 1987 or the Alabama Medical Liability Act of 1996, or any amendment thereto, or any judicial interpretation thereof.

(d) Physicians and hospitals, as hospitals are defined in Section 22-21-20, shall not have legal liability or responsibility for claims resulting from providing or failing to provide the pertussis information required pursuant to subsection (a).

(Act 2014-280, p. 889, § 1.)

### **§ 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.

(Code 1907, § 726; Code 1923, § 1149; Code 1940, T. 22, § 88.)

### **§ 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.

(Code 1907, § 723; Acts 1919, No. 658, p. 909; Code 1923, § 1146; Acts 1927, No. 640, p. 774; Acts 1935, No. 443, p. 918; Code 1940, T. 22, § 85; Acts 1947, No. 52, p. 22; Acts 1947, No. 491, p. 337; Acts 1953, No. 723, p. 977.)

### **§ 22-20-5.1. Cottage food production.**

(a) For purposes of this section, the following words have the following meanings:

- (1) **BAKED GOOD.** Includes cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven. A baked good does not include a potentially hazardous food item as defined by rule of the department.
- (2) **COTTAGE FOOD PRODUCTION OPERATION.** A person operating out of his or her home who meets all of the following requirements:
  - a. Produces a baked good, a canned jam or jelly, a dried herb or herb mix, or a candy for sale at the person's home.
  - b. Has an annual gross income of twenty thousand dollars (\$20,000) or less from the sale of food described in paragraph a.
  - c. Sells the foods produced under paragraph a. only directly to consumers.
- (3) **DEPARTMENT.** The State Department of Public Health.
- (4) **HOME.** A primary residence that contains a kitchen and appliances designed for common residential use.

(b) A cottage food production operation is not a food service establishment and is not required to have a food service permit issued by the county health department.

(c) Neither the State Department of Public Health nor a county health department may regulate the production of food at a cottage food production operation except as provided by this section.

(d) The department may issue a stop sale, seize, or hold order for any food suspected of being the cause of a food borne illness.

(e) The department shall promulgate rules requiring a cottage food production operation to label all baked goods, canned jams or jellies, candies, and dried herb or herb mix that the operation sells to consumers, and requiring completion of a food safety course. The label shall include the name and address of the cottage food production operation and a statement that the food is not inspected by the department or local health department. The operator of a cottage food production operation shall maintain certification of having attended and passed a food safety course approved by the department.

(f) A cottage food production operation may not sell baked goods, jams and jellies, candies, or dried herbs and herb mixes over the Internet.

(Act 2014-180, p. 524, §§ 1, 2.)

### **§ 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.

(Acts 1967, No. 413, p. 1068.)

### **§ 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.

(Acts 1927, No. 262, p. 261; Code 1940, T. 22, § 98.)

### **§ 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.

(Code 1896, § 5331; Code 1907, § 7875; Code 1923, § 5610; Code 1940, T. 22, § 133.)

### § 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.

(Code 1867, § 4435; Code 1876, § 1728; Code 1886, § 1464; Code 1896, § 5330; Code 1907, § 7874; Code 1923, § 5609; Code 1940, T. 22, § 132.)

### § 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 5611; Code 1940, T. 22, § 134.)

### § 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, veratrium, 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 the box, vessel or paper in which the said poison is contained 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.

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(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.

(Acts 1931, No. 332, p. 377; Code 1940, T. 22, §§ 259, 260.)

### **§ 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.

(Acts 1919, No. 658, p. 909; Code 1923, § 4379; Code 1940, T. 22, § 274.)

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### Chapter 20A, Source or Origin of Fish Products 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.

(Act 2009-582, p. 1715, § 1.)

#### § 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.

(Act 2009-582, p. 1715, § 2.)

### **§ 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.

(Act 2009-582, p. 1715, § 3.)

### **§ 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.

(Act 2009-582, p. 1715, § 4.)

### **§ 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.

(Act 2009-582, p. 1715, § 5.)

### **§ 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.

(Act 2009-582, p. 1715, § 6.)

### **§ 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.

(Act 2009-582, p. 1715, § 7.)

### **§ 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.

(Act 2009-582, p. 1715, § 9.)



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### 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.

(Act 2009-584, p. 1719, § 1.)

#### § 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 other members of the Order of Siluriformes, or catfish products or siluriformes 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 subsection stating the country of origin of the product shall be displayed daily when the catfish or siluriformes or catfish products or siluriformes products are from a country other than the United States of America.

(c) No catfish or siluriformes 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.

(Act 2009-584, p. 1719, § 2; Act 2015-156, § 1.)

### **§ 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 within 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.

(Act 2009-584, p. 1719, § 3.)

**Article 3, Processing of Shrimp**

**§ 22-20A-50. Processing at harvesting site.**

Any shrimp harvested from inland ponds or farms may be processed at the site where the harvesting occurs pursuant to rules adopted by the Alabama Department of Public Health.

(Act 2015-488, § 2.)

### Chapter 21, Hospitals and Other Health Care Facilities Generally Article 1, General Provisions

#### **§ 22-21-1. Establishment of hospitals by local authorities.**

The corporate authorities of any town or city and the county commission of any county may each establish, within the town or city or within the county, hospitals, temporary or permanent, for the reception of the sick or infirm or of persons suspected of having infectious or contagious diseases, and may make all needful rules and regulations for the control and management thereof and may confer by contract upon any institution for the instruction of students of medicine located in the city, town or county in which such hospital is situated, upon such terms and for such number of years as they may determine, the right to select the visiting staff of physicians to such hospital for the collegiate course of each year and to hold clinics on the patients therein and have its students attend such clinics. The corporate authorities and the county commission may unite in the establishment of such hospitals, if deemed expedient, making them common for the use of the town or city and of the county, and in the making of rules and regulations for the control and management thereof and shall jointly have the same powers and authority above conferred upon each.

(Code 1852, § 956; Code 1867, § 1207; Code 1876, § 1504; Code 1886, § 1260; Code 1896, § 2392; Code 1907, § 734; Code 1923, § 1200; Code 1940, T. 22, § 189.)

#### **§ 22-21-2. Appropriations for indigent persons in hospitals.**

The governing body of any county or municipality in this state may make an appropriation or appropriations out of their respective treasuries to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained for the care of the sick and wounded. Any county or municipally owned or controlled hospital may accept patients from any county or municipality.

(Code 1907, § 735; Acts 1911, No. 190, p. 192; Code 1923, § 1201; Acts 1932, Ex. Sess., No. 340, p. 335; Code 1940, T. 22, § 190.)

#### **§ 22-21-3. Scholarships for professional and technical personnel at public hospitals.**

(a) This section shall apply to any public hospital in this state, operated on a municipal-county basis, on a county basis, on a municipal basis or on a regional or statewide basis operating under the authority of any act or acts of the Legislature of Alabama, heretofore passed or hereinafter enacted, either local or general.

(b) The board of trustees or other like governing bodies of any hospital coming within the purview of this section is hereby authorized and permitted, but not required, to expend any funds such hospital has on hand by providing scholarships for the purpose of the educating and training of professional and technical personnel, and each such hospital, by and through its governing body, shall make and provide its own rules and regulations to govern the issuance of such scholarships.

(Acts 1966, Ex. Sess., No. 213, p. 265.)

### **§ 22-21-4. Annual audit of books and records of publicly owned medical institutions.**

(a) The books and records of publicly owned hospitals, nursing homes, rest homes or any other publicly owned medical institution may, upon request of the governing board of the particular institution, be audited annually by any certified public accountant who is subject to the control of the Alabama State Board of Public Accountancy. The selection of the certified public accountant to perform the audit shall be the responsibility of the governing board of the particular institution. Such audit, upon approval as provided in this section, shall be in lieu of any audits otherwise required by law of said institutions. The audit to be performed by the certified public accountant shall be in accordance with generally accepted auditing standards and shall comply with the procedures promulgated by the Chief Examiner of Public Accounts, and the audit report shall be addressed to the Chief Examiner of Public Accounts, who shall be charged with the responsibility of processing and distributing it as provided by law, and upon approval and acceptance, such audit report shall have the legal effect as a report of an examiner of public accounts.

(b) Examinations and audits performed upon provisions of this section shall be made at the expense of the institution and not as an expense of the State of Alabama. Such audit reports shall be public records open to public inspection, and a copy of each report shall be kept on file at the institution concerning which the audit was made.

(c) The provisions of this section shall be cumulative and supplemental and shall be construed in pari materia with other laws relative to the audit of the books and records of publicly owned hospitals, nursing homes, rest homes and any other publicly owned medical institutions.

(Acts 1967, No. 205, p. 569.)

### **§ 22-21-5. Incorporation of public bodies created under chapter; powers of same.**

(a) Any public body heretofore or hereafter created and established by ordinance or resolution pursuant to this chapter may become a body corporate and politic under the name set forth in such ordinance or resolution by filing a certified copy of such ordinance or resolution with the Secretary of State, to be recorded in his office. The members of such public body shall constitute the members of the corporation until they are succeeded by other members as provided by said ordinance or resolution. Neither the members of the corporation nor its directors or officers shall be personally liable for the debts, torts or undertakings of the corporation.

(b) The corporations provided for by this section shall have all the power and authority of health care authorities as provided for by Article 11 of this chapter; except, that such corporations shall not have or exercise any power which is inconsistent with or repugnant to the provisions of the ordinance or resolution under which it came into existence.

(c) This section shall be deemed to be cumulative.

(Acts 1957, No. 63, p. 102; Acts 1991, No. 91-552, p. 1020, § 1.)

### **§ 22-21-6. Certain public hospital corporations exempted from usury and interest rate limitation laws.**

(a) Bonds, notes and other securities issued by any public hospital corporation are hereby exempted from all laws of the state governing usury or prescribing or limiting interest rates, including, without limitation, the provisions of Chapter 8 of Title 8 of this code.

(b) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them by this subsection:

- (1) STATE. The State of Alabama.
- (2) PUBLIC HOSPITAL CORPORATION. Any public corporation organized pursuant to the provisions of any of the following statutes, as heretofore or hereafter amended:
  - a. Section 22-21-5,
  - b. Article 3 of this chapter, or
  - c. Division 1 of Article 4 of this chapter.

(Acts 1975, No. 192, p. 679.)

### **§ 22-21-7. Itemized statement of services rendered to be furnished patient upon request; provisions of statement; itemization of services and expenses; action by Attorney General; payment of claims by insurance companies.**

(a) For the purposes of this section, the term “hospital” shall mean any hospital in which human patients are given medical care. It shall include all emergency rooms or outpatient facilities connected thereto.

(b) Within 10 days following discharge or release from confinement in a hospital or nursing home, or within 10 days after the earliest date at which the expense from the confinement or service may be determined, which in the case of long-term confinement may be the monthly charge, the hospital or nursing home providing the service shall submit to the patient, or to his survivor or legal guardian as may be appropriate, upon written request, an itemized statement detailing in language comprehensible to an ordinary layman the specific nature of charges or expenses incurred by the patient, which in the initial billing shall contain a statement of specific services received and expenses incurred for each such item of service, enumerating in detail the constituent components of the services received within each department of the hospital or nursing home and including unit-price data on rates charged by the hospital or nursing home. This statement shall not include charges of hospital based or nursing home based physicians if billed separately.

(c) In any billing for hospital or nursing home services subsequent to the initial billing for such services, whether it is a restatement of the initial bill or a bill of additional charges, the patient or his survivor or legal guardian may elect, upon written request, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (b) of this section. The hospital or nursing home shall have 10 days from the receipt of the request to provide said statement.

(d) All provisions of subsection (b) of this section shall be followed if a written request is made within 30 days of discharge from the facility. If such request is made after 30 days of discharge then the 10 day period will not be in effect. Instead the hospital or nursing home providing the service shall have 30 days to meet the request. All requests shall be made within one year of discharge.

(e) The Attorney General shall maintain an action in the name of the state for an injunction to restrain any person, firm, association or corporation from operating, conducting or managing a hospital in violation of the provisions of this section if and when violations are brought to his attention by an individual after a due process of law procedure has been followed.

(f) The provisions of this section shall not apply in cases where regulations by the federal or the state government so stipulate.

(g) Hospitals can print information on the statement as to the procedure that must be followed by insurance companies relating to the payment of claims made by persons in possession of the statement referred to in subsection (b) of this section. An addendum which prohibits insurance companies from paying to the patient any amounts due the hospital by the patient is acceptable. Any insurance company making a payment to the patient without positive validation from appropriate hospital officials shall be held liable for such payment to the hospital and shall be guilty of a misdemeanor.

(Acts 1981, No. 81-795, p. 1397.)

### **§ 22-21-8. Confidentiality of accreditation, quality assurance credentialling materials, etc.**

(a) Accreditation, quality assurance and similar materials as used in this section shall include written reports, records, correspondence, and materials concerning the accreditation or quality assurance or similar function of any hospital, clinic, or medical staff. The confidentiality established by this section shall apply to materials prepared by an employee, advisor, or consultant of a hospital, clinic, or medical staff and to materials prepared by an employee, advisor or consultant of an accrediting, quality assurance or similar agency or similar body and to any individual who is an employee, advisor or consultant of a hospital, clinic, medical staff or accrediting, quality assurance or similar agency or body.

(b) All accreditation, quality assurance credentialling and similar materials shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a health care professional or institution arising out of matters which are the subject of evaluation and review for accreditation, quality assurance and similar functions, purposes, or activities. No person involved in preparation, evaluation or review of accreditation, quality assurance or similar materials shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the course of preparation, evaluation, or review of such materials or as to any finding, recommendation, evaluation, opinion, or other action of such accreditation, quality assurance or similar function or other person involved therein. Information, documents, or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were presented or used in preparation of accreditation, quality assurance or similar materials nor should any person involved in preparation, evaluation, or review of such materials be prevented from testifying as to matters within his knowledge, but the witness testifying should not be asked about any opinions or data given by him in preparation, evaluation, or review of accreditation, quality assurance or similar materials.

(Acts 1981, No. 81-801, p. 1409.)

### **§ 22-21-9. Name tags, etc., required for nurses.**

(a) Each health care provider and facility in Alabama which employs or contracts for the employment of one or more registered nurses shall require each registered nurse to wear a name tag, badge, or pin with the letters "R.N." printed on the name tag, badge, or pin while the nurse is providing direct patient care.

(b) Each health care provider and facility in Alabama which employs or contracts for the employment of one or more licensed practical nurses shall require each licensed practical nurse to wear a name tag, badge, or pin with the letters "L.P.N." printed on the name tag, badge, or pin while the nurse is providing direct patient care.

(c) A health care provider or facility may suspend the requirements in subsections (a) and (b) above for legitimate health care purposes, such as for employees who work in departments where metal adornments cannot safely be worn.

(d) No health care provider or facility may allow employees not licensed as registered nurses or licensed practical nurses to wear name tags, badges, or pins which have the word "nurse" or "nursing" thereon.

(Act 2000-683, p. 1388, § 1.)

### **§ 22-21-10. Flu and pneumonia vaccinations for long term care facility residents and employees.**

(a) As used in this section, the following words have the following meanings:

- (1) EMPLOYEE. An individual who is a part-time or full-time employee of the long term care facility.
- (2) LONG TERM CARE FACILITY. The term includes a skilled nursing facility, intermediate care facility, specialty care assisted living facility or dementia care facility, or an assisted living facility licensed under this chapter.

(b) Each long term care facility in this state shall conduct an immunization program as provided in this section which gives residents the opportunity to be immunized annually against the influenza virus and to be immunized against pneumococcal disease and employees the opportunity to be immunized against influenza virus.

(c) A long term care facility shall notify the resident upon admission of the immunization program provided by this section and shall request that the resident agree to be immunized against influenza virus and pneumococcal disease.

(d) A long term care facility shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and the annual immunization against influenza virus for each employee, as provided in this section. Upon finding that a resident is lacking the immunizations as provided herein or that an employee has not been immunized against influenza virus, or if the long term care facility is unable to verify that the individual has received the required immunizations, the long term care facility shall provide or arrange for immunization.



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(e) (1) The annual immunization and documentation program provided by this section for influenza shall be completed not later than November 30 of each year.

(2) The annual immunization and documentation program provided by this section for pneumococcal disease shall be assessed within 5 days of admission and when indicated.

(f) For an individual who becomes a resident of or who is newly employed by the long term care facility after November 30, but before March 30 of the following year, the long term care facility shall determine the individual's status for the influenza virus required under this section, and if found to be deficient, the long term care facility shall provide the required immunizations.

(g) No individual, resident, or employee, shall be required to receive vaccine under this section if the vaccine is medically contraindicated, if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(h) The State Board of Health may adopt rules to implement the immunization provisions of this section.

(i) The State Health Officer shall waive the requirements of this section in the event that there is a shortage of vaccine.

(j) The State Board of Health shall make available to long term care facilities educational and informational materials pertaining to the vaccination program provided in this section.

(Act 2001-1059, 4th Sp. Sess., p. 1053, § 1.)

### 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.

(Acts 1975, 3rd Ex. Sess., No. 140, p. 382, § 1; Acts 1979, No. 79-798, p. 1461; Acts 1991, No. 91-548, p. 1010, § 1; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

#### § 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.

(Acts 1949, No. 530, p. 835, § 1; Acts 1962, Ex. Sess., No. 122, p. 157, § 1.)

#### § 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.

(Acts 1949, No. 530, p. 835, § 4; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 5; Acts 1975, 3rd Ex. Sess., No. 140, p. 382, § 2; Acts 1980, No. 80-642, p. 1213; Acts 1988, 1st Ex. Sess., No. 88-902, p. 470; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 7; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 11.)

### **§ 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.

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- (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.

(Acts 1949, No. 530, p. 835, § 9; Acts 1959, No. 134, p. 656, § 1; Acts 1991, No. 91-548, p. 1010, § 1; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 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

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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.

(Acts 1949, No. 530, p. 835, § 8; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 6; Acts 1997, No. 97-632, p. 1146, § 1; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1; Act 2006-617, p. 1688, § 1; Act 2009-492, p. 906, § 1.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 10; Acts 1975, 3rd Ex. Sess., No. 140, p. 383, § 3.)

### **§ 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.

(Acts 1949, No. 530, p. 835, § 2; Acts 1962, Ex. Sess., No. 122, p. 157, § 2; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1.)

### **§ 22-21-33. Penalties for operation of or referring persons to unlicensed hospital.**

(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



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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.

(Acts 1949, No. 530, p. 835, § 12; Act 2001-1058, 4th Sp. Sess., p. 1044, § 1; Act 2008-389, p. 732, § 1.)

### **§ 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

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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.

(Act 2001-1058, 4th Sp. Sess., p. 1044, § 2.)

**§ 22-21-35. Licensure of abortion clinic or reproductive health center located within 2,000 feet of a K-8 public school.**

**(This statute is being challenged in litigation; contact Office of General Counsel for more information.)**

(a) For the purposes of this act, the term public school means kindergarten through grade 8, inclusive, of those educational institutions operated under the auspices of the State Board of Education.

(b) The Alabama Department of Public Health may not issue or renew a health center license to an abortion clinic or reproductive health center that performs abortions and is located within 2,000 feet of a K-8 public school.

(Act 2016-388, § 1.)

### **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.

(Act 2000-686, p. 1393, § 1.)

#### **§ 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.

(Act 2000-686, p. 1393, § 2.)

#### **§ 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.

(Act 2000-686, p. 1393, § 3.)

### **§ 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

(Act 2000-686, p. 1393, § 4.)

### **§ 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 shall be exempt from all fees described herein.

(Act 2000-686, p. 1393, § 5.)

### **§ 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.

(Act 2000-686, p. 1393, § 6.)

### **§ 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

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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.

(Act 2000-686, p. 1393, § 7.)

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### Article 3, Public Hospital Associations

#### § 22-21-50. Proceedings to establish.

(a) Any one or more local governing bodies located in the same or contiguous counties, within a zone determined by the State Board of Health as a zone for public hospitals, may act to establish a hospital association, a body corporate and politic. Before taking action to establish a hospital association, each local governing body involved shall give notice of the time, place and purpose of a public hearing at which all residents and taxpayers of the local political subdivision shall be given an opportunity to be heard. Such notice by the local governing body shall be given by publishing or posting a notice at least 10 days preceding the day on which the hearing is to be held. In determining whether a hospital association shall be established, the need for additional hospital beds in the areas affected shall be determined. After such a hearing, the local governing body shall determine whether to establish a hospital association, and if it is decided to establish a hospital association, an appropriate resolution or ordinance shall be passed, which resolution or ordinance shall take effect immediately and shall not be laid over or published or posted. After the adoption of such resolution or ordinance, the local governing body shall thereupon appoint one member for each precinct or ward falling within the jurisdiction of the local governing body to act as a director for the hospital association.

(b) Said hospital association shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

- (1) The directors of the hospital association shall present to the secretary of state an application signed by them, which shall set forth:
  - a. That notice has been given and a public hearing has been held and that they have been appointed by a local governing body as members of a board of directors of a hospital association;
  - b. The name and official residence of each of the directors, together with a certified copy of the appointment evidencing their right to office;
  - c. The date and place and induction into and taking oath of office and that they desire the hospital association to become a public body and body corporate and politic;
  - d. The term of office of each of the directors and the place where the official appointment of each of said directors is kept a record; and
  - e. The name which is proposed for the corporation;
- (2) The application shall be subscribed and sworn to by each of the directors before an officer authorized by the laws of the State of Alabama to take and certify oaths, who shall certify upon the application that he personally knows the directors and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence; and
- (3) The Secretary of State shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of the state or so nearly

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similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of records in his office.

When the application has been made, filed and recorded as provided in this subsection, the association shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the said directors a certificate of incorporation pursuant to this division under the seal of the state and shall record the same with the application.

(Acts 1945, No. 211, p. 330, § 9.)

### **§ 22-21-51. Directors -- Appointment; term; vacancies; quorum; compensation; loss of seat.**

(a) A hospital association shall consist of the directors appointed by the local governing bodies, and the directors shall elect from among their number the first chairman. The term of office of each director shall be five years. A director shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for any unexpired term by the local governing body having the original appointment. A majority of the members shall constitute a quorum. The respective local governing bodies shall appoint or reappoint any director whose term expires or whenever a position becomes vacant for any other reason and shall record a certificate of such appointment or reappointment. A director shall receive no compensation for his services. If at any time a local governing unit shall cease to give financial support to the hospital association as required by the rules and regulations, such governing body shall lose all seats on the board of directors.

(b) The following alternative method of appointing the directors may be used, if the directors of any existing hospital associations so decide or if the governing body originally sponsoring a hospital association is a county governing body and so decides: There shall be the same number of directors as there are members of the county commission, and they shall be appointed from the same voting districts from which the respective members of the county commission are elected.

(Acts 1945, No. 211, p. 330, § 10; Acts 1971, 3rd Ex. Sess., No. 84, p. 4297.)

### **§ 22-21-52. Directors -- Annual meeting; constitution and bylaws; executive committee.**

The directors shall meet annually and shall adopt a constitution and bylaws of the corporation, said constitution and bylaws to be subject to the approval of the State Board of Health. The active affairs of the corporation shall be vested in an executive committee composed of not less than five nor more than nine directors, to be selected by the directors. The executive committee shall meet monthly, organize itself and shall carry on the affairs of the corporation in compliance with the laws of the State of Alabama and with the constitution and bylaws of the corporation. The executive committee shall appoint a medical advisory committee of three to five members from the medical staffs of the respective hospitals. This medical advisory committee will be responsible to the executive committee for the professional aspects of the hospital's operations subject to the rules and regulations adopted by the State Board of Health. In the discretion of the directors, there may be appointed, for each hospital or other separate unit, a hospital executive committee consisting of not less than three nor more than five members who shall be residents of the political subdivision or subdivisions from which directors are selected. Such members shall possess such qualifications as may be prescribed by the directors, but need not reside in any particular precinct or ward. The members of such hospital executive committee shall each serve at the pleasure of the directors and shall, when appointed, organize and possess all of the power and authority and

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shall have all the duties of the executive committee of the hospital association in respect to all affairs of the hospital for which they are appointed. Said hospital executive committee shall act subject to the general supervision and control of the hospital association and its directors.

(Acts 1945, No. 211, p. 330, § 11; Acts 1953, No. 122, p. 169.)

### **§ 22-21-53. Powers.**

(a) Any district or regional hospital association is hereby authorized and empowered to exercise the following powers in addition to others granted in this article:

- (1) To cooperate with the State Board of Health for the purpose of constructing, equipping, maintaining and operating a hospital by making appropriate application to the State Board of Health; to enter into a cooperative contract with the State Board of Health for this purpose;
- (2) To act as an agent for the State Board of Health under a cooperative contract to prepare, carry out and operate hospital projects;
- (3) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital, or any part thereof;
- (4) To take over, by purchase, lease or otherwise, any hospital;
- (5) To manage, as agent of the State Board of Health, any hospital constructed or owned by the association;
- (6) To arrange, with any appropriate local or state agencies, for the opening or closing of streets, roadways, alleys or other transportation facilities;
- (7) To lease or rent any land, building, structure or facility needed in the operation of the hospital;
- (8) To enter upon buildings or property in order to conduct investigations or to make surveys or soundings;
- (9) To purchase, obtain options upon or acquire by eminent domain, gift, grant, bequest, devise or otherwise any property, real or personal, or interest therein, from any person, firm, corporation, city, county or government;
- (10) To sell, exchange, transfer, assign or pledge any property, real or personal, or any interest therein, to any person, firm, corporation, city, county or government;
- (11) To own, hold, clear and improve property;
- (12) To insure or provide for insurance of the property or operation of the association against such risks as the association may deem advisable;
- (13) To borrow money upon its bonds, notes, warrants, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues;



(14) To have perpetual succession;

(15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the association;

(16) To make and, from time to time, amend and repeal bylaws, rules and regulations, not inconsistent with this article, to carry into effect the powers and purposes of the association; and

(17) To do all things necessary to carry out the powers given in this article.

(b) The directors of any district or regional hospital association, together with the county commissions of the counties comprising such association, are hereby authorized and empowered to lease hospitals, clinics or hospital facilities to such persons, firms, partnerships, associations or corporations and on such terms as they deem to be necessary, and appropriate and consistent with the maintenance of public health services and facilities.

(Acts 1945, No. 211, p. 330, § 12; Acts 1969, No. 658, p. 1192.)

### **§ 22-21-54. Validation of noncomplying associations.**

In all cases where the county commission of a county has, or the governing bodies of a county and of a city have, adopted a resolution or resolutions authorizing the incorporation, under this article as originally enacted or as subsequently amended, of a public hospital association for public hospital purposes and there has been an attempt to organize such public hospital association by the directors appointed by the county commission of the county or the governing bodies of the county and city, presenting to the Secretary of State an application signed by them, which shall set forth that notice has been given and a public hearing has been held and that they have been appointed by the local governing body or bodies as members of the board of directors of the hospital association, and that they desire the hospital association to become a public body and body corporate, and the name which is proposed for the corporation and the Secretary of State has received, filed and recorded the application in an appropriate book of records in said Secretary of State's office, then such public hospital association shall be, and is hereby, validated ab initio notwithstanding any failure on the part of the county commission of the county or the governing bodies of the county and city to comply with all the requirements of said article; provided, that this section shall not apply to the incorporation of any public hospital association that has been held invalid by a court of competent jurisdiction by judgment entered prior to August 7, 1969, or to the incorporation of any public hospital association, the validity of which is an issue in any pending civil action commenced prior to August 7, 1969.

(Acts 1969, No. 282, p. 618.)

### **§ 22-21-55. Dissolution.**

Any hospital association organized under the provisions of this article may be dissolved, in the manner prescribed in this section if, at the time of such dissolution, it owns no property and has no indebtedness outstanding and if it is not, at the time, designated as the agency of a county to acquire, construct, equip, operate and maintain public hospital facilities. Such dissolution shall be effected by the filing in the office of the

Secretary of State of a certificate of dissolution, signed by all the then living directors of such hospital association.

(Acts 1961, No. 67, p. 87.)

### **§ 22-21-56. Appropriations by local political subdivisions.**

The governing bodies of each local political subdivision involved are hereby authorized to appropriate their respective shares of the cost of constructing, maintaining, equipping and operating such hospitals as determined upon by agreement between the executive committee of the association and the State Board of Health. The sums so appropriated shall be paid into the treasury of the corporation and shall be paid out on certificate of the executive committee of the corporation.

(Acts 1945, No. 211, p. 330, § 13.)

### **§ 22-21-57. Effect of article on local executive committees.**

Nothing in this article shall be construed to mean that all local, regional or district hospitals included in this article are to be under the direction or control of any body other than the local executive committee of each hospital, subject to the rules and regulations contained in this article or to mean that any local executive committee cannot receive and administer gifts, donations or endowments for their respective local hospitals, subject to the rules and regulations contained therein.

(Acts 1945, No. 211, p. 330, § 15.)

### 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

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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.

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- (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, corporation, limited liability company, or other legal entity, 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.

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(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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 2; Acts 1979, No. 79-577, p. 1033, § 1; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 1; Acts 1984, No. 84-281, p. 468; Acts 1990, No. 90-468, § 1; Acts 1993, No. 93-93, p. 147, § 2; Acts 1994, No. 94-369, p. 620, § 1; Act 2003-331, p. 810, § 1; Act 2009-492, p. 906, § 1; Act 2013-192, p. 350, § 1.)

### **§ 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 1; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 2.)

### **§ 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. A transaction involving the sale, lease, or other transfer or change of control of an existing health care facility, existing health maintenance organization, or existing institutional health service is not subject to certificate of need review or approval under this article unless the transaction also involves implementing one or more of the new institutional health services described in subdivision (2), (3), or (4). The two immediately preceding sentences are applicable to all transactions occurring on or after July 30, 1979. Notwithstanding anything to the contrary in this article, expenditures incurred in the sale, lease, or other transfer of an existing health care facility or existing health maintenance organization or existing institutional health service shall not be subject to subdivision (2).
- (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

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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 those facilities and distinct units operating under contract or subcontract with the Department of Mental Health 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 4; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 3; Acts 1990, No. 90-468, § 1; Acts 1993, No. 93-315, p. 473, § 1; Acts 1993, No. 93-326, p. 497, § 1; Acts 1994, No. 94-369, p. 620, § 1; Act 2003-331, p. 810, § 1; Act 2013-192, p. 350, § 1.)

### **§ 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 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;



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- 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:

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- 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 6; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 4; Acts 1990, No. 90-468, § 1.)

### **§ 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 those facilities and distinct units operating under contract or subcontract with the Department of Mental Health 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 hospitals 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 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.

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(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.

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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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 5; Acts 1979, No. 79-577, p. 1033, § 2; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 5; Acts 1990, No. 90-468, p. 665, § 1; Acts 1994, No. 94-209, p. 279, § 1; Acts 1995, No. 95-565, p. 1179, § 1; Act 98-339, p. 592, § 1; Act 99-586, p. 1338, § 1; Act 2001-495, p. 863, § 1; Act 2001-899, 3rd Sp. Sess., p. 730, § 1; Act 2003-331, p. 810, § 1; Act 2012-294, p. 620, § 1.)

### **§ 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.

(Acts 1995, No. 95-565, p. 1179, § 2.)

### **§ 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.

(Act 99-586, p. 1338, § 2.)

### **§ 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.

(Act 2001-899, 3rd Sp. Sess., p. 730, § 2.)

### **§ 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

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- (5) That patients will experience serious problems in obtaining inpatient care of the type proposed in the absence of the proposed new service.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 7; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 6.)

### **§ 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 8; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 7.)

### **§ 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 9; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 8.)

### **§ 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,



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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 or inauguration of a new health service, the certificate of need shall be vested in and continued in force and effect as a part of the health care facility and shall survive changes of control and changes of ownership of the health care facility without further certificate of need approval by this agency.

(e) Prior to becoming vested under subsection (d), a certificate of need shall not be transferable, assignable, or convertible other than to an entity under common ownership and control. As used in this subsection only, "ownership and control" means ownership, directly or through one or more affiliates, of 50 percent or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or 50 percent or more of the voting equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby an entity including, without limitation, any governmental entity, controls or has the right to control the selection of 50 percent or more of the board of directors, managing members, or equivalent governing body of a legal entity. An "affiliate" under the preceding sentence means any corporation, limited liability company, partnership, or other legal entity that directly or indirectly controls or is controlled by or is under common control with such entity. Any agreement entered into by an applicant, prior to the issuance of a certificate of need, to transfer ownership or control of such health care facility to another person after the certificate becomes vested shall be disclosed to SHPDA prior to a decision by the Certificate of Need Review Board to grant or deny such certificate.

(f) Notwithstanding any other provisions of this article, the transfer of equity interests in, or change of name or merger of, any legal entity which holds a certificate of need shall not constitute a transfer, assignment, or conversion of the certificate of need. The transaction is not subject to certificate of need approval under this article unless the transaction also involves implementing one or more of the new institutional health services or a new health care facility or health maintenance organization described in subdivisions (2), (3), or (4) of Section 22-21-263(a). The preceding sentence is applicable to all transactions occurring on or after July 30, 1979.

(g) SHPDA may adopt rules requiring the submission of informational filings relating to a transfer of control or ownership interests under subsections (d), (e), and (f).

(h) The provisions of this section are applicable to all transactions occurring on or after July 30, 1979.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 11; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 10; Act 98-341, p. 597, § 1; Act 2012-294, p. 620, § 1; Act 2013-192, p. 350, § 1.)

### **§ 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 16; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 11; Acts 1986, Ex. Sess., No. 86-688, p. 86; Acts 1990, No. 90-468, § 1; Act 2012-294, p. 620, § 1.)

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### § 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.

(Act 98-384, p. 731, § 1.)

### § 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.).

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 13; Acts 1979, No. 79-577, p. 1033, § 3; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 12; Act 98-341, p. 597, § 1.)

### § 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:

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- (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

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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.

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- (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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 14; Acts 1979, No. 79-577, p. 1033, § 4; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 13; Act 98-341, p. 597, § 1; Act 2012-294, p. 620, § 1.)

### **§ 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

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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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 15; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 14.)

### **§ 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.

(Acts 1977, 1st Ex. Sess., No. 82, p. 1509, § 19; Acts 1982, 2nd Ex. Sess., No. 82-770, p. 249, § 15; Acts 1993, No. 93-93, p. 147, § 2.)

### **§ 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

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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.

(Acts 1991, No. 91-722, p. 1412, §§ 1-3.)



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### Article 11, Health Care Authorities

#### § 22-21-310. Short title.

This article shall be known and may be cited as “The Health Care Authorities Act of 1982.”

(Acts 1982, No. 82-418, p. 629, § 1.)

#### § 22-21-311. Definitions.

(a) The following words and phrases used in this article, and others evidently intended as the equivalent thereof, shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

- (1) APPLICANT. A natural person who files a written application with the governing body of a county, municipality, or educational institution, or two or more thereof, in accordance with the provisions of Section 22-21-313.
- (2) AUTHORITY. A public corporation organized, and any public hospital corporation reincorporated, pursuant to the provisions hereof.
- (3) AUTHORIZING RESOLUTION. The resolution adopted by the governing body of an authorizing subdivision, in accordance with the provisions of Section 22-21-313 or Section 22-21-341, that authorizes the incorporation of an authority or the reincorporation of a public hospital corporation.
- (4) AUTHORIZING SUBDIVISION. Each county, municipality, and educational institution with the governing body of which an application for the incorporation of an authority hereunder or for the reincorporation of a public hospital corporation hereunder is filed.
- (5) BOARD. The board of directors of an authority.
- (6) CODE. The Code of Alabama 1975 and all amendments thereto and, with respect to any particular title, chapter, article, division, section or other portion thereof, any act of the Legislature or other code preceding such portion of the code or subsequently replacing the same.
- (7) COUNTY. Any county in the state.
- (8) COUPON. Any interest coupon evidencing an installment of interest payable with respect to a security.
- (9) DIRECTOR. A member of a board.
- (10) EDUCATIONAL INSTITUTION. A public college or university established under the Constitution of Alabama or act of the Alabama Legislature that operates a school of medicine.

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- (11) FEDERAL SECURITIES. Debt securities that are direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, or debt securities issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America.
- (12) FISCAL YEAR. A fiscal year of the authorizing subdivision.
- (13) GOVERNING BODY. With respect to a county, its county commission or other like governing body, with respect to a municipality, its city or town council, board of commissioners or other like governing body, and with respect to an educational institution, its board of trustees, or other like governing body.
- (14) HEALTH CARE FACILITIES. Generally, any one or more buildings or facilities which serve to promote the public health, either by providing places or facilities for the diagnosis, treatment, care, cure or convalescence of sick, injured, physically disabled or handicapped, mentally ill, retarded or disturbed persons, or for the prevention of sickness and disease, or for the care, treatment and rehabilitation of alcoholics, or for the care of elderly persons, or for research with respect to any of the foregoing, including, without limiting the generality of the foregoing:
- a. Public hospitals of all types, public clinics, sanatoria, public health centers and related public health facilities, such as medical or dental facilities, laboratories, out-patient departments, educational facilities, nurses' homes and nurses' training facilities, dormitories or residences for hospital personnel or students, other employee-related facilities, and central service facilities operated in connection with public hospitals and other facilities (such as, for example, gift and flower shops, cafe and cafeteria facilities and the like) ancillary to public hospitals;
  - b. Retirement homes, nursing homes, convalescent homes, apartment buildings, dormitory or domiciliary facilities, residences or special care facilities for the housing and care of elderly persons or other persons requiring special care;
  - c. Appurtenant buildings and other facilities:
    - 1. To provide offices for persons engaged in the diagnosis, treatment, care, or cure of diseased, sick, or injured persons, or in preventive medicine, or in the practice of dentistry; or
    - 2. To house or service equipment used for the diagnosis, treatment, care or cure of diseased, sick, or injured persons, or in preventive medicine, or in the practice of dentistry, or the records of such diagnosis, treatment, care, cure or practice or research with respect to any of the foregoing;
  - d. Parking areas, parking decks, facilities, buildings and structures appurtenant to any of the foregoing;
  - e. Ambulance, helicopter, and other similar facilities and services for the transportation of sick or injured persons; and

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f. Machinery, equipment, furniture, and fixtures useful or desirable in the operation of any of the foregoing.

(15)HOSPITAL TAX. Any tax which may be levied for the benefit of an authority or any health care facilities owned or operated by it or the proceeds of which may have been appropriated, allocated or apportioned to such authority, or to or for the benefit of any such health care facilities, by the Legislature or by the governing body of a county or municipality.

(16)INCORPORATORS. The natural persons forming an authority pursuant to the provisions of this article.

(17)INDENTURE. A mortgage, mortgage indenture, mortgage and trust indenture or trust indenture executed by an authority as security for any of its securities.

(18)LEGISLATURE. The Legislature of the state.

(19)MUNICIPALITY. An incorporated city or town of the state.

(20)PRINCIPAL OFFICE. The place at which the certificate of incorporation of an authority and amendments thereto, the bylaws and the minutes of the proceedings of the board are kept.

(21)PUBLIC HOSPITAL CORPORATION. Any public authority, public corporation or public association or entity organized on a local or regional basis by or with the consent of any county or municipality (or any two or more thereof) and having the power to own or operate any health care facilities, including (without limitation) any public corporation or authority heretofore or hereafter organized under the provisions of Article 3, Division 1 of Article 4, Article 5, or Article 6 of this chapter, Section 22-21-5, or Chapter 95 of Title 11, but excluding the state, any state institution of higher learning owning or operating health care facilities or any other state (as distinguished from local or regional) agency owning or operating health care facilities.

(22)SECURITIES. Bonds, notes, warrants, certificates of indebtedness or other evidences of indebtedness, including (without limiting the generality of the foregoing) notes issued in anticipation of the sale of any of the foregoing.

(23)STATE. The State of Alabama.

(b) The terms "herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this article as an entirety and not solely to the particular section or portion hereof in which any such word is used. The definitions set forth herein shall be deemed applicable whether the words defined are used in the singular or plural. Whenever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

(Acts 1982, No. 82-418, p. 629, § 2; Act 2003-249, p. 606, § 1.)

### **§ 22-21-312. Legislative findings and intent.**

The Legislature hereby finds and declares:

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(1) That publicly-owned (as distinguished from investor-owned and community-nonprofit) hospitals and other health care facilities furnish a substantial part of the indigent and reduced-rate care and other health care services furnished to residents of the state by hospitals and other health care facilities generally;

(2) That as a result of current significant fiscal and budgetary limitations or restrictions, the state and the various counties, municipalities, and educational institutions therein are no longer able to provide, from taxes and other general fund moneys, all the revenues and funds necessary to operate such publicly-owned hospitals and other health care facilities adequately and efficiently; and

(3) That to enable such publicly-owned hospitals and other health care facilities to continue to operate adequately and efficiently, it is necessary that the entities and agencies operating them have significantly greater powers with respect to health care facilities than now vested in various public hospital or health-care authorities and corporations and the ability to provide a corporate structure somewhat more flexible than those now provided for in existing laws relating to the public hospital and health-care authorities.

It is therefore the intent of the Legislature by the passage of this article to promote the public health of the people of the state (1) by authorizing the several counties, municipalities, and educational institutions in the state effectively to form public corporations whose corporate purpose shall be to acquire, own and operate health care facilities, and (2) by permitting, with the consent of the counties or municipalities (or both) authorizing their formation, existing public hospital corporations to reincorporate hereunder. To that end, this article invests each public corporation so organized or reincorporated hereunder with all powers that may be necessary to enable it to accomplish its corporate purposes and shall be liberally construed in conformity with said intent.

(Acts 1982, No. 82-418, p. 629, § 3; Act 2003-249, p. 606, § 1.)

### **§ 22-21-313. Application for incorporation of authority; authorizing resolution.**

(a) In order to incorporate an authority, any number of natural persons, not less than three, shall first file a written application with the governing body of any county, municipality, or educational institution, or any two or more thereof, which application shall:

- (1) Recite the name of each county, municipality, and educational institution with the governing body of which such application is being filed;
- (2) Contain a statement that the applicants propose to incorporate an authority pursuant to the provisions of this article;
- (3) State either a. where the authorizing subdivision is a county or municipality, that each of the applicants is a duly qualified elector of the authorizing subdivision (or, if there is more than one, at least one thereof) or b. where the authorizing subdivision is an educational institution, that each of the applicants is a duly qualified elector of the state; and
- (4) Request that the governing body of such authorizing subdivision adopt a resolution declaring that it is wise, expedient and necessary that the proposed authority be formed, approving its certificate of incorporation and authorizing the applicants to proceed to form the proposed authority by filing for record a certificate of incorporation in accordance with the provisions of Section 22-21-314.

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Every such application shall be accompanied by the form of certificate of incorporation of the proposed authority and by such other supporting documents as the applicants may consider appropriate.

(b) As promptly as may be practicable after the filing of the aforesaid application with it in accordance with the preceding provisions of this section, the governing body of each authorizing subdivision with which the application was filed shall review the contents of the application and the accompanying form of certificate of incorporation and shall adopt a resolution either:

- (1) Denying the application; or
- (2) Declaring that it is wise, expedient and necessary that the proposed authority be formed, approving the form of its certificate of incorporation and authorizing the applicants to proceed to form the proposed authority by filing for record such a certificate of incorporation in accordance with the provisions of Section 22-21-314.

While it shall not be necessary that any such resolution be published in any newspaper or posted, the governing body of each authorizing subdivision with which the application is filed shall cause a copy of the application (and accompanying documents) to be included in the aforesaid resolution or otherwise spread upon or made a part of the minutes of the meeting thereof at which final action thereon is taken. Except as otherwise provided in Section 22-21-341, no authority shall be formed hereunder unless the application required by this section shall be made and unless an authorizing resolution for which provision is made in this section shall be adopted by each authorizing subdivision.

(Acts 1982, No. 82-418, p. 629, § 4; Act 2003-249, p. 606, § 1.)

### **§ 22-21-314. Certificate of incorporation -- Filing; form and contents; recordation.**

(a) Within 40 days following the adoption of the authorizing resolution (or, if there is more than one, the last adopted thereof), the applicants shall proceed to incorporate an authority by filing for record, in the office of the judge of probate of the county in which the principal office of the authority is to be located, a certificate of incorporation which shall comply in form and substance with the requirements of this section, shall be in the form and executed in the manner herein provided and shall also be in the form theretofore approved by the governing body of each authorizing subdivision.

(b) In addition to any other provisions required by this article to be included therein, the certificate of incorporation of an authority shall state:

- (1) The names of the incorporators, together with the address of the residence of each thereof, and either a. where the authorizing subdivision is a county or municipality, that each of them is a duly qualified elector of the authorizing subdivision (or, if there is more than one, at least one thereof) or b. where the authorizing subdivision is an educational institution, that each of them is a duly qualified elector of the state;
- (2) The name of the authority, which may be a name indicating in a general way the area proposed to be served by the authority and shall include the words "Health Care Authority" (e.g., "The \_\_\_\_\_ Health Care Authority," or "The Health Care Authority of \_\_\_\_\_," the blank space to be filled in

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with the name of one or more of the authorizing subdivisions or other geographically descriptive word or words, such descriptive word or words not, however, to preclude the authority from locating health care facilities or otherwise exercising its powers in other geographical areas), unless the Secretary of State shall determine that such name is identical to the name of another corporation organized under the laws of the state or so nearly similar thereto as to lead to confusion and uncertainty, in which case the incorporators may insert additional identifying words so as to eliminate said duplication or similarity or adopt some other similar name that is available;

- (3) The period for the duration of the authority (if the duration is to be perpetual, subject to the provisions of Section 22-21-339, that fact shall be stated);
- (4) The name of each authorizing subdivision, together with the date on which the governing body thereof adopted an authorizing resolution;
- (5) The location of the principal office of the authority, which either a. where the authorizing subdivision is a county or municipality, shall be within the boundaries of the authorizing subdivision (or, if more than one, at least one thereof) or b. where the authorizing subdivision is an educational institution, shall be where the principal office of the educational institution is located;
- (6) That the authority is organized pursuant to the provisions of this article;
- (7) If the exercise by the authority of any of its powers hereunder is to be in any way prohibited, limited or conditioned, a statement of the terms of such prohibition, limitation or condition;
- (8) If the authority is to have the extraordinary power set out in Section 22-21-319, a statement to that effect;
- (9) The number of directors, which shall be an odd number not less than three, the duration of their respective terms of office (which shall not be in excess of six years), and (subject to the provisions of Section 22-21-316) the manner of their election or appointment;
- (10) Any provisions, not inconsistent with Section 22-21-339, relating to the vesting of title to its assets and properties upon its dissolution; and
- (11) Any other matters relating to the authority that the incorporators may choose to insert and that are not inconsistent with this article or with the laws of the state.

(c) The certificate of incorporation shall be signed and acknowledged by each of the incorporators before an officer authorized by the laws of the state to take acknowledgements to deeds.

(d) When the certificate of incorporation is filed for record, there shall be attached to it:

- (1) A certified copy of each authorizing resolution; and

(2) A certificate by the Secretary of State that the name proposed for the authority is not identical to that of any other corporation organized under the laws of the state or so nearly similar thereto as to lead to confusion and uncertainty.

(e) Upon the filing for record of the certificate of incorporation and the documents required by subsection (d) of this section to be attached thereto, the authority shall come into existence and shall constitute a public corporation under the name set forth in its certificate of incorporation. The said judge of probate shall thereupon record the certificate of incorporation in an appropriate book in his office.

(Acts 1982, No. 82-418, p. 629, § 5; Act 2003-249, p. 606, § 1.)

**§ 22-21-315. Certificate of incorporation -- Amendment; application; approving resolution; filing and recordation of certificate.**

(a) The certificate of incorporation of any authority incorporated under the provisions of this article, as well as that of any public hospital corporation reincorporated hereunder, may at any time and from time to time be amended, but only in the manner provided in this section. The board shall first adopt a resolution proposing an amendment to the certificate of incorporation of the authority, which amendment shall be set forth in full in the said resolution and which may include any matters that might have been included in an original certificate of incorporation hereunder.

(b) After the adoption by the board of a resolution proposing an amendment to the certificate of incorporation, the chairman and the secretary of the authority shall sign and file, with the governing body of each authorizing subdivision, a written application in the name and on behalf of the authority, under its seal, requesting such governing body to adopt a resolution approving the proposed amendment, and accompanied by a certified copy of the said resolution adopted by the board proposing the amendment to the certificate of incorporation, together with such documents in support of the application as the chairman may consider appropriate. As promptly as may be practicable after the filing of the application with the governing body of an authorizing subdivision as aforesaid, such governing body shall review the application and shall adopt a resolution either denying the application or approving and authorizing the proposed amendment. While it shall not be necessary that any such resolution be published in any newspaper or posted, the governing body of each authorizing subdivision with which any such application is filed shall cause a copy of the application and all accompanying documents to be included in the aforesaid resolution or otherwise spread upon or made a part of the minutes of the meeting of such governing body at which final action upon such application is taken. The certificate of incorporation of an authority may be amended only after the filing of such an application therefor and the adoption by the governing body of each authorizing subdivision of an approving resolution.

(c) Within 40 days following the adoption of a resolution approving the proposed amendment by the governing body of the authorizing subdivision (or, if there is more than one, the last adopted of such approving resolutions), the chairman and the secretary of the authority shall sign and file for record in the office of the judge of probate of the county in which the certificate of incorporation of the authority was filed a certificate in the name and on behalf of the authority, under its seal, reciting the adoption of said respective resolutions by the board and by the governing body of each authorizing subdivision and setting forth the proposed amendment. The said judge of probate shall thereupon record such certificate in an appropriate book in his office. When such certificate has been so filed and recorded, such amendment shall become effective, and the certificate of incorporation shall thereupon be amended to the extent provided in such amendment.

(Acts 1982, No. 82-418, p. 629, § 6.)

**§ 22-21-316. Board of directors; qualifications; election or appointment; terms; vacancies; reimbursement for expenses; quorum; regular, special and called meetings; waiver of notice; record of proceedings; use as evidence; removal from office.**

(a) Each authority shall have a board of directors composed of the number of directors provided in the certificate of incorporation, as most recently amended. Unless provided to the contrary in its certificate of incorporation, all powers of the authority shall be exercised, and the authority shall be governed, by the board or pursuant to its authorization. Subject to the provisions of subdivision (9) of subsection (b) of Section 22-21-314, the board shall consist of directors having such qualifications, being elected or appointed by such person or persons (including, without limitation, the board itself, the governing body or bodies of one or more authorizing subdivisions or other counties and municipalities, and other entities or organizations) and in such manner, and serving for such terms of office, all as shall be specified in the certificate of incorporation of the authority; provided however, that no fewer than a majority of the directors shall be elected by the governing body or bodies of one or more of the authorizing subdivisions and the certificate of incorporation of each authority must contain provisions having this effect.

(b) If, at the expiration of any term of office of any director, a successor thereto shall not have been elected or appointed, then the director whose term of office shall have expired shall continue to hold office until his successor shall be so elected or appointed. If at any time there should be a vacancy on the board, whether by death, resignation, incapacity, disqualification or otherwise, a successor director to serve for the unexpired term applicable to such vacancy shall be elected or appointed by the person or persons who elected or appointed the predecessor director. Each election or appointment of a director, whether for a full term or to complete an unexpired term, shall be made not earlier than 30 days prior to the date on which such director is to take office as such. Any director, irrespective of by whom elected or appointed, shall be eligible for reelection or reappointment.

(c) Each director shall serve as such without compensation but shall be reimbursed for expenses actually incurred by him in and about the performance of his duties. A majority of the directors shall constitute a quorum for the transaction of business, but any meeting of the board may be adjourned from time to time by a majority of the directors present or may be so adjourned by a single director if such director is the only director present at such meeting. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board. The board shall hold regular meetings at such times as may be provided in the bylaws of the authority, may hold other meetings at any time and from time to time upon such notice as may be required by the bylaws of the authority, and must upon call of the chairman of the authority or a majority of the total number of directors, hold a special meeting, none of which meetings shall be subject to the provisions of Chapter 25A, Title 36 or other similar law. Whenever any notice is required by the bylaws of the authority to be given of any meeting of the board, a waiver thereof in writing, signed (whether before or after such meeting) by the person or persons entitled to such notice, shall be the equivalent to the giving of such notice. Any matter on which the board is authorized to act may be acted upon at any regular, special or called meeting. At the request of any director, the vote on any question before the board shall be taken by yeas and nays and entered upon the record. All resolutions adopted by the board shall constitute actions of the authority, and all proceedings of the board shall be reduced to writing and signed by the secretary of the authority and shall be recorded in a well-bound book. Copies of such proceedings, when certified by the



secretary of the authority, under the seal of the authority, shall be received in all courts as prima facie evidence of the matters and things therein certified.

(d) Any director may be impeached and removed from office in the same manner and on the same grounds provided in Section 175 of the Constitution of Alabama of 1901 and the general laws of the state for impeachment and removal of the officers mentioned in said Section 175.

(Acts 1982, No. 82-418, p. 629, § 7.)

### **§ 22-21-317. Officers; election; terms; duties.**

The officers of an authority shall consist of a chairman, a vice-chairman, a secretary, a treasurer and such other officers as the board shall deem necessary or desirable. The chairman and the vice-chairman of the authority shall be elected by the board from its membership but neither the secretary, the treasurer nor any of the other officers of the authority need be a director. The offices of secretary and treasurer may, but need not be, held by the same person. The chairman and the vice-chairman of the authority shall be elected by the board for terms of not exceeding three years each, and the secretary, the treasurer and the other officers of the authority shall be elected by the board for such terms as it deems advisable. The duties of the chairman, vice-chairman, secretary and treasurer shall be such as are customarily performed by such officers and as may be prescribed by the board. The duties of any other officers of the authority shall be such as are from time to time prescribed by the board.

(Acts 1982, No. 82-418, p. 629, § 8.)

### **§ 22-21-318. Powers of authority.**

(a) In addition to all other powers granted elsewhere in this article, and subject to the express provisions of its certificate of incorporation, an authority shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

- (1) To have succession by its corporate name for the duration of time, which may be in perpetuity, specified in its certificate of incorporation or until dissolved as provided in Section 22-21-339;
- (2) To sue and be sued in its own name in civil suits and actions, and to defend suits and actions against it, including suits and actions ex delicto and ex contractu, subject, however, to the provisions of Chapter 93 of Title 11, which chapter is hereby made applicable to the authority;
- (3) To adopt and make use of a corporate seal and to alter the same at pleasure;
- (4) To adopt, alter, amend and repeal bylaws, regulations and rules, not inconsistent with the provisions of this article or its certificate of incorporation, for the regulation and conduct of its affairs and business;
- (5) To acquire, construct, reconstruct, equip, enlarge, expand, alter, repair, improve, maintain, equip, furnish and operate health care facilities at such place or places, within and without the boundaries of its authorizing subdivisions and within and without the state, as it considers necessary or advisable;

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- (6) To lease or otherwise make available any health care facilities or other of its properties and assets to such persons, firms, partnerships, associations or corporations and on such terms as the board deems to be appropriate, to charge and collect rent or other fees or charges therefor and to terminate any such lease or other agreement upon the failure of the lessee or other party thereto to comply with any of its obligations thereunder;
- (7) To receive, acquire, take and hold (whether by purchase, gift, transfer, foreclosure, lease, devise, option or otherwise) real and personal property of every description, or any interest therein, and to manage, improve and dispose of the same by any form of legal conveyance or transfer; provided however, that the authority shall not, without the prior approval of the governing body of each authorizing subdivision, have the power to dispose of (i) substantially all its assets, or (ii) any health care facilities the disposition of which would materially and significantly reduce or impair the level of hospital or health care services rendered by the authority; and provided further, that the foregoing proviso shall not be construed to require the prior approval of any such governing body for the mortgage or pledge of all or substantially all its assets or of any of its health care facilities, for the foreclosure of any such mortgage or pledge or for any sale or other disposition thereunder;
- (8) To mortgage, pledge or otherwise convey its property and its revenues from any source;
- (9) To borrow money in order to provide funds for any lawful corporate function, use or purpose and, in evidence of such borrowing, to sell and issue interest-bearing securities in the manner provided and subject to the limitations set forth hereinafter;
- (10) To pledge for payment of any of its securities any revenues (including proceeds from any hospital tax to which it may be entitled) and to mortgage or pledge any or all of its health care facilities or other assets or properties or any part or parts thereof, whether then owned or thereafter acquired, as security for the payment of the principal of and the interest and premium, if any, on any securities so issued and any agreements made in connection therewith;
- (11) To provide instruction and training for, and to contract for the instruction and training of, nurses, technicians and other technical, professional and paramedical personnel;
- (12) To select and appoint medical and dental staff members and others licensed to practice the healing arts and to delineate and define the privileges granted each such individual;
- (13) To affiliate with, and to contract to provide training and clinical experience for students of, other institutions;
- (14) To contract for the operation of any department, section, equipment or holdings of the authority, and to enter into agreements with any person, firm or corporation for the management by said person, firm or corporation on behalf of the authority of any of its properties or for the more efficient or economical performance of clerical, accounting, administrative and other functions relating to its health care facilities;
- (15) To establish, collect and alter charges for services rendered and supplies furnished by it;

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- (16) To make all needful or appropriate rules and regulations for the conduct of any health care facilities and other properties owned or operated by it and to alter such rules and regulations;
- (17) To provide for such insurance as the business of the authority may require;
- (18) To receive and accept from any source aid or contributions in the form of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this article, subject to any lawful condition upon which any such aid or contributions may be given or made;
- (19) To cooperate with the State Board of Health and the State Department of Mental Health and to make contracts with either of said agencies respecting the operation of any health care facilities or other properties owned or operated by it, whether as an agent for either or both of said agencies or otherwise;
- (20) To enter into contracts with, to accept aid, loans and grants from, to cooperate with and to do any and all things not specifically prohibited by this article or the constitution of the state that may be necessary in order to avail itself of the aid and cooperation of the United States of America, the state, any county or municipality, or any agency, instrumentality or political subdivision of any of the foregoing in furtherance of the purposes of this article; to give such assurances, contractual or otherwise, to or for the benefit of any of the foregoing as may be required in connection with, or as conditions precedent to the receipt of, any such aid, loan or grant; and to take such action not in violation of law as may be necessary in order to qualify the authority to receive funds appropriated by any of the foregoing;
- (21) To give such assurances, contractual or otherwise, and to make such commitments and agreements as may be necessary or desirable to preclude the exercise of any rights of recovery with respect to, or the forfeiture of title to, any of its health care facilities or other property or any health care facilities or other property proposed to be acquired by it;
- (22) To make and alter rules and regulations for the treatment of indigent patients;
- (23) To assume any obligations of any entity that conveys and transfers to the authority any health care facilities or other property, or interest therein, provided that such obligations appertain to the health care facilities, property or interest so conveyed and transferred to the authority;
- (24) To assume, establish, fund and maintain retirement, pension or other employee benefit plans for its employees;
- (25) To appoint, employ, contract with, and provide for the compensation of, such employees and agents, including but not limited to, architects, attorneys, consultants, engineers, accountants, financial experts, fiscal agents and such other advisers, consultants and agents as the business of the authority may require;
- (26) To invest, in any trust fund established under and subject to the general laws of the state for investment or self-insurance purposes with investment authority as may be authorized by law for such trusts, any funds of the authority available therefor;

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- (27) To the extent permitted by its contracts with the holders of its securities, to purchase securities out of any of its funds or moneys available therefor and to hold, cancel or resell such securities;
- (28) To make any expenditure of any moneys under its control that would, if the authority were generally subject to state corporate income taxation, be considered an ordinary and necessary expense of the authority within the meaning of Section 40-18-35 and applicable regulations thereunder, and without limiting the generality of the foregoing, to expend its moneys for the recruitment of employees and physicians, dentists and other health care professionals and for the promotion of employee morale and well-being; provided however, that nothing herein contained shall be construed to permit the authority (i) to increase the compensation of any of its officers or employees on a retroactive basis, (ii) to pay any extra compensation to any of its officers or employees for services theretofore rendered, (iii) to furnish free or below-cost office space to any nonhospital- based physician, dentist or other health care professional for use in his private practice, or (iv) to guarantee the income of any nonhospital-based physician, dentist or other health care professional in his private practice;
- (29) To provide scholarships for students in training for work in the duties peculiar to health care;
- (30) To enter into affiliation, cooperation, territorial, management or other similar agreements with other institutions (public or private) for the sharing, division, allocation or exclusive furnishing of services, referral of patients, management of facilities and other similar activities;
- (31) To exercise all powers granted hereunder in such manner as it may determine to be consistent with the purposes of this article, notwithstanding that as a consequence of such exercise of such powers it engages in activities that may be deemed "anticompetitive" within the contemplation of the antitrust laws of the state or of the United States; and
- (32) To enter into such contracts, agreements, leases and other instruments, and to take such other actions, as may be necessary or convenient to accomplish any purpose for which the authority was organized or to exercise any power expressly granted hereunder.

(b) The Legislature hereby declares:

- (1) That any expenditure permitted by the provisions of subdivision (28) of the preceding subsection (a) of this section to be made by or on behalf of an authority shall be deemed an expenditure of operating and maintaining public hospitals and public health facilities for a public purpose; and
- (2) That no expenditure permitted by the provisions of said subdivision (28) to be made by or on behalf of an authority shall be considered to be a lending of credit or a granting of public money or thing of value to or in aid of any individual, association or corporation within the meaning of any constitutional or statutory provision.

Nothing herein contained shall be construed as prohibiting or rendering unlawful any otherwise lawful expenditure made by or on behalf of an authority, solely because such expenditure is not expressly permitted by the terms of said subdivision (28).

(c) As a basis for the power granted in subdivision (31) of the preceding subsection (a), the Legislature hereby:

- (1) Recognizes and contemplates that the nature and scope of the powers conferred on authorities hereunder are such as may compel each authority, in the course of exercising its other powers or by virtue of such exercise of such powers, to engage in activities that may be characterized as “anticompetitive” within the contemplation of the antitrust laws of the state or of the United States; and
- (2) Determines, as an expression of the public policy of the state with respect to the displacement of competition in the field of health care, that each authority, when exercising its powers hereunder with respect to the operation and management of health care facilities, acts as an agency or instrumentality of its authorizing subdivisions and as a political subdivision of the state.

(d) Nothing herein contained shall be construed as granting to an authority the power to levy any taxes.

(Acts 1982, No. 82-418, p. 629, § 9.)

### **§ 22-21-319. Extraordinary power of authority.**

If and only if its certificate of incorporation or an appropriate amendment thereto (both of which must, under the terms of this article, be approved by the governing body of each authorizing subdivision) shall expressly so provide, an authority shall have, in addition to all other powers granted elsewhere in this article, the same power of eminent domain as is vested by law in any authorizing subdivision, in the same manner and under the same conditions as are provided by law for the exercise of the power of eminent domain by such authorizing subdivision; provided however, that under no circumstances may an authority exercise the power of eminent domain for the purposes of providing office facilities for any physician, dentist or other health care professional primarily for use in his private practice.

(Acts 1982, No. 82-418, p. 629, § 10.)

### **§ 22-21-320. Securities of authority.**

Securities of an authority may be executed and delivered by it at any time and from time to time, shall be in such form and denominations and of such tenor and maturity or maturities not exceeding 40 years from their date, shall bear such rate or rates of interest (which may be fixed or which may float or vary based on some index or other standard deemed appropriate by the board), shall be payable and evidenced in such manner, may contain provisions for redemption prior to maturity and may contain other provisions not inconsistent with this article, all as may be provided by the resolution of the board authorizing the same or by the indenture whereunder such securities are authorized to be issued. Each such security having a specified maturity date more than 10 years after its date shall be made subject to redemption at the option of the authority at the end of the tenth year after its date, and on any interest payment date thereafter, under such terms and conditions as may be provided in the resolution authorizing the same or the indenture under which issued. Any borrowing may be effected by the issuance and sale of securities at either public or private sale in such manner, at such price or prices, at such time or times and on such other terms and conditions as may be determined by the board to be most advantageous to the authority.

(Acts 1982, No. 82-418, p. 629, § 11.)

### § 22-21-321. Refunding securities.

(a) An authority may at any time and from time to time sell and issue its refunding securities for the purpose of refunding the principal of and interest on any then outstanding securities of the authority, whether or not such securities shall have matured or be redeemable at the option of the authority at the time of such refunding, and for the payment of any expenses incurred in connection with such refunding and any premium or other sum necessary to be paid to redeem or retire the securities so to be refunded; provided however, that the principal amount of securities that the authority may at any time issue for refunding purposes shall not exceed the sum of the following:

- (1) The outstanding principal or face amount of the securities refunded thereby;
- (2) The unpaid interest accrued or to accrue thereon to their respective maturities (or, in the event the securities to be refunded, or any part thereof, are to be retired prior to their respective maturities, the interest accrued or to accrue thereon to the date or dates on which they are to be retired);
- (3) Any premium or other sum necessary to be paid in order to redeem or retire the securities to be refunded (but only if such securities are in fact to be redeemed or retired prior to their respective maturities); and
- (4) The expenses estimated to be incurred in connection with such refunding.

The authority may also at any time and from time to time sell and issue its securities for the combined purpose of so refunding any of its securities and of obtaining funds for any other purpose for which it is authorized by this article to sell and issue securities, in which event the provisions of this article relating to refunding securities shall apply only to those of such securities issued for refunding purposes.

(b) The principal proceeds derived by the authority from the sale of any refunding securities shall be used only for the payment of the principal of and the interest (and premium) on the securities being refunded and for payment of the expenses referred to in the preceding subdivision (4) of subsection (a) of this section; provided, that if in the judgment of the board such is necessary or desirable to effect an advantageous refunding, a portion of said proceeds may be used for payment of principal of and interest on such refunding securities themselves and the remainder of said proceeds for payment of the securities being refunded and of said expenses; and provided further, that any portion of said proceeds that shall at the time not be needed therefor, may be invested in such investments as are specified in Section 22-21-332.

(c) Any such refunding may be effected either by sale of refunding securities and the application of the proceeds thereof as provided in subsection (b) of this section, or by exchange of the refunding securities for the securities or coupons to be refunded thereby, or by any combination thereof; provided, that the holders of any securities or coupons so to be refunded shall not be compelled without their consent to surrender their securities or coupons for payment or exchange prior to the date on which they may be paid or redeemed by call of the authority under their respective provisions. All provisions of this article pertaining to securities of the authority that are not inconsistent with the provisions of this section shall, to the extent applicable, also apply to refunding securities issued by the authority and to securities issued by the authority for both refunding and other purposes.

(Acts 1982, No. 82-418, p. 629, § 12.)

### **§ 22-21-322. Execution of securities.**

All securities of an authority shall be signed in the name and behalf of the authority by its chairman or vice-chairman, and the seal of the authority shall be affixed thereto and attested by its secretary or an assistant secretary; provided, that a facsimile of the signature of one, but not both, of the officers whose signature will appear on such securities may be imprinted or otherwise reproduced on any thereof in lieu of his manually signing the same; and provided further, that a facsimile of the seal of the authority may be imprinted, or otherwise reproduced, on any such securities in lieu of being manually affixed thereto. Any coupons applicable to any securities of the authority shall be signed either manually by, or with a facsimile of the signature of, the chairman or the vice-chairman of the authority. If after any such securities or coupons shall be so signed, whether manually or by facsimile, any such officer shall, for any reason, vacate his office, the securities and coupons so signed may nevertheless be delivered at any time thereafter as the act and deed of the authority.

(Acts 1982, No. 82-418, p. 629, § 13.)

### **§ 22-21-323. Source of payment; security.**

(a) Securities issued by an authority shall not be general obligations of the authority but shall be payable solely out of the revenues from any health care facilities or other properties or assets (including, without limitation, proceeds from such securities, investment income and insurance and condemnation proceeds) owned or operated by it and the proceeds of any hospital tax appropriated, apportioned or allocated to it or for its benefit, or any portion of either thereof, all as may be provided or specified in the resolution of the board authorizing such securities or the indenture under which issued. The principal of and interest (and premium, if any) on any securities issued by the authority shall be secured by a pledge of the revenues or taxes (or both) out of which the same are payable and may be secured by a trust indenture evidencing such pledge or by a foreclosable mortgage, mortgage indenture or mortgage and trust indenture conveying as security for such securities all or any part of its property.

(b) Any indenture executed on behalf of the authority and any resolution of the board authorizing the issuance of securities may contain such agreements as the board may deem advisable respecting the operation and maintenance of the properties of the authority, the application and use of any revenues (including hospital tax proceeds) out of which any such securities are payable, the rights or duties of the parties to such instrument or the parties for the benefit of whom such instrument is made and the rights and remedies of such parties in the event of default, and may also contain provisions restricting the individual rights of action of the holders of any such securities. Any such indenture may be filed in the office of the judge of probate of any county in which any of the property, real, personal or mixed, subject to the lien thereof is, or is anticipated to be, located, and the lien of such indenture shall, with respect to all personal property and fixtures subject thereto (including after-acquired property) and notwithstanding any contrary provisions of, and without compliance with, the Alabama Uniform Commercial Code (Title 7), be valid and binding against all parties having claims of any kind against the authority, irrespective of whether the parties have actual notice thereof, from the time such indenture is so filed. Any such pledge of any such revenues (including hospital tax proceeds) shall be valid and binding from the time it is made, and the revenues (including hospital tax proceeds) so pledged and thereafter received by the authority shall immediately become subject to the lien of such pledge without any physical delivery thereof or further act. The lien of such pledge shall, notwithstanding any contrary provisions of the

Alabama Uniform Commercial Code (Title 7), and without compliance with the provisions thereof, be valid and binding against all parties having claims of any kind against the authority, irrespective of whether the parties have actual notice thereof, from the time there is filed in the office of the judge of probate of the county in which the principal office of the authority is located a notice stating the date on which the resolution authorizing the issuance of the securities was adopted by the board, the principal amount of the securities issued, a brief description of the revenues (including any hospital tax proceeds) so pledged and a brief description of any property the revenues from which are so pledged. Issuance by any authority of one or more series of securities for one or more purposes shall not preclude it from issuing other securities, but the resolution or indenture whereunder any subsequent securities may be issued shall recognize and protect any prior pledge or mortgage made for the benefit of any prior issue of securities unless in the proceedings authorizing such prior issue the right was reserved to issue subsequent securities on a parity with such prior issue. The trustee under any indenture may be a trust company or bank having trust powers, whether located within or without the state, and may be selected by the board without regard to the provisions of Chapter 25 of Title 36.

(Acts 1982, No. 82-418, p. 629, § 14.)

### **§ 22-21-324. Use of proceeds.**

(a) The principal proceeds derived from any borrowing made by an authority shall be used solely for the purpose or purposes for which such borrowing was authorized to be made. If any securities are issued for the purpose of financing costs of acquiring, constructing, improving, enlarging and equipping health care facilities, such costs shall be deemed to include the following:

- (1) The cost of any land forming a part of such health care facilities;
- (2) The cost of the labor, materials and supplies used in any such construction, improvement or enlargement, including architectural and engineering fees and the cost of preparing contract documents advertising for bids;
- (3) The purchase price of, and the cost of installing, equipment for such health care facilities;
- (4) The cost of landscaping the lands forming a part of such health care facilities and of constructing and installing roads, sidewalks, curbs, gutters, utilities and parking places in connection therewith;
- (5) Legal, accounting, publishing, printing, fiscal and recording fees and expenses incurred in connection with the authorization, sale and issuance of the securities issued in connection with such health care facilities; bond discount, commission or other financing charges; fees and expenses of financial advisers and planning and management consultants; the cost of any feasibility studies deemed necessary or advisable in connection with the issuance and sale of such securities; the amount of any debt service reserve that the board deems necessary or advisable to be funded out of the proceeds from the sale of such securities; and such other expenses as shall be necessary or incident to such borrowing;
- (6) Interest on such securities for a reasonable period prior to the commencement of the construction and equipment of such health care facilities, or of any improvements or additions being financed (in whole or in part) out of the proceeds from the sale of such securities, and during the period estimated to be



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required for such construction and equipment and for a period of not more than two years after the completion of such construction and equipment;

- (7) The reimbursement to itself, or to its general fund or any one or more of its other funds, to any authorizing subdivision or other county or municipality, and to any public hospital corporation or other public agency, authority or body, of any funds advanced, to or for the benefit of the authority or any health care facilities owned by it, in anticipation of the issuance of securities by the authority, including the amount of any interest paid or incurred on any borrowings made for the purpose of obtaining funds to advance to or for the benefit of the authority or such health care facilities; and
- (8) The amount of such reserves for the payment of debt service on any such securities and for the maintenance, repair, replacement, improvement and enlargement of any of its health care facilities and other properties as the board shall deem advisable.

(b) Any portion of the principal proceeds derived from any such borrowing not needed for any of the purposes for which such borrowing was authorized to be made shall be applied and used:

- (1) For retirement of the securities issued in evidence of such borrowing;
- (2) For payment of the interest thereon;
- (3) For payment into one or more special funds created for payment of principal or interest, or both, or for the creation of reserves for the payment of debt service or for maintenance, repair, replacement, improvement or enlargement; or
- (4) For any combination thereof, all as shall be specified in the indenture under which such securities are issued or in the resolution of the board authorizing any such borrowing.

(Acts 1982, No. 82-418, p. 629, § 15.)

### **§ 22-21-325. Obligations not debt of state, county or municipality.**

All agreements and obligations undertaken, and all securities issued, by an authority shall be solely and exclusively an obligation of the authority and shall not create an obligation or debt of the state, any authorizing subdivision or any other county or municipality within the meaning of any constitutional or statutory provision. The faith and credit of the state, any authorizing subdivision or any other county or municipality shall never be pledged for the payment of any securities issued by an authority; nor shall the state, any authorizing subdivision or any other county or municipality be liable in any manner for the payment of the principal of or interest on any securities of an authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by an authority.

(Acts 1982, No. 82-418, p. 629, § 16.)

### **§ 22-21-326. Securities issued under article as legal investments.**

Securities issued under the provisions of this article are hereby made legal investments for savings banks and insurance companies organized under the laws of the state. Unless otherwise directed by the court having jurisdiction thereof or the document that is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity may, in addition to any other investment powers conferred by law and with the exercise of reasonable business prudence, invest trust funds in securities of an authority. The governing body of any authorizing subdivision (or any county or municipality in which any health care facilities of an authority may be situated) is authorized, in its discretion, to invest in securities of such authority any idle or surplus money held in its treasury which is not otherwise earmarked or pledged.

(Acts 1982, No. 82-418, p. 629, § 17.)

### **§ 22-21-327. Securities and coupons as negotiable instruments.**

Securities issued by an authority, while not registered, shall be construed to be negotiable instruments although payable solely from a specified or limited source. All coupons applicable to any securities issued by an authority, while the applicable securities are not registered as to both principal and interest, shall likewise be construed to be negotiable instruments although payable solely from a specified or limited source.

(Acts 1982, No. 82-418, p. 629, § 18.)

### **§ 22-21-328. Exemption from usury and interest laws.**

An authority shall be exempt from all laws of the state governing usury or prescribing or limiting interest rates, including, but without limitation to, the provisions of Chapter 8 of Title 8.

(Acts 1982, No. 82-418, p. 629, § 19.)

### **§ 22-21-329. Notice of issuance of securities; limitation on actions to contest.**

Any resolution authorizing any securities under this article may contain a recital that they are issued pursuant to the provisions of this article, which recital shall be conclusive evidence that such securities have been duly authorized pursuant to the provisions of this article, notwithstanding the provisions of any other law now in force or hereafter enacted or amended. Upon the adoption by the board of any resolution providing for the issuance of securities, the authority may, in its discretion, cause to be published, once a week for two consecutive weeks, in a newspaper then published in the county in which the principal office of the authority is located, or, if there is no such newspaper, then in a daily newspaper published in the state, a notice in substantially the following form, with any appropriate changes, to the extent applicable and with the blanks being properly filled in:

“ \_\_\_\_\_, a public corporation and instrumentality under the laws of the state of Alabama, has authorized the issuance of \$ \_\_\_\_\_ principal amount of securities of the said authority to be dated \_\_\_\_\_, for purposes authorized in Act No. 82-418 enacted at the 1982 Regular Session of the legislature of Alabama. Any action or proceeding questioning the validity of the

said securities, or the pledge [and any indenture] to secure the same, must be commenced within 20 days after the first publication of this notice.

[here insert name of the authority]

By  
Its Chairman”

Any action or proceeding in any court to set aside or question the validity of the proceedings for the issuance of the securities referred to in said notice or to contest the validity of any such securities, the validity of any pledge made therefor or the validity of any indenture with respect thereto must be commenced within 20 days after the first publication of such notice. After the expiration of the said period, no right of action or defense questioning or attacking the validity of the said proceedings, the said securities, any pledge herein authorized, or such indenture shall be asserted, nor shall the validity of the said proceedings, securities, pledge or indenture be open to question in any court on any ground whatsoever except in an action commenced within said period.

(Acts 1982, No. 82-418, p. 629, § 20.)

**§ 22-21-330. Lease agreements with authorizing subdivision; terms; renewal options; special pledge as security for payment of rental, etc.; use of vacant space.**

(a) Each authority and any authorizing subdivision are hereby respectively authorized to enter into one or more lease agreements with each other whereunder any health care facilities situated within (or within 10 miles of) such authorizing subdivision or any part thereof shall be leased by the authority to such authorizing subdivision, but if and only if such authorizing subdivision is then permitted by law to operate such health care facilities, to issue its bonds, warrants, notes or other securities therefor and to pledge for the benefit of any such securities its full faith and credit. No such lease agreement shall be for a term longer than the then current fiscal year in which it is made. Any such lease agreement may, however, contain a grant to such authorizing subdivision of successive options to renew such lease agreement, on the conditions specified therein, for additional terms, but no such additional term shall be for a period longer than the fiscal year in which such renewal shall be made. Such lease agreement may contain provisions as to the method by which such renewal may be effected.

(b) The obligation on the part of such authorizing subdivision to pay the rental required to be paid and to perform the agreements on its part required to be performed during any fiscal year during which such lease agreement is in effect shall constitute a general obligation of such authorizing subdivision, which is authorized to pledge its full faith and credit for the payment of such rental and the performance of such agreements; provided, that the rental required to be paid and the agreements required to be performed by such authorizing subdivision under such lease agreement during any fiscal year during which such lease agreement is in effect shall be payable solely out of the current revenues of such authorizing subdivision for such fiscal year.

(c) As additional security for the payment of the rental required to be paid and for performance of the agreements on the part of such authorizing subdivision required to be performed during the first or initial term of any lease agreement made by the authority with such authorizing subdivision, such authorizing subdivision is authorized to pledge specially so much of the following revenues and tax proceeds as may be necessary to pay the rental and to perform the agreements which are required in said lease agreement to be paid and performed during the said initial term:

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- (1) The revenues that may be received by such authorizing subdivision during the said initial term from the operation of the health care facilities covered by the said lease agreement remaining after the payment of all reasonable expenses during the said initial term for the operation and maintenance of the said health care facilities; and
- (2) The proceeds that may be received by such authorizing subdivision during the said initial term from any tax or taxes, the proceeds of which the authorizing subdivision is authorized, in Section 11-81-16, to pledge for the benefit of bonds of such authorizing subdivision.

Whenever a lease agreement containing such a special pledge is renewed under its terms for an additional term, such special pledge shall be deemed effective for such additional term without the necessity of a new pledge being made or a new lease agreement being entered into for that purpose, and the exercise of the option to renew shall be construed as a renewal also of the said special pledge; provided, that said special pledge shall be applicable only to the aforesaid pledged revenues that are received by such authorizing subdivision during the fiscal year for which the lease agreement is renewed. Each such special pledge that shall be so effected by renewal of said lease agreement for an additional term shall be deemed to relate to, and to have been made as of, the date on which such lease agreement was made and shall take precedence over any pledge of said pledged revenues which might be made by such authorizing subdivision and over any claim which might arise against the said pledged revenues between the date on which such lease agreement was made and the first day of the additional term for which such lease agreement shall be so renewed. Any pledge of revenues made by such authorizing subdivision as aforesaid under the provisions of any contract made by it subsequent to the date of the lease agreement containing such special pledge shall be subordinate to the special pledge contained in such lease agreement.

(d) In any instance where a lease agreement contains a pledge of any tax proceeds, such authorizing subdivision shall during each fiscal year that such lease agreement shall be in effect:

- (1) Levy the tax or taxes so pledged; and
- (2) Use so much of the proceeds therefrom as may be necessary to pay the rentals and perform the agreements on the part of such authorizing subdivision which are required in such lease agreement to be paid and performed during such fiscal year.

(e) Any lease agreement may contain such covenants as shall not be inconsistent with this article. The rental required to be paid and the agreements required to be performed by such authorizing subdivision under the provisions of such lease agreement shall never create an indebtedness of such authorizing subdivision within the meaning of any constitutional or statutory limitation or provision. If any space available for rent in any health care facilities which shall have been leased, in whole or in part, to such authorizing subdivision should become vacant after acquisition or construction of such health care facilities by the authority, then until such time as all such vacant space therein shall have been filled or rented, neither such authorizing subdivision nor any officer, department or agency thereof, shall thereafter enter into any rental agreement, or renew any then existing rental agreement, for other space in or about such authorizing subdivision to be used for the same purposes for which such vacant space in such health care facilities is capable of being used.

(Acts 1982, No. 82-418, p. 629, § 21.)

### § 22-21-331. Remedies for default in payment of securities or performance of lease agreement.

(a) If there should be any default in the payment of the principal of or interest on any securities issued under this article, then the holder of any such securities and any coupons applicable thereto (subject to any provision of the resolution or indenture under which such securities were issued restricting the individual rights of action of any such holders or vesting such rights exclusively in a trustee), and the trustee under any indenture, or any one or more of them:

- (1) May, by mandamus, injunction or other proceedings, compel performance of all duties of the directors and officers of the authority with respect to the use of funds for the payment of such securities and for the performance of the agreements of the authority contained in the proceedings under which they were issued;
- (2) Shall be entitled to a judgment against the authority for the principal of and interest on the securities so in default;
- (3) May, in the event such securities are secured by a mortgage on or security interest in any physical properties of the authority, foreclose such mortgage or pledge, exercise any powers of sale contained therein or exercise any possessory or other similar rights as are provided for in the resolution or indenture under which such securities were issued;
- (4) Regardless of the sufficiency of the security for the securities in default and as a matter of right, shall be entitled to the appointment of a receiver:
  - a. To make lease agreements respecting any health care facilities or other properties out of whose revenues the securities so in default are payable and fix and collect rents therefor; and
  - b. To operate, administer and maintain such health care facilities and other properties, with all powers of a receiver in the exercise of any of said functions.

The income derived from any lease agreement made, and any operation of such health care facilities and other properties carried on, by any such receiver shall be expended in accordance with the provisions of the proceedings under which the securities were authorized to be issued and the orders of the court by which such receiver is appointed.

(b) If there should be any default by the authorizing subdivision in the payment of any installment of rent or in the performance of any agreement required to be made or performed by it under the provisions of any lease agreement described in Section 22-21-330, the authority and the trustee under any indenture, or either of them:

- (1) May, by mandamus, injunction or other proceedings, compel performance by the officials of the authorizing subdivision of their duties respecting the payment of the rentals required to be paid and performance of the agreements on the part of the authorizing subdivision required to be performed under any such lease agreement; and

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- (2) Shall be entitled to a judgment against the authorizing subdivision for all monetary payments required to be made by the authorizing subdivision under the provisions of such lease agreement with respect to which the authorizing subdivision is then in default.

(c) The remedies specified in this section shall be cumulative to all other remedies which may otherwise be available, by law or contract, for the benefit of the holders of the securities and the coupons applicable thereto.

(Acts 1982, No. 82-418, p. 629, § 22.)

### **§ 22-21-332. Investment of funds.**

(a) To the extent permitted by the contracts of the authority with the holders of its securities and if not otherwise specifically prohibited by any other provision of this article, the authority may invest any portion of the principal proceeds derived from the sale of any of its securities which is not then needed for any of the purposes for which such securities were authorized to be issued, the moneys held in any special fund created pursuant to any resolution or indenture authorizing or securing any of its securities, and any other moneys of the authority not then needed by it, in any of the following:

- (1) Federal securities;
- (2) Any debt securities that are direct obligations of any agency of the United States of America;
- (3) Interest-bearing bank time deposits and interest-bearing bank certificates of deposit; and
- (4) Interest-bearing time deposits and interest-bearing certificates of deposit of any federally-chartered savings and loan association.

(b) Any securities, time deposits or certificates of deposit in which any such investment is made may, at any time and from time to time, be sold or otherwise converted into cash. The income derived from any such investments shall be disbursed on order of the board for any purpose for which the authority may lawfully expend funds.

(Acts 1982, No. 82-418, p. 629, § 23.)

### **§ 22-21-333. Exemptions from taxation.**

All properties of an authority, whether real, personal or mixed, and the income therefrom, all securities issued by an authority and the coupons applicable thereto and the income therefrom, and all indentures and other instruments executed as security therefor, all leases made pursuant to the provisions of this article and all revenues derived from any such leases, and all deeds and other documents executed by or delivered to an authority shall be exempt from any and all taxation by the state, or by any county, municipality or other political subdivision of the state, including, but without limitation to, license and excise taxes imposed in respect of the privilege of engaging in any of the activities in which an authority may engage. An authority shall not be obligated to pay or allow any fees, taxes or costs to the judge of probate of any county in respect of its incorporation, the amendment of its certificate of incorporation or the recording of any document. Further, the gross proceeds of the sale of any property used in the construction and equipment of any health care facilities for an authority, regardless of whether such sale is to such authority or any contractor or agent thereof, shall be

exempt from the sales tax imposed by Article 1 of Chapter 23 of Title 40 and from all other sales and similar excise taxes now or hereafter levied on or with respect to the gross proceeds of any such sale by the state or any county, municipality or other political subdivision or instrumentality of any thereof; and any property used in the construction and equipment of any health care facilities for an authority, regardless of whether such property has been purchased by the authority or any contractor or agent thereof, shall be exempt from the use tax imposed by Article 2 of Chapter 23 of Title 40 and all other use and similar excise taxes now or hereafter levied on or with respect to any such property by the state or any county, municipality or other political subdivision or instrumentality of any thereof.

(Acts 1982, No. 82-418, p. 629, § 24.)

### **§ 22-21-334. Nonapplicability of Ethics Act.**

The provisions of Chapter 25 of Title 36 shall, any provision thereof to the contrary notwithstanding, not apply to any authority, the members of its board or any of its officers or employees.

(Acts 1982, No. 82-418, p. 629, § 25.)

### **§ 22-21-335. Nonapplicability of competitive bid laws.**

The provisions of Articles 2 and 3 of Chapter 16 of Title 41 shall not apply to any authority, the members of its board or any of its officers or employees.

(Acts 1982, No. 82-418, p. 629, § 26.)

### **§ 22-21-336. Transfer of funds and assets to authority.**

Any municipality, county, or educational institution, any public hospital corporation and any other public agency, authority or body is hereby authorized to transfer and convey to any authority, with or without consideration:

- (1) Any health care facilities and other properties, real or personal, and all funds and assets, tangible or intangible, relative to the ownership or operation of any such health care facilities that may be owned by such municipality, county, educational institution, public hospital corporation or other public agency, authority or body, as the case may be, or that may be jointly owned by any two or more thereof, including, without limiting the generality of the foregoing, any certificates of need, assurances of need or other similar rights appertaining or ancillary thereto, irrespective of whether they have been exercised; and
- (2) Any funds owned or controlled by such municipality, county, educational institution, public hospital corporation or other public agency, authority or body, as the case may be, or jointly by any two or more thereof, that may have been raised or allocated for any of the purposes for which such authority shall have been organized, whether or not such property is considered necessary for the conduct of the governmental or public functions (if any) of such municipality, county, educational institution, public hospital corporation or other public agency, authority or body.

Such transfer or conveyance shall be authorized by an ordinance or resolution duly adopted by the governing body of such municipality, county, or educational institution or by the board of directors or other governing body of such public hospital corporation or other public agency, authority or body, as the case may be, and it shall not be necessary, any provision of law to the contrary notwithstanding, to obtain any certificate of need, assurance of need or other similar permit for any such transfer or conveyance. In the event of the transfer of any health care facilities to the authority, any hospital tax proceeds, other tax proceeds and other revenues apportioned or allocated to or for the benefit of the prior owner or operator of such health care facilities or for patient care at such health care facilities shall thereafter be paid to the authority.

(Acts 1982, No. 82-418, p. 629, § 27; Act 2003-249, p. 606, § 1.)

### **§ 22-21-337. Disposition of earnings of authority.**

An authority shall be a public corporation or authority and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the board shall determine that sufficient provision has been made for the full payment of the expenses, securities and other obligations of the authority, then any portion, as determined by the board, of the net earnings of the authority thereafter accruing may, in the discretion of the board, be paid to one or more of its authorizing subdivisions.

(Acts 1982, No. 82-418, p. 629, § 28.)

### **§ 22-21-338. Authority as designated agency for purposes of Division 2 of Article 4 of this chapter.**

An authority shall constitute a "hospital corporation" as that term is used in Division 2 of Article 4 of this chapter; and any county otherwise authorized to do so may designate any authority having the power to own and operate health care facilities situated in such county as the agency of such county to acquire, construct, equip, operate and maintain public hospital facilities in such county, in the manner and with the consequences specified in said Division 2. Such authority shall, if so designated, receive the proceeds from any special public hospital tax referred to in said Division 2. Further, the reincorporation hereunder of any public hospital corporation that has theretofore been designated as the agency of a county to acquire, construct, equip, operate and maintain public hospital facilities in such county shall in no way impair or invalidate such designation, and such reincorporated public hospital corporation shall continue as such (with the consequences specified in said Division 2) just as if it had not been reincorporated hereunder. Nothing in this section shall, however, be construed in any manner to limit any rights or powers otherwise conferred upon an authority pursuant to any other provision of this article.

(Acts 1982, No. 82-418, p.629, § 29.)

### **§ 22-21-339. Dissolution of authority.**

At any time when the authority does not have any securities outstanding, and when there shall be no other obligations assumed by the authority that are then outstanding, the board may adopt a resolution, which shall be duly entered upon its minutes, declaring that the authority shall be dissolved. Upon the filing for record of a certified copy of said resolution in the office of the judge of probate in which the certificate of incorporation of



the authority was filed, the authority shall thereupon stand dissolved, and in the event that it owned any assets or property at the time of its dissolution, the title to all its assets and property shall, subject to any constitutional provision or inhibition to the contrary, thereupon vest in one or more counties, municipalities, or educational institutions in such manner and interests as may be provided in the said certificate of incorporation; provided however, that if the said certificate of incorporation contains no provision respecting the vesting of title to the assets and property of the authority, title to all such assets and property shall, subject to any constitutional provision or inhibition to the contrary, thereupon vest in its authorizing subdivisions as tenants in common.

(Acts 1982, No. 82-418, p. 629, § 30; Act 2003-249, p. 606, § 1.)

### **§ 22-21-340. Multiple corporations permitted.**

Neither the formation or dissolution of one authority hereunder nor the reincorporation hereunder of a public hospital corporation shall prevent the subsequent incorporation hereunder of another authority or the subsequent reincorporation hereunder of another public hospital corporation pursuant to authority granted by one or more of the same authorizing subdivisions. Further, any county may authorize the incorporation of an authority hereunder notwithstanding the existence in such county of a public hospital corporation designated as the agency of such county with respect to public hospital facilities therein pursuant to the provisions of Division 2 of Article 4 of this chapter.

(Acts 1982, No. 82-418, p. 629, § 31.)

### **§ 22-21-341. Reincorporation of existing corporations.**

Any public hospital corporation may be reincorporated under this article, avail itself of all rights, powers and privileges and become subject to all duties, obligations and responsibilities conferred or imposed by this article, in the following manner:

- (1) The board of directors or other governing body of such public hospital corporation shall adopt a resolution stating that it proposes and applies for permission to reincorporate hereunder and containing a form of proposed certificate of reincorporation, which such certificate of reincorporation shall include, with the necessary changes in detail, the information required to be included in a certificate of incorporation described in Section 22-21-314 other than that referred to in subdivision (b)(1) thereof.
- (2) Such public hospital corporation shall as promptly as practicable thereafter file a certified copy of such resolution with the governing body of each county or municipality that authorized the formation of such public hospital corporation (and, with respect to any public hospital corporation organized under the provisions of Article 6 of this chapter, the governing body of any other municipality that is then a “member” thereof); and each such county and municipality shall be deemed an “authorizing subdivision” with respect to any such public hospital corporation reincorporated hereunder.
- (3) The governing body of each authorizing subdivision shall, as promptly as may be practicable after the filing of said certified resolution, review and act upon the said resolution and application in the manner, with the necessary changes in detail, prescribed in Section 22-21-313.

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- (4) The chairman (or other principal officer) and the secretary of such public hospital corporation shall thereupon sign and acknowledge a certificate of reincorporation, in the form included in the resolution referred to in subdivision (1) of this section, and cause it to be filed for record in the office specified in Section 22-21-314.
- (5) Thereupon, such certificate of reincorporation shall be filed and recorded by the judge of probate as provided in Section 22-21-314, and the existence of such public hospital corporation as an authority under this article shall begin upon the filing of such certificate of reincorporation as provided for in this section.

No such reincorporation shall in any manner affect the rights of creditors or the rights or liabilities of the public hospital corporation existing at the time of such reincorporation or shall (any provision of law to the contrary notwithstanding) necessitate the obtaining by such reincorporated public hospital corporation or the reissuance of any certificate of need, assurance of need or other similar permit. With respect to any public hospital corporation reincorporated hereunder, any reference herein to a certificate of incorporation thereof shall also include and refer to its certificate of reincorporation.

(Acts 1982, No. 82-418, p. 629, § 32.)

### **§ 22-21-342. Provisions of article exclusive.**

Any authority organized under the provisions of this article (as well as any public hospital corporation reincorporated hereunder) shall, insofar as the subject matter of this article is concerned, be governed exclusively by the provisions of this article, which shall not be construed in *pari materia* with any other statute.

(Acts 1982, No. 82-418, p. 629, § 33.)

### **§ 22-21-343. Cumulative effect of article.**

This article shall not be construed as a restriction or limitation upon any power, right or remedy which any county, municipality, educational institution, or public hospital corporation now in existence or hereafter formed may have in the absence of this article. The provisions of this article are cumulative and shall not be deemed to repeal existing laws, except to the extent such laws are clearly inconsistent with the provisions of this article.

(Acts 1982, No. 82-418, p. 629, § 34; Act 2003-249, p. 606, § 1.)

### **§ 22-21-344. Use of proceeds from hospital taxes.**

Nothing in this article shall be construed to permit the use, by or for the benefit of any authority, of the proceeds of any hospital tax for any purpose, at any place, or in connection with any health care facilities, not permitted or described in the constitutional, statutory or other provision of law authorizing the imposition, levy and collection of such hospital tax or the use of the proceeds therefrom. In order to assure the lawful disposition of such hospital tax proceeds, the board may require the deposit thereof into special funds or accounts established for that purpose and the accounting therefor in such manner as the board may deem necessary.

(Acts 1982, No. 82-418, p. 629, § 35.)

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### Article 11a, Additional Power of Health Care Authorities Division 1, Certain Additional Powers

#### § 22-21-350. Definitions.

The following words and phrases used in this division shall, unless the context clearly indicates otherwise, have the following respective meanings:

- (1) **AUTHORITY.** A public corporation organized, and any public hospital corporation reincorporated, pursuant to the provisions of the enabling statute.
- (2) **AUTHORIZING RESOLUTION.** A resolution adopted by the board authorizing an arrangement by which an authority is to furnish office space to a nonhospital-based physician, dentist or other health care professional for use in his private practice.
- (3) **AUTHORIZING SUBDIVISION.** A county, municipality, or educational institution with the governing body of which an application for the incorporation of an authority under the enabling statute, or for the reincorporation of a public hospital corporation thereunder, is filed (and any other county, municipality, or educational institution that may at the time constitute an “authorizing subdivision” within the meaning of the enabling statute).
- (4) **BOARD.** The board of directors of an authority.
- (5) **DIRECTOR.** A member of a board.
- (6) **ENABLING STATUTE.** Act No. 82-418 enacted at the 1982 Regular Session of the Legislature (codified as Article 11 of Chapter 21 of Title 22, as amended).
- (7) **NATIONALLY RECOGNIZED CREDIT RATING AGENCY.** Any credit rating agency that is nationally recognized for skill and expertise in rating the credit of obligations similar to securities issued by an authority (including, without limiting the generality of the foregoing, Moody's Investors Service, Inc., and Standard & Poor's Corporation).
- (8) **SECURITIES.** Bonds, notes, warrants, certificates of indebtedness or other evidences of indebtedness, including (without limiting the generality of the foregoing) notes issued in anticipation of the sale of any of the foregoing.

The term “federal securities,” as used in this division, shall have the same meaning given it in the enabling statute.

(Acts 1987, No. 87-745, p. 1458, § 1; Act 2003-249, p. 606, § 1.)

#### § 22-21-351. Legislative findings.

The Legislature hereby finds and declares as follows:

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- (1) That in order to promote the public health of the people of the State of Alabama, the Legislature enacted the enabling statute, whereunder, among other things:
  - a. The several counties, municipalities, and educational institutions of the state are effectively authorized to form public corporations known as health care authorities, and
  - b. Existing public hospital corporations are authorized to reincorporate as health care authorities;
- (2) That all such health care authorities are empowered under and pursuant to the enabling statute, among other things:
  - a. To own and operate public hospitals and other health care facilities;
  - b. To furnish office space to (among others) any nonhospital-based physician, dentist or other health care professional for use in his private practice, subject to the conditions specified in the enabling statute; and
  - c. To appoint, employ, contract with, and provide for the compensation of accountants; and
- (3) That as a result of significant changes and developments in the economic and commercial structure and practices of health care providers since the enactment of the enabling statute, it is now necessary, in order to enable health care authorities organized or reincorporated pursuant to the provisions of the enabling statute to continue to operate adequately and efficiently, that the Legislature:
  - a. Confer on such health care authorities certain powers in addition to, and in furtherance of, those conferred by the enabling statute; and
  - b. Provide further for the corporate structure of such health care authorities.

(Acts 1987, No. 87-745, p. 1458, § 2; Act 2003-249, p. 606, § 1.)

### **§ 22-21-352. Further provision for amendment of certificates of incorporation or reincorporation.**

- (a) Except as otherwise provided in the last sentence of this subsection, any authority that now exists, or that is hereafter organized or reincorporated (as the case may be) pursuant to the provisions of the enabling statute, shall have the power to amend its certificate of incorporation or certificate of reincorporation, in the manner hereinafter provided, so as to provide:
- (1) That the governing body of an authorizing subdivision empowered (either alone or jointly with the governing body or bodies of one or more other authorizing subdivisions) to elect or appoint one or more directors shall so elect or appoint all or any of such directors only from a list of nominees, as provided in subdivision (2) below, proposed by the board and otherwise qualified, in accordance with law and with the terms of such certificate of incorporation or certificate of reincorporation (as the case may be), or any amendment thereto made pursuant to the provisions of the enabling statute, to serve as a director; and

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- (2) That in the case of a vacancy resulting from the expiration of the stated term of office of any such director, the board shall, not more than 90 nor less than 10 days prior to the expiration of such term of office (or in case of a vacancy resulting from the death or resignation of any such director or from a cause other than the expiration of the stated term of office of any such director, within 30 days following the occurrence of such vacancy):
  - a. By resolution duly adopted, propose a list of nominees (not less than three in number) for each place or seat on the board that is or is to become vacant as aforesaid; and
  - b. Cause a certified copy of such resolution to be filed with the governing body of the authorizing subdivision or subdivisions empowered to elect or appoint such director.

To amend its certificate of incorporation or certificate of reincorporation so to provide, the board shall first adopt a resolution approving and authorizing such an amendment to the certificate of incorporation or certificate of reincorporation (as the case may be) of the authority, which amendment shall be set forth in full in the said resolution. Within 40 days following the adoption of such resolution, the chairman and the secretary of the authority shall sign and file for record, in the office of the judge of probate of the county in which the original certificate of incorporation or certificate of reincorporation (as the case may be) of the authority was filed, a certificate in the name and on behalf of the authority, under its seal, reciting the adoption of such resolution by the board and setting forth the proposed amendment. The said judge of probate shall thereupon record such certificate in an appropriate book in his office. When such certificate has been so filed and recorded, such amendment shall become effective without any further consents or approvals (including, without limitation, any consents or approvals that would otherwise be required by law for amendments to such certificate of incorporation or certificate of reincorporation, as the case may be), and the certificate of incorporation or certificate of reincorporation (as the case may be) of such authority shall thereupon be amended to the extent provided in such amendment. The preceding provisions of this subsection shall not, however, apply to any authority if its certificate of incorporation or certificate of reincorporation (as the case may be), or any amendment thereto made pursuant to the provisions of the enabling statute, expressly denies to such authority the power to amend its certificate of incorporation or certificate of reincorporation as provided in this subsection.

(b) Nothing in this section shall be construed to prohibit the inclusion in the original certificate of incorporation or certificate of reincorporation of any authority (or in any amendment thereto made pursuant to the provisions of the enabling statute) of provisions requiring the election or appointment of any director of such authority by the governing body of an authorizing subdivision (either alone or jointly with the governing body or bodies of one or more other authorizing subdivisions) from a list of nominees proposed by the board, provided that the number of directors elected or appointed by the governing body or bodies of one or more authorizing subdivisions without reference to any list of nominees (whether proposed by the board or otherwise) or other condition, is at least a majority of the total number of directors, it being understood and intended by the Legislature, however, that in the case of an amendment to the certificate of incorporation or certificate of reincorporation made pursuant to the provisions of the preceding subsection (a), there shall be no limit on the number of directors that may be elected or appointed by the governing body or bodies of the authorizing subdivisions only from a list of nominees proposed by the board.

(Acts 1987, No. 87-745, p. 1458, § 3.)

### **§ 22-21-353. Further provisions respecting issuance of securities.**

Any authority shall have, in addition to the power to sell and issue interest-bearing securities that are limited as to source of payment, the power to sell and issue interest-bearing securities that are not limited as to source of payment and that are general obligations of the authority. The principal of and interest on (and premium, if any) any securities issued by the authority pursuant to the provisions of this section may be secured by:

- (1) A pledge of the general credit of the authority; or
- (2) Both such a pledge of the general credit of the authority and a special pledge of specific revenues or taxes (or both) identified in the proceedings authorizing the sale and issuance of such securities; and may also be secured by a trust indenture evidencing such pledge or by a foreclosable mortgage, mortgage indenture or mortgage and trust indenture conveying as security for such securities all or any part of its property. Except to the extent hereinabove provided, all securities issued pursuant hereto shall be considered as securities issued under the enabling statute and shall be subject to all the provisions thereof respecting securities issued thereunder.

(Acts 1987, No. 87-745, p. 1458, § 4.)

### **§ 22-21-354. Further provisions respecting use and disposition of certain property.**

In determining the financial effect of an arrangement between an authority and any nonhospital-based physician, dentist or other health care professional for the furnishing of office space to any such person for use in his private practice (for purposes of those provisions of the enabling statute relating thereto), the board:

- (1) May, in the determination of the rental and other consideration to be received by the authority from the furnishing of such office space, consider not only the dollar amount of such rental and other consideration being or to be paid by such person pursuant to such arrangement, but also such other circumstances or conditions as it shall generally describe in an authorizing resolution, including (without limitation and by way of example or illustration) factors such as the probability or possibility that such person will refer patients or others to any one or more of the health care facilities owned or operated by the authority or will otherwise make use of, and compensate the authority for, services provided at or by any such health care facilities;
- (2) In such event, may (in the authorizing resolution) assign to such other circumstances or conditions such value as in its discretion it deems appropriate and warranted; and
- (3) May furnish office space to such person if the dollar amount of the rental and any other consideration being or to be paid to the authority by such person, when added to the value so assigned to such other circumstances and conditions, is not less than the cost of such office space to the authority, any provisions of the enabling statute to the contrary notwithstanding.

Any value so assigned in an authorizing resolution to any such other circumstances and conditions shall be conclusive in the absence of fraud or a gross abuse of discretion.

(Acts 1987, No. 87-745, p. 1458, § 5.)

### § 22-21-355. Further provisions respecting investment of funds.

In addition to the investment powers granted by the enabling statute, any authority shall, to the extent permitted by the contracts of such authority with the holders of its securities, have the further power to invest any portion of the principal proceeds derived from the sale of any of its securities not then needed for any of the purposes for which such securities were authorized to be issued, any moneys held in any special fund created pursuant to any resolution or mortgage, mortgage indenture, mortgage and trust indenture or trust indenture authorizing or securing any of its securities, and any other moneys of such authority not then needed by it, in any of the following:

- (1) Debt securities (whether general obligations or limited or special obligations) of any state, territory or possession of the United States of America and of any political subdivision of any such state, territory or possession, but if and only if at the time of their acquisition for the account of the authority, such securities are rated by a nationally recognized credit rating agency in one of its four highest rating categories;
- (2) Commercial paper of a corporation incorporated under the laws of any state of the United States of America, but if and only if at the time of the acquisition thereof for the account of the authority, such commercial paper is rated "prime one" (or the equivalent thereof) by a nationally recognized credit rating agency;
- (3) Banker's acceptances endorsed or guaranteed by a bank whose senior long-term debt obligations are, at the time of the acquisition of such acceptances for the account of the authority, rated by a nationally recognized credit rating agency in one of its three highest rating categories (or by a bank that is owned or controlled by a bank holding company whose senior long-term debt obligations are, at the time of the acquisition of such acceptances for the account of the authority, rated by a nationally recognized credit rating agency in one of its three highest rating categories);
- (4) Bonds and debentures of a corporation incorporated under the laws of any state of the United States of America, but if and only if at the time of the acquisition thereof for the account of the authority, such bonds or debentures have an investment grade rating (or its equivalent) from a nationally recognized credit rating agency; and
- (5) To the extent not prohibited by the Constitution of Alabama:
  - a. Investments in a money market fund or other similar fund, all or substantially all the assets of which consist of federal securities or other assets in which an authority is permitted, by the enabling statute or by the preceding provisions of this section, to invest moneys directly,
  - b. Participation certificates in federal securities, and
  - c. Investment or cash management agreements with a bank whose senior long-term debt obligations are, at the time of the acquisition of any such investment or cash management agreement for the account of the authority, rated by nationally recognized credit rating agency in one of its three highest rating categories (or with a bank that is owned or controlled by a bank holding company whose senior long-term debt obligations are, at the time of the acquisition of any such investment or cash

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management agreement for the account of the authority, rated by a nationally recognized credit rating agency in one of its three highest rating categories).

(Acts 1987, No. 87-745, p. 1458, § 6.)

### **§ 22-21-356. Cumulative effect.**

The provisions of this division shall be construed as cumulative of the provisions of the enabling statute, shall be construed in pari materia therewith and shall not be deemed to repeal any provisions of the enabling statute or other existing law except to the extent (but only to the extent) that any such provisions of the enabling statute or other existing law clearly conflict, or are clearly inconsistent, with the provisions of this division.

(Acts 1987, No. 87-745, p. 1458, § 7.)



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### Article 11a, Additional Power of Health Care Authorities Division 2, Further Additional Powers

#### § 22-21-357. Definitions.

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

- (1) **AUTHORITY.** Any public corporation now or hereafter organized or reincorporated, as the case may be, pursuant to the provisions of the Health Care Authorities Act.
- (2) **AUTHORIZING SUBDIVISION.** Each county, municipality, and educational institution with the governing body of which the application for the incorporation of any authority under the Health Care Authorities Act or the reincorporation of a public corporation under the Health Care Authorities Act was filed.
- (3) **COUNTY.** Any county in the State of Alabama.
- (4) **GOVERNING BODY.** With respect to a county, its county commission or other like governing body, and, with respect to a municipality, its city or town council, board of commissioners or other like governing body, and, with respect to an educational institution, its board of trustees, or other like governing body.
- (5) **EDUCATIONAL INSTITUTION.** A public college or university established under the Constitution of Alabama or act of the Alabama Legislature that operates a school of medicine.
- (6) **HEALTH CARE AUTHORITIES ACT.** Act No. 82-418 enacted at the 1982 Regular Session of the Legislature of Alabama, as supplemented by Act No. 87-745 enacted at the 1987 Regular Session of the Legislature of Alabama (codified as Articles 11 and 11A of Chapter 21 of Title 22 as amended).
- (7) **MUNICIPALITY.** An incorporated city or town of the State of Alabama.

(Acts 1990, No. 90-532, § 1; Act 2003-249, p. 606, § 1.)

#### § 22-21-358. Powers of authorities.

In addition to all other powers at any time conferred on it by law, and subject to any express provisions of its certificate of incorporation or certificate of reincorporation to the contrary, an authority shall (to the extent at the time not prohibited by the Constitution of Alabama) have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

- (1) To participate as a shareholder in a corporation, as a joint venturer in a joint venture, as a general or limited partner in a limited partnership or a general partnership, as a member in a nonprofit corporation or as a member of any other lawful form of business organization, which provides health care or engages in activities related thereto;

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- (2) To make or arrange for loans, contributions to capital and other debt and equity financing for the activities of any corporation of which such authority is a shareholder, any joint venture in which such authority is a joint venturer, any limited partnership or general partnership of which such authority is a general or limited partnership, any nonprofit corporation in which such authority is a member or any other lawful form of business organization of which such authority is a member, and to guarantee loans and any other obligations for such purposes;
- (3) To elect (i) all or any of the members of the board of directors of any nonprofit corporation of which such authority is a member or of which any one or more of the members of the board of directors of such authority is an ex officio member (subject, however, to any contrary or inconsistent provision of the articles of incorporation or bylaws of such nonprofit corporation), and (ii) all or any of the members of the board of directors of any nonprofit corporation that has no members and whose articles of incorporation or bylaws provide for the election of one or more of the members of its board of directors from among members of the board of directors of such authority (subject, however, to any contrary or inconsistent provision of the articles of incorporation or bylaws of such nonprofit corporation); provided, however, that if the board of directors of an authority adopts, and files for record in the office of the judge of probate of that county in which its certificate of incorporation or certificate of reincorporation is filed, a certified copy of a resolution to such effect, the election by such authority of any member of the board of directors of any nonprofit corporation who it would otherwise have the right to elect shall be effective only upon the consent of the governing body of each authorizing subdivision with respect to such authority;
- (4) To create, establish, acquire, operate or support subsidiaries and affiliates, either for profit or nonprofit, to assist such authority in fulfilling its purposes;
- (5) To create, establish or support nonaffiliated for profit or nonprofit corporations or other lawful business organizations which operate and have as their purposes the furtherance of such authority's purposes;
- (6) Without limiting the generality of the preceding subdivisions (4) and (5), to accomplish and facilitate the creation, establishment, acquisition, operation or support of any such subsidiary, affiliate, nonaffiliated corporation or other lawful business organization, by means of loans of funds, leases of real or personal property, gifts and grants of funds or guarantees of indebtedness of such subsidiaries, affiliates and non-affiliated corporations;
- (7) To indemnify any person (including for purposes of this subdivision such person's estate and personal representatives) made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a board member, officer, or a physician acting as an agent of such authority in the performance of duties delegated by the board of directors as contained in the medical staff bylaws, medical staff rules and regulations, or policies adopted by the board of directors of such authority, or serves or served any other corporation or other entity or organization (whether for profit or not for profit) in any capacity at the request of the authority while he or she was a board member, officer of the authority, or a physician acting as an agent of such authority as stated above, against all judgments, fines, amounts paid in settlement and reasonable expenses (including, without limitation, attorneys' fees actually and necessarily incurred) as a result of any such action or proceeding, or any appeal therein; provided, however, that nothing herein shall be construed as permitting indemnification of any person:

- a. In connection with any malpractice action or proceeding arising out of or in any way connected with such person's practice of his profession;
- b. In connection with an action or proceeding by such authority in which a person is adjudged liable to such authority; or
- c. In connection with any other action or proceeding in which such person is adjudged liable on the basis that personal benefit was improperly received by such person.

(8) To make any other indemnification now or hereafter authorized by law; and

(9) To have and exercise all powers necessary or convenient to effect any or all the purposes for which authorities are organized.

(Acts 1990, No. 90-532, § 2.)

### **§ 22-21-359. Legislative intention.**

It is the intent of the Legislature by the passage of this division to clarify existing provisions of statutory law respecting the powers of authorities. To that end, the grant to such authorities of the powers specified in Section 22-21-358 shall be deemed declarative of existing statutory law and shall therefore have both a prospective and a retroactive or retrospective operation.

(Acts 1990, No. 90-532, § 3.)

### Chapter 25B, Regulation of Privately Owned Wastewater Systems

#### § 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.

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- (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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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:

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- (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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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

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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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

(Act 2009-773, p. 2388, § 2.)

### **§ 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.

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(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).

(Act 2009-773, p. 2388, §§ 2, 4.)

### 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.

(Acts 1969, No. 1127, p. 2089, § 1.)

#### **§ 22-26-2. Authority of boards of health to require installation of connections with sanitary sewers, etc.; 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 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 rules and regulations. No rule or regulation of the State Board of Health shall require the permitting or inspection by county government of any plumbing within structures.

(Acts 1969, No. 1127, p. 2089, § 2; Act 2016-305, § 1.)

#### **§ 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.

(Acts 1969, No. 1127, p. 2089, § 4.)

### **§ 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.

(Acts 1969, No. 1127, p. 2089, § 5.)

### **§ 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.

(Acts 1969, No. 1127, p. 2089, § 3.)

### **§ 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.

(Acts 1978, No. 776, p. 1133; Acts 1980, No. 80-399, p. 557.)

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### Chapter 27, Solid Waste 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."

(Acts 1969, No. 771, p. 1373, § 1; Act 2008-151, p. 244, § 1.)

#### § 22-27-2. 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

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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 wastes 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 1,600 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 this title.
- (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



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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, were 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.

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- (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 is 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 1,600 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 department.

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- (33)SOLID WASTE. 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, commencing with Section 9-16-1, of Chapter 16 of Title 9.
- (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.

(Acts 1969, No. 771, p. 1373, § 1; Acts 1982, No. 82-612, p. 1111, § 11(f); Act 2005-302, 1st Sp. Sess., p. 596, § 1; Act 2008-151, p. 244, § 1; Act 2011-258, p. 462, § 1.)

### **§ 22-27-3. Authority of local governing bodies as to waste collections and disposal; household exemptions; state regulatory program.**

(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

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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 percent 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.

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(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

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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.

(Acts 1969, No. 771, p. 1373, § 2; Acts 1971, No. 2247, p. 3604, § 1; Acts 1982, No. 82-612, p. 1111, § 11(f); Acts 1989, No. 89-630, p. 1231, § 1; Acts 1997, No. 97-636, p. 1159, § 1; Act 2011-258, p. 462, § 1.)

### **§ 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

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the department, shall be accompanied by an adequate vermin eradication program to prevent the spread of vermin to nearby properties.

(Acts 1969, No. 771, p. 1373, § 3; Acts 1982, No. 82-612, p. 1111, § 11(f); Act 2008-151, p. 244, § 1.)

### **§ 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.

(Acts 1969, No. 771, p. 1373, § 5; Acts 1971, No. 2247, p. 3604, § 2; Acts 1979, No. 79-668, p. 1176; Acts 1982, No. 82-612, p. 1111, §§ 11(f), 14(a)(7); Acts 1988, No. 88-655, p. 1052; Acts 1988, 1st Ex. Sess., No. 88-858, p. 346.)

### **§ 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.

(Act 98-610, p. 1342, §§ 1, 2.)

### **§ 22-27-5.2. Solid waste landfill moratorium.**

(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.



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(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.

(Act 2011-297, p. 551, §§ 1-3; Act 2012-434, p. 1212, § 1.)

### **§ 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.

(Acts 1969, No. 771, p. 1373, § 4; Acts 1989, No. 89-630, p. 1231, § 2.)

### **§ 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.

(Acts 1969, No. 771, p. 1373, § 6; Acts 1971, No. 2247, p. 3604, § 3; Acts 1982, No. 82-612, p. 1111, § 11(f); Acts 1989, No. 89-630, p. 1231, § 3.)

### **§ 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.

(Act 2005-302, 1st Sp. Sess., p. 596, § 2.)

### **§ 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 this article are consistently and equitably applied.

(Act 2008-151, p. 244, § 2.)

**§ 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 or the department, or both, 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.

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(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 this article 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 not limited to, enjoining 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 of Title 11.

(Act 2008-151, p. 244, § 2.)

### **§ 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.

(Act 2008-151, p. 244, § 2.)

### **§ 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, specify the terms and conditions of permits or notices, conduct inspections, require that records be established and maintained, direct the abatement of unauthorized dumps or other public nuisances involving solid waste, and 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 April 15, 2010, 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.

(Act 2008-151, p. 244, § 2.)

### **§ 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.

(Act 2008-151, p. 244, § 2.)

### **§ 22-27-14. 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.

(Act 2008-151, p. 244, § 2.)

### **§ 22-27-15. Establishment and review of reduction goals.**

(a) No later than October 15, 2009, 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.

(Act 2008-151, p. 244, § 2.)

### **§ 22-27-16. Ownership and disposition of recovered materials.**

Notwithstanding any other law or any provision of this article 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.

(Act 2008-151, p. 244, § 2.)

### **§ 22-27-17. 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).



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(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), to be collected by the operator of the solid waste facility and remitted in accordance with subsection (b).

(b) Unless exempted under subsection (f), 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.
- (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.
- (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.

(d) Where operators of solid waste facilities have entered into fixed-price contracts for disposal of solid waste prior to April 15, 2008, the disposal fee collected by the solid waste facilities pursuant to subsection (b) shall not be considered part of the contract price for disposal.

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(e) A waste hauler who has entered into a contract for transportation and disposal of solid waste which is in effect on April 15, 2008, 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 12-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 April 15, 2008, and shall not apply to the renewal of an existing contract or to a contract executed on or after April 15, 2008.

(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 of Title 40.

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- (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 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.

(Act 2008-151, p. 244, § 2.)

### **§ 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) except as budgeted and allotted according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations act or other appropriation acts.

(Act 2008-151, p. 244, § 2.)

### 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.

(Acts 1989, No. 89-824, p. 1638, § 1.)

### **§ 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.

(Acts 1989, No. 89-824, p. 1638, § 2.)

### **§ 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

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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.

(Acts 1989, No. 89-824, p. 1638, § 3.)

### **§ 22-27-43. Definitions.**

All terms used in this article shall be defined as such terms are defined in Section 22-27-2.

(Acts 1989, No. 89-824, p. 1638, § 4.)

### **§ 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.

(Acts 1989, No. 89-824, p. 1638, § 5.)

### **§ 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.

(Acts 1989, No. 89-824, p. 1638, § 6.)

### § 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.

(Acts 1989, No. 89-824, p. 1638, § 7.)

### § 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;

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- (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.

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(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.

(Acts 1989, No. 89-824, p. 1638, § 8.)

### § 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

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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.

(Acts 1989, No. 89-824, p. 1638, § 9; Act 2006-534, p. 1227, § 1.)

### **§ 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

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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.

(Acts 1989, No. 89-824, p. 1638, §§ 10, 11.)



### 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.

(Act 2001-661, p. 1383, § 1.)

#### § 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.

(Act 2001-661, p. 1383, § 2.)

#### § 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.

(Act 2001-661, p. 1383, § 3.)

**§ 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.

(Act 2001-661, p. 1383, § 4.)

### Article 4a, Methods of Disposing Waste Cooking Grease and Animal Byproducts

#### § 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.

(Act 2003-398, p. 1145, § 1.)

### **§ 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.

(Act 2003-398, p. 1145, § 2.)

### **§ 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.

(Act 2003-398, p. 1145, § 3.)

### **§ 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.

(Act 2003-398, p. 1145, § 4.)

### **§ 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.

(Act 2003-398, p. 1145, § 5.)

### Chapter 31, Determination of Death

#### § 22-31-1. Determination of death.

An individual who, in the opinion of a medical doctor licensed in Alabama, has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

(Acts 1979, No. 79-165, p. 276, § 1; Act 2000-710, p. 1506, § 1.)

#### § 22-31-2. Use of other methods.

Nothing in this chapter shall prohibit a physician from using other procedures based on accepted medical standards for determining death as the exclusive basis for pronouncing a person dead.

(Acts 1979, No. 79-165, p. 276, § 2; Act 2000-710, p. 1506, § 1.)

#### § 22-31-3. Procedure where part of body to be used for transplantation.

(a) When a part of a donor is proposed to be used for transplantation pursuant to Article 3 of Chapter 19 of this title and the death of the donor is determined as set forth in Section 22-31-1, there shall be an independent confirmation of the death by another medical doctor licensed in Alabama. Neither the physician making the determination of death nor the physician making the independent confirmation shall participate in the procedures for removing or transplanting a part.

(b) When a part of a donor is proposed to be used for transplantation pursuant to Article 3 of Chapter 19 of this title and the death of the donor is determined as set forth in Section 22-31-1, complete patient medical records shall be kept, maintained and preserved.

(Acts 1979, No. 79-165, p. 276, §§ 3, 4.)

#### § 22-31-4. Liability for acts.

A person who acts in accordance with the terms of this chapter is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(Acts 1979, No. 79-165, p. 276, § 5.)

### Chapter 32, Southeast Interstate Low-Level Radioactive Waste Management Compact

#### § 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. Expedient 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.

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### 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.

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- I. "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



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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.

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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:

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(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.

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### 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;

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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

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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.

(Acts 1982, No. 82-328, p. 441, § 1; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1983, No. 83-511, p. 720, § 1; Acts 1984, No. 84-259, § 1; Acts 1988, No. 88-534, p. 804, § 1.)

#### **§ 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.

(Acts 1982, No. 82-328, p. 441, § 2; Acts 1983, No. 83-511, p. 720, § 2; Acts 1988, No. 88-534, p. 804, § 2.)

#### **§ 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.

(Acts 1982, No. 82-328, p. 441, § 3; Acts 1983, No. 83-511, p. 720, § 3.)

#### **§ 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.

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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.

(Acts 1982, No. 82-328, p. 441, § 4; Acts 1983, No. 83-511, p. 720, § 4.)

### **§ 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



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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 in-state 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.

(Acts 1982, No. 82-328, p. 441, § 5; Acts 1983, No. 83-511, p. 720, §§ 5, 6.)

**§ 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.

(Acts 1982, No. 82-328, p. 441, § 6; Acts 1983, No. 83-511, p. 720, § 7.)

**§ 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.

(Acts 1982, No. 82-328, p. 441, § 7.)

**§ 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.

(Acts 1982, No. 82-328, p. 441, § 8.)

**§ 22-32-9. Effective date.**

The provisions of this chapter became effective August 15, 1983.

(Acts 1982, No. 82-328, p. 441, § 11; Acts 1983, No. 83-511, p. 720, § 8.)

### Chapter 37A, Alabama Lead Reduction Act of 1997

#### § 22-37A-1. Short title.

This chapter may be cited as the Alabama Lead Reduction Act of 1997.

(Acts 1997, No. 97-553, p. 975, § 1.)

#### § 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:

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- 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.

(Acts 1997, No. 97-553, p. 975, § 2.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 3.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 4.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 5.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 6.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 7.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 8.)

### **§ 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.

(Acts 1997, No. 97-553, p. 975, § 9.)



### Title 26, Infants and Incompetents Chapter 1, General Provisions

#### **§ 26-1-1. Age of majority designated as 19 years.**

(a) Any person in this state, at the arrival at the age of 19 years, shall be relieved of his or her disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age. No law of this state shall discriminate for or against any person between and including the ages of 19 and 21 years solely on the basis of age.

(b) This section shall also apply to any person who arrived at the age of 19 and 20 years before July 22, 1975, but shall not abrogate any defense or abridge any remedy available to him or her prior to such date.

(c) All laws or parts of laws which read "under the age of 21 years" hereafter shall read "under the age of 19 years." Wherever the words "under the age of 21 years" appear in any law limiting the legal rights and abilities of persons under such age, such words shall be construed to mean under the age of 19 years.

(d) Notwithstanding subsection (c), nothing in this section shall be deemed to repeal any provision of Chapter 19 of Title 15.

(e) Notwithstanding subsection (a), an honorably discharged veteran who is under the age of 19 shall be permitted to enter into a contract for the purchase of a motor vehicle.

(f) Notwithstanding subsection (a), or any other provision of law to the contrary, a person who is 18 years of age or older may consent to participate in research conducted by a college or university that is accredited by a federally recognized accrediting agency if the research has been approved by the Institutional Review Board of the institution.

(Acts 1975, No. 77; Act 2012-415, p. 1127, § 1; Act 2015-167, § 1.)

#### **§ 26-1-3.1. Blood donations by persons 17 or older; blood donations by persons 16 years of age; blood or plasma donations by persons 18 or older.**

(a) A person who is 17 years of age or older may consent to donate blood in a voluntary and noncompensatory blood donation program without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

(b) A person who is 16 years of age may donate blood in a voluntary and noncompensatory blood donation program if the person obtains written permission from the person's parent or guardian.

(c) A person 18 years of age or older may consent to donate blood or plasma without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

(Act 2007-395, p. 789, § 1; Act 2015-51, § 1.)

### Chapter 14, Reporting of Child Abuse and Neglect

#### § 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.

(Acts 1975, No. 1124, p. 2213, § 1; Acts 1981, No. 81-615, p. 1031; Acts 1981, No. 81-789, p. 1387; Acts 1993, 1st Ex. Sess., No. 93-890, p. 162, § 2.)

#### § 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.

(Acts 1975, No. 1124, p. 2213, § 1.)

### § 26-14-3. Mandatory reporting.

(a) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, physical therapists, nurses, public and private K-12 employees, school teachers and officials, peace officers, law enforcement officials, pharmacists, social workers, day care workers or employees, mental health professionals, employees of public and private institutions of postsecondary and higher education, 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 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.

(g) Commencing on August 1, 2013, a public or private employer who discharges, suspends, disciplines, or penalizes an employee solely for reporting suspected child abuse or neglect pursuant to this section shall be guilty of a Class C misdemeanor.

(Acts 1965, No. 563, p. 1049, § 1; Acts 1967, No. 725, p. 1560; Acts 1975, No. 1124, p. 2213, § 1; Acts 1993, 1st Ex. Sess., No. 93-890, p. 162, § 3; Act 2003-272, p. 645, § 1; Act 2013-201, p. 416, § 1.)

### **§ 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.

(Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 26-14-5. Contents of reports.**

The reports provided for in this chapter shall state, if known, the name of the child, his or her whereabouts, the names and addresses of the parents, guardian, or caretaker, and the character and extent of his or her injuries. The written report shall also contain, if known, any evidence of previous injuries to the 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.

(Acts 1965, No. 563, p. 1049, § 2; Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 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 or her 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 or her 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.

(Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 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.

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- (3) All other reports of suspected child abuse and neglect shall be investigated by the Department of Human Resources.

(Acts 1993, 1st Ex. Sess., No. 93-890, p. 162, § 1.)

### § 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.

(Acts 1975, No. 1124, p. 2213, § 1.)

### § 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 or her 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 or her agents, and the 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 or her 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:

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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.

(Acts 1992, 2nd Ex. Sess., No. 92-704, p. 176, § 1.)

### **§ 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 infants with disabilities and 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.

(Acts 1993, 1st Ex. Sess., No. 93-890, p. 162, § 4; Act 98-371, p. 673, § 1.)

### **§ 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;



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- (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 the 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

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(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 the five years, at which time the department shall expunge the 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.

(Acts 1975, No. 1124, p. 2213, § 1; Acts 1992, 2nd Ex. Sess., No. 92-704, p. 176, § 2; Act 98-371, p. 673, § 1.)

### **§ 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.

(Acts 1965, No. 563, p. 1049, § 3; Acts 1975, No. 1124, p. 2213, § 1; Act 98-371, p. 673, § 1.)

### **§ 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.

(Acts 1965, No. 563, p. 1049, § 4; Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 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 the child.

(Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 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.

(Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 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.

(Acts 1965, No. 563, p. 1049, § 5; Acts 1975, No. 1124, p. 2213, § 1.)

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### Chapter 16, Child Abuse and Neglect Article 1, Child Abuse and Neglect Prevention

#### § 26-16-1. Short title.

This article shall be known and may be cited as the Child Abuse and Neglect Prevention Act.

(Acts 1983, No. 83-736, p. 1198, § 1.)

#### § 26-16-2. Definitions.

As used in this article, the following words and phrases shall have the meanings herein ascribed to them:

- (1) CHILD. A person under 18 years of age.
- (2) CHILD ABUSE. Harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which harm occurs or is threatened through nonaccidental physical or mental injury; sexual abuse, which includes a violation of any provision of Article 4, Chapter 6, Title 13A.
- (3) CULTURAL COMPETENCY. The ability of an individual or organization to understand and act respectfully toward, in a cultural text, the beliefs, interpersonal styles, attitudes, and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.
- (4) DEPARTMENT. The Department of Child Abuse and Neglect Prevention.
- (5) LOCAL COUNCIL. An organization which meets the criteria described in Section 26-16-10.
- (6) NEGLECT. Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
- (7) ORGANIZATION. A nonprofit organization or a public agency which provides or proposes to provide child abuse and neglect prevention, early intervention services, or parent education.
- (8) PREVENTION PROGRAM. A system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian.
- (9) STATE BOARD. The State Child Abuse and Neglect Prevention Board created in Section 26-16-3.
- (10) TRUST FUND. The Children's Trust Fund established in the State Treasury.

(Acts 1983, No. 83-736, p. 1198, § 2; Act 98-601, p. 1313, § 1; Act 2006-228, p. 393, § 1.)

### **§ 26-16-3. Child Abuse and Neglect Prevention Board -- Board created; department created; director; staff.**

(a) The State Child Abuse and Neglect Prevention Board is created as an autonomous agency of the state government.

(b) There is created the Department of Child Abuse and Neglect Prevention which shall operate under the State Child Abuse and Neglect Prevention Board and consist of a director and such other employees of the department.

(c) There shall be a director of the department appointed by the Governor from a list of candidates submitted under Section 26-16-6(a)(2). The director shall not be a member of the state classified civil service. The director shall be compensated by a salary payable out of the State Treasury at the times and in the manner that the salary of other state officials is paid. The exact amount of the director's salary shall be set by the board.

(d) The director shall hire all staff required to exercise the powers and carry out the duties of the department with the approval of the state board. In carrying out the duties provided in subsection (b) of Section 26-16-6, the director shall coordinate these activities with the State Department of Human Resources, the Department of Mental Health, the Department of Public Health, the Department of Education, the Department of Public Safety, and other state agencies as needed. The director, with the approval of the state board, shall have the authority to hire outside the state classified civil service an executive assistant who shall serve at the pleasure of the director. The state board shall approve the number of staff members hired and their job descriptions and further shall set the rate of pay or compensation due the executive assistant. Each staff member except the director and his or her executive assistant shall be a member of the state classified civil service.

(e) The director shall serve as secretary of the state board.

(Acts 1983, No. 83-736, p. 1198, § 3; Acts 1985, No. 85-698, p. 1138; Act 98-601, p. 1313, § 1; Act 2006-228, p. 393, § 1.)

### **§ 26-16-3.1. Child Abuse and Neglect Prevention Board -- Transfer of rights, duties, property, etc., to Department of Child Abuse and Neglect Prevention.**

(a) Except as necessary to comply with this section and Sections 26-16-2, 26-16-3, 26-16-4, and 26-16-6, the rights, duties, property, real or personal, and all other effects existing in the name of the State Child Abuse and Neglect Prevention Board shall be transferred to the Department of Child Abuse and Neglect Prevention. Any reference to the state board in any existing law, contract, or other instrument, except as otherwise provided in this section or Sections 26-16-2, 26-16-3, 26-16-4, and 26-16-6, shall be deemed a reference to the Department of Child Abuse and Neglect Prevention.

(b) A reasonable transition period for the name change shall be allowed to permit an orderly and cost-effective transition, relating particularly to the use of equipment, and supplies of all letterhead, business cards, forms, and any other materials in use by the state board containing the name State Child Abuse and Neglect Prevention Board shall continue to be used by the Department of Child Abuse and Neglect Prevention until the supplies are exhausted. Replacement supplies shall contain the name of the Department of Child Abuse and Neglect Prevention.

(c) The Code Commissioner, pursuant to Section 29-7-8, at times determined appropriate, shall implement this statutory name change in applicable sections of this code.

(Act 2006-228, p. 393, § 2.)

**§ 26-16-4. Child Abuse and Neglect Prevention Board -- Composition; terms; officers and committees; compensation.**

(a) The state board shall be composed of the following 14 members:

- (1) The Commissioner of the State Department of Human Resources, the State Mental Health Officer, the State Health Officer, the State Superintendent of Education, and the Director of Public Safety or designees authorized to speak on their behalf.
- (2) Nine public members appointed by the Governor, one from each of the seven congressional districts into which the state is divided for the purpose of electing representatives in the United States Congress, and two from the state at large. As a group, the public members shall demonstrate knowledge in the area of child abuse and neglect prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all of the following categories: organized labor, the business community, the religious community, the legal community, professional providers of child abuse and neglect prevention services, and volunteers in child abuse and neglect prevention services.

(b) The term of each public member shall be three years, except that of the public members first appointed, three shall serve for three years, three for two years, and three for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes such appointments. A public member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(c) The Governor shall designate a chair of the state board from among the public members, which chair shall serve in that position at the pleasure of the Governor. The state board may elect other officers and committees as it considers appropriate.

(d) The actual and necessary per diem compensation and the schedule for reimbursement of expenses for the public members of the state board shall be the same as prescribed by law for state employees when traveling on state business. The compensation and reimbursement, the salaries of the director and staff, and all actual and necessary operating expenses of the department and the members of the state board shall be paid from the trust fund, pursuant to an authorization as provided in Section 26-16-9.

(Acts 1983, No. 83-736, p. 1198, § 4; Act 2006-228, p. 393, § 1.)

**§ 26-16-5. Child Abuse and Neglect Prevention Board -- Public biannual meetings required; notice; books, records, etc., to be public records.**

(a) The business of the state board shall be conducted at public meetings held in compliance with Section 13A-14-2. The board shall hold two regular public meetings each year and may hold such special meetings as in

the opinion of the chairman or a majority of the board are needed to transact the business of the board. Notice of the time, date, and place of each meeting shall be given in the manner and for the time prescribed therefor by the board.

(b) All books, records, and documents pertaining to the board or the performance of any official function of the board shall be public records and open to the public at all reasonable times.

(Acts 1983, No. 83-736, p. 1198, § 5; Acts 1988, 1st Ex. Sess., No. 88-882, p. 427, § 1.)

### **§ 26-16-6. Child Abuse and Neglect Prevention Board -- Duties and functions of board and department.**

(a) The state board shall do all of the following:

- (1) Meet not less than twice annually at the times prescribed in Section 26-16-5(a).
- (2) Transmit to the Governor a list of individuals recommended to fill the position of director.

(b) The department, with the approval of the state board, shall do all of the following:

- (1) Annually develop a state plan for the distribution of funds from the trust fund. The plan shall assure that an equal opportunity exists for establishment of prevention programs and receipt of trust fund money among all geographic areas in this state. The plan shall be transmitted to the Speaker of the House, the President Pro Tempore of the Senate, to the Governor, and to the Government Finance and Appropriations Committee of the House of Representatives, or its successor, and the Committee on Finance and Taxation General Fund of the Senate, or its successor.
- (2) Provide for the coordination and exchange of information on the establishment and maintenance of local councils and prevention programs.
- (3) Develop and publicize criteria for the receipt of trust fund money by eligible local councils, eligible prevention programs, and eligible family resource and support programs and centers.
- (4) Review, approve, and monitor the expenditure of trust fund money by local councils and prevention programs.
- (5) Provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect; encourage professional persons and groups to recognize and deal with problems of child abuse and neglect; make information about the problems of child abuse and neglect available to the public and organizations and agencies which deal with problems of child abuse and neglect; and encourage the development of community prevention programs and family resource and support programs and centers.
- (6) Establish a procedure for the annual, internal evaluation of the functions, responsibilities, and performance of the department, and include the evaluation in the state plan.

(c) The department, with the approval of the state board, shall enter into contracts with public or private agencies to fulfill the requirements of subdivision (5) of subsection (b) and may contract to fulfill the other requirements of subsection (b).

(Acts 1983, No. 83-736, p. 1198, § 6; Act 98-601, p. 1313, § 1; Act 2006-228, p. 393, § 1.)

**§ 26-16-7. Child Abuse and Neglect Prevention Board -- Recommendation to Governor, etc., of changes in state programs which will reduce problem of child abuse, etc.**

The state board may recommend to the Governor and the Legislature changes in state programs, statutes, policies, budgets, and standards which will reduce the problem of child abuse and neglect, improve coordination among state agencies that provide prevention services, and improve the condition of children and parents or guardians who are in need of prevention program services.

(Acts 1983, No. 83-736, p. 1198, § 7.)

**§ 26-16-8. Child Abuse and Neglect Prevention Board -- Acceptance of federal funds; authorized; conditions; disposition of funds.**

The state board may accept federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the Legislature to continue the purposes for which the federal funds are made available. All funds received in the manner described in this section shall be transmitted to the State Treasurer for deposit in the trust fund.

(Acts 1983, No. 83-736, p. 1198, § 8.)

**§ 26-16-9. Child Abuse and Neglect Prevention Board -- Disbursement generally.**

(a) The state board may authorize the disbursement of available money from the trust fund exclusively for the following purposes, which are listed in the order of preference for expenditure:

- (1) To fund a private nonprofit or public organization in the development or operation of a program if at least all of the following conditions are met:
  - a. The appropriate local council has reviewed the program. This paragraph does not apply if a local council does not exist for the geographic area to be served by the program.
  - b. The organization demonstrates an ability to match, through money or in-kind services, 50 percent of the amount of any trust fund money received. Not more than 50 percent of the local match shall be in in-kind services. In-kind services are subject to the approval of the state board.
  - c. The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance.



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d. The organization demonstrates the ability to provide programs for the primary prevention of child abuse and neglect, including, but not limited to, programs to promote public awareness of the need to prevent child abuse and neglect; community-based family resource and support programs on strengthening family skills, including, but not limited to, parent education, prenatal care, prenatal bonding, child development, health and nutrition, care of children with special needs, and coping with family stress; and community-based programs relating to crisis care, early identification of children at risk of child abuse and neglect, and education, training, and support groups for parents, children, and families.

e. Other conditions that the state board may deem appropriate.

(2) To fund local councils.

(3) To fund the state board created in Section 26-16-3 for the actual and necessary expenses that the board incurs in performing its duties.

(b) Authorizations for disbursement of trust fund money under subdivision (a)(3) shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money under subdivisions (a)(1) and (2) to encourage the direct provision of services to prevent child abuse and neglect.

(Acts 1983, No. 83-736, p. 1198, § 9; Act 98-601, p. 1313, § 1.)

§ 26-16-10. Child Abuse and Neglect Prevention Board -- Criteria for making grants to local councils.

In making grants to a local council, the state board shall consider the degree to which the local council meets the following criteria:

(1) Has as its primary purpose the development and facilitation of a collaborative community prevention program in a specific geographical area. The prevention program shall utilize trained volunteers and existing community resources wherever practicable.

(2) Is administered by a board of directors composed of an equal number of members from the following two groups:

a. A representative from each of the following local agencies: The county department of human resources, the county public health department, a mental health representative, the office of the prosecuting attorney, a local law enforcement agency, a school district, and a number of private, local agencies that provide treatment or prevention services for abused and neglected children and their parents or guardians. The number of private agencies to be represented on the local council shall be designated in the bylaws of the local council by the remaining members.

b. Members of the local council elected by the membership. The elected members shall represent the demographic composition of the community served, as far as practicable.

(3) Does not provide direct services except on a demonstration project basis, or as a facilitator of interagency projects.

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- (4) Demonstrates a willingness and ability to provide prevention program models and consultation organizations and communities regarding prevention program development and maintenance.
- (5) Demonstrates an ability to match, through money or in-kind services, 50 percent of the amount of any trust fund money received. Not more than 50 percent of the local match shall be in in-kind services. In-kind services are subject to the approval of the board.
- (6) Other criteria that the state board deems appropriate.

(Acts 1983, No. 83-736, p. 1198, § 10; Act 98-601, p. 1313, § 1.)

### **§ 26-16-11. Child Abuse and Neglect Prevention Board -- Promulgation of rules.**

Not later than two years after August 8, 1983, the state board shall promulgate rules pursuant to the Alabama Administrative Procedure Act, Act No. 81-855 of 1981, now codified as Chapter 22 of Title 41.

(Acts 1983, No. 83-736, p. 1198, § 11.)

### **§ 26-16-12. Review of board conducted every five years.**

A thorough, independent review of the functions, responsibilities, and performance of the state board shall be completed each five years after August 8, 1983, and transmitted to the individuals listed in Section 26-16-6(a)(3).

(Acts 1983, No. 83-736, p. 1198, § 12.)

### **§ 26-16-13. State agencies to share information concerning investigations of child abuse or neglect.**

Law enforcement agencies of this state, social service agencies of this state, and state and local departments of human resources shall share information concerning investigations of suspected or actual child abuse or neglect when the sharing of such information is necessary to prevent or discover abuse or neglect of children.

(Acts 1985, No. 85-699, p. 1140.)

### Article 5, Child Death Review Teams

#### § 26-16-90. Legislative findings.

The Legislature finds and declares that: Every child is entitled to live in safety and in health and to survive into adulthood; there are concerns about the adequacy of efforts in this state to identify deaths; and recognizing that no single agency or person is responsible, that multidisciplinary, multiagency child death review teams are methods of achieving the state policy.

(Act 97-893, p. 252, § 1.)

#### § 26-16-91. Definitions.

The following words and phrases have the following meanings unless the context clearly indicates otherwise:

- (1) AUTOPSY. An external and internal examination, medical history, and record review.
- (2) CHILD. A person who has not yet reached his or her eighteenth birthday.
- (3) CHILD DEATHS TO BE REVIEWED. Those deaths which are unexpected or unexplained.
- (4) COMMUNITY. The people and area within the local team jurisdiction.
- (5) COUNTY. The county in which a deceased child resided prior to his or her death.
- (6) INVESTIGATION. In the context of child death, includes all of the following:
  - a. A postmortem examination which may be limited to an external examination or may include an autopsy.
  - b. An inquiry by law enforcement agencies having jurisdiction into the circumstances of the death, including a scene investigation and interview with the child's parents, guardians, or caretakers and the person who reported the child's death.
  - c. A review of information regarding the child from relevant agencies, professionals, and providers of medical care.
- (7) LOCAL TEAM. A multidisciplinary, multiagency child death review team established for a county or judicial circuit pursuant to Section 26-16-96.
- (8) MEETING. In-person meetings and conferences as well as those through telephone and other live electronic means. Individual participation in meetings through electronic conferencing may be authorized through the state team chairperson or designee. Local teams may not meet by electronic means.

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(9) PERSON ACTING IN A PROFESSIONAL CAPACITY. A health practitioner, law enforcement officer, employee of a local department of social services, undertaker, funeral home director or employee of a funeral home, or firefighter, who is acting in the course of his or her professional duties.

(10) PROVIDER OF MEDICAL CARE. Any health practitioner who personally provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment.

(11) STATE TEAM. The State Child Death Review Team.

(12) UNEXPECTED/UNEXPLAINED. In referring to a child's death, includes all deaths which, prior to investigation, appear possibly to have been caused by trauma, suspicious or obscure circumstances, child abuse or neglect, or other agents or Sudden Infant Death Syndrome.

(Act 97-893, p. 252, § 2.)

### **§ 26-16-92. State policy.**

It is the policy of this state that responding to unexpected/unexplained child deaths is a state and a community responsibility and must include an accurate and complete determination of the cause of death.

(Act 97-893, p. 252, § 3.)

### **§ 26-16-93. State Child Death Review Team -- Created.**

(a) There is hereby created the State Child Death Review Team, referred to in this article as the state team.

(b) The state team shall be situated within the Alabama Department of Public Health for administrative and budgetary purposes.

(c) The state team shall be a multidisciplinary, multiagency review team, composed of 28 members, the first 7 of whom are ex officio. The ex officio members may designate representatives from their particular departments or offices to represent them on the state team who may vote and exercise all other prerogatives of the appointment. The members of the state team shall include all of the following:

- (1) The Jefferson County Coroner, Medical Examiner.
- (2) The State Health Officer who shall serve as chair.
- (3) One member appointed by the Alabama Sheriff's Association.
- (4) The Director of the Alabama Department of Forensic Sciences.
- (5) The Commissioner of the Alabama Department of Human Resources.
- (6) The Commissioner of the Alabama Department of Mental Health.

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- (7) The Director of the Alabama Department of Public Safety.
- (8) A pediatrician with expertise in SIDS appointed by the Alabama Chapter, American Academy of Pediatrics.
- (9) A health professional with expertise in child abuse and neglect appointed by the Alabama Department of Public Health.
- (10) A family practice physician appointed by the Alabama Academy of Family Physicians.
- (11) A pediatric pathologist appointed by the Alabama Department of Forensic Sciences.
- (12) Eight private citizens appointed by the Governor.
- (13) A member of the clergy appointed by the Governor.
- (14) A representative of the Alabama Coroner's Association.
- (15) A representative of the Alabama Network of Children's Advocacy Centers.
- (16) A representative of the Alabama Sheriff's Association.
- (17) A representative of the Alabama District Attorney's Association.
- (18) A specialist in pediatric emergency medicine appointed by the Alabama Medical Association.
- (19) A representative of the Alabama Association of Chiefs of Police.
- (20) Chair of the Senate Health Committee or his or her designee and the Chair of the House Health Committee or his or her designee.

(d) Members who are not ex officio shall serve for a three-year term and shall not serve more than two consecutive terms. Terms for these members shall be staggered.

(e) Staffing for the state team shall be provided through the Alabama Department of Public Health using funds appropriated for this article.

(f) The initial meeting of the state team shall be held within 60 days of September 11, 1997. Meetings shall be held at least quarterly thereafter.

(g) Fifteen members shall constitute a quorum for conducting all activities of the state team which may require a vote among the members. A simple majority of members present constituting a quorum shall be required for any affirmative vote.

(Act 97-893, p. 252, § 4.)

### § 26-16-94. State Child Death Review Team -- Purpose; duties.

The purpose of the state team is to decrease the risk and incidence of unexpected/unexplained child injury and death by undertaking all of the following duties:

- (1) Identifying factors which make a child at risk for injury or death.
- (2) Collecting and sharing information among state team members and agencies which provide services to children and families or investigate child deaths.
- (3) Making suggestions and recommendations to appropriate participating agencies regarding improving coordination of services and investigations.
- (4) Identifying trends relevant to unexpected/unexplained child injury and death.
- (5) Reviewing reports from local child death teams and, upon request of a local team, individual cases of child deaths.
- (6) Providing training and written materials to the local teams to assist them in carrying out their duties. Such written materials shall include model protocols for the operation of the local teams.
- (7) Developing a protocol for child death investigations, and revising the protocol as needed. The protocol for child death investigations shall not include any activity that causes public scrutiny of the family circumstances surrounding the subject death.
- (8) Undertaking a study of the operations of local teams considering training needs and service gaps. If the state team determines that changes to any statute, regulation, or policy is needed to decrease the risk and incidence of child injury and death, it shall propose and recommend changes to such statute, regulation, or policy in its annual report.
- (9) Educating the public in Alabama regarding the incidence and causes of child injury and death and the public role in aiding in reducing the risk of such injuries and deaths. The state team shall enlist the support of civil, philanthropic, and public service organizations in its performance of its education duties.
- (10) Developing and implementing such procedures and policies as are necessary for its own operation.
- (11) Providing the Governor and the Legislature with an annual written report which shall include, but not be limited to, the state team's findings and recommendations for each of its duties; and providing copies of such report to the public.
- (12) Determining, by consent of state team members, what protocols should be followed by team members for providing data and/or information to the state team as a whole.
- (13) Examining confidentiality and access to information laws, regulations, and policies for agencies with responsibilities for children, including health, public welfare, education, social services, mental health,

and law enforcement agencies, and determining whether those laws, regulations, or policies impede the exchange of information necessary to reduce the risk of injury and death. If the state team determines that such laws, regulations, or policies do impede the necessary exchange of information, it shall take prompt steps to propose and recommend changes to the appropriate state agencies.

(Act 97-893, p. 252, § 5.)

### **§ 26-16-95. Liability of team members.**

State and local team members shall be immune from any and all civil and criminal liability in connection with their good faith participation on the state or local team and all activities associated therewith, provided however, this immunity shall not be available in the event any state or local team member violates the provisions of confidentiality enumerated in this article.

(Act 97-893, p. 252, § 6.)

### **§ 26-16-96. Local child death review teams.**

(a) There are hereby created local child death review teams.

(b) Each county of the state shall be included in a local multidisciplinary, multiagency child death review team's jurisdiction. The district attorney shall initiate the establishment of local teams by convening a meeting of potential team members within 60 days of September 11, 1997. In the absence of the initiation of a child death review team by the district attorney within 60 days of September 11, 1997, the local public health representative will initiate the first team meeting. During this meeting, participants shall recommend whether to establish a team for that county alone or to establish a team with and for the counties within that judicial circuit.

(c) The local team shall include, but not be limited to, all of the following members, the first five of whom are ex officio. The ex officio members may designate representatives from their particular departments or offices to represent them on the local team who may vote and exercise all other prerogatives of the appointment. The members of the local team include the following:

- (1) The county health officer.
- (2) The director of the county department of human resources.
- (3) The county district attorney.
- (4) The medical examiner.
- (5) The local coroner.
- (6) An investigator with a local sheriff's department who is familiar with homicide investigation.
- (7) An investigator with a local police department who is familiar with homicide investigation.

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(8) A pediatrician, or if no pediatrician is available a primary care physician, appointed by the county medical society.

(9) A representative from a local child advocacy center, if one exists.

(d) The local team shall select a chair from among its members. The chair shall serve a term of three years and may serve more than one consecutive term.

(e) Members who are not ex officio shall serve for a three-year term and may succeed themselves but shall not serve more than two consecutive terms. Terms for these members shall be staggered.

(f) The initial meeting of the local team shall be held within 60 days of September 11, 1997.

(g) A quorum for conducting all activities shall be determined by the local team. A simple majority of members present constituting a quorum shall be required for any affirmative vote.

(h) The purpose of the local team is to decrease the incidence of unexpected/unexplained child injury and death by the following means:

(1) Identifying factors which make a child at risk of injury or death.

(2) Sharing information among the agencies which provide services to children and families or which investigate child deaths or provide services.

(3) Improving local investigations of unexpected/unexplained child deaths by participating agencies.

(4) Improving existing services and systems and assisting in the establishment of additional services and systems to fill in gaps in the community.

(5) Identifying trends relevant to unexpected/unexplained child injury and death.

(6) Educating the local public regarding the incidence and causes of child injury and death and the public role in aiding and reducing the risk of such injuries and deaths.

(i) To achieve its purpose, the local team shall perform all the following duties and functions:

(1) Establish and implement a protocol for the local team within two months of receipt of the model protocols from the state team as required by Section 26-16-93.

(2) Respond by recording all child deaths and reviewing individual unexpected/unexplained child deaths in accordance with protocols from the state team.

(3) Meet as deemed necessary by the local chair, but not less than annually, to review the status of unexpected/unexplained child death cases, propose recommendations for improving coordination of services and investigations between member agencies, and propose changes within the member agencies which shall reduce the risk and incidence of unexpected/unexplained child injury and death.



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- (4) Collect data as required for submittal to the state team.
- (5) Provide reports to the state team following each team meeting which shall include data on child deaths, steps taken to improve coordination of services and investigations, steps taken to implement changes within member agencies, and advice on needed changes to law, policy, and practice which shall aid in reducing the risk and incidence of child injury and death.

(j) At a local team meeting to review unexpected/unexplained child deaths, information shall be provided as specified below, except where otherwise protected by statute, to carry out each of the following of the local team's purpose and duties:

- (1) The providers of medical care, the physician representative, or the medical examiner, shall provide pertinent health and medical information regarding a child whose death is being reviewed by the local team.
- (2) State, county, or local government agencies shall provide all of the following data on forms developed by the state team for reporting to local child death review teams:
  - a. Birth information for children who died at less than one year of age including confidential information collected for medical and health use.
  - b. Death information for children who have not reached their eighteenth birthday.
  - c. Law enforcement investigative data, medical examiner investigative data, parole and probation information, and records.
  - d. Medical care, including dental, mental, and prenatal health care.
  - e. Pertinent information from any social services agency that provided services to the child or family.

(Act 97-893, p. 252, § 7.)

### **§ 26-16-97. Meetings; disclosure of information; violation; penalties.**

- (a) Meetings of the state team and of local teams shall be closed to the public and not subject to the State Sunshine Law when the state team or local team is discussing a specific child death.
- (b) Information identifying a deceased child, a family member, guardian or caretaker of a deceased child, or an alleged or suspected perpetrator of abuse or neglect upon a child, may not be disclosed during a meeting which is open to the public.
- (c) Information regarding the involvement of any agency with the deceased child or family may not be disclosed during a public meeting.

(d) Nothing in this section shall be construed as preventing the state team or a local team from requesting the attendance at a team meeting of a person who has information relevant to the team's exercise of its purpose and duties.

(e) Any person who intentionally violates any portion of this section commits a Class C misdemeanor and shall be punished as prescribed by law.

Any person who violates the provisions of confidentiality in any proceedings conducted by either a local team or the state team shall be removed from the team in addition to any other penalty.

(Act 97-893, p. 252, § 8.)

### **§ 26-16-98. Confidentiality of information and records.**

(a) All information and records acquired by the state team or by a local team, in the exercise of its purpose and duties pursuant to this article, are confidential, exempt from disclosure under Section 41-13-1, and may only be disclosed as necessary to carry out the team's duties and purposes.

(b) Reports of the state team and of a local team which do not contain any information that would permit the identification of any person to be ascertained shall be public information.

(c) Except as necessary to carry out a team's purpose and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting which is not public under Section 26-16-97, nor shall they disclose any information the disclosure of which is prohibited by this section.

(d) Members of a team, persons attending a team meeting, and persons who present information to a team may release information to such government agencies as is necessary for the purpose of carrying out assigned team duties.

(e) Information, documents, and records of the state team or of a local team are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by a team.

(f) Moreover, notwithstanding subsections (a) and (b), those criminal records, court records, and other records that have been open to public inspection before September 11, 1997, shall remain open.

(Act 97-893, p. 252, § 9.)

### **§ 26-16-99. Duties of coroner/medical examiner.**

The duties of the coroner/medical examiner shall include the following:

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- (1) Except in locations where a county medical examiner has jurisdiction, the coroner or a person acting in a professional capacity shall report the death of a child by telecommunications to the medical examiner or his or her representative as soon as possible upon discovery.
- (2) Upon receipt of a report of a child death, the county medical examiner or state medical examiner shall determine whether the death appears to be unexpected/unexplained. If the death appears to be unexpected/unexplained, the county medical examiner or state medical examiner shall commence an investigation of the death consisting of a postmortem examination conducted by a state or county medical examiner. Upon the recommendation of the state medical examiner, with authorization from a district attorney, an autopsy may be conducted. A county medical examiner may conduct an autopsy at his or her discretion as authorized by existing statutes. This section should not be interpreted as mandating an autopsy. In a case where an autopsy is not performed, the postmortem examination shall consist of an external examination.

(Act 97-893, p. 252, § 10.)

### Article 6, Sudden Unexplained Infant Death Investigation Act

#### § 26-16-110. Short title.

This article shall be known and may be cited as the Sudden Unexplained Infant Death Investigation Act.

(Act 2011-705, p. 2184, § 1.)

#### § 26-16-111. Legislative findings.

The Legislature finds and declares all the following:

- (1) Protection of the health and welfare of the infants of this state is a goal of its people and the unexpected or unexplained death of an infant is an important public health concern that requires legislative action.
- (2) Death scene investigations and findings thereof can be particularly important in accurately diagnosing the manners and causes of infant deaths.
- (3) Collecting accurate data on the cause and manner of unexpected infant deaths will better enable the state to protect infants from preventable deaths and will help reduce the incidence of infant deaths.

(Act 2011-705, p. 2184, § 2.)

#### § 26-16-112. Definitions.

For purposes of this article, the following words shall have the following meanings:

- (1) FORENSIC PATHOLOGIST. A pathologist trained or with experience in forensic pathology, licensed to practice medicine and surgery or osteopathic medicine and surgery in the State of Alabama and board certified by the American Board of Pathology, or under the direct supervision of a physician with these qualifications.
- (2) INFANT DEATH. The sudden death of a person less than one year of age whose death occurs outside the direct care of a physician in a hospital or other health care setting.
- (3) SUDDEN UNEXPLAINED INFANT DEATH (SUID). The sudden death of an infant less than one year of age whose death occurs outside the direct care of a physician in a hospital or other health care setting and whose cause of death is not reasonably ascertainable after a thorough investigation and examination by the person signing the death certificate.

(Act 2011-705, p. 2184, § 3.)

### **§ 26-16-113. Alabama Sudden Unexplained Infant Death Investigation Team.**

(a) There is established the Alabama Sudden Unexplained Infant Death Investigation (SUIDI) Team which for administrative purposes shall be organized within the Department of Public Health as a subcommittee of the State Child Death Review Team. The team is charged with the development, maintenance, and provision of SUIDI training curricula for the State of Alabama. The development and approval of infant death investigation protocol and reporting forms are not subject to the rule-making requirements of the Administrative Procedure Act.

(b) In order to implement this article, the SUIDI Team shall do all of the following:

- (1) Establish infant death scene investigation protocol.
- (2) Develop and maintain the training standards, policies, and procedures related to investigating and reporting SUID in Alabama.
- (3) Approve a standardized reporting form to be used in conjunction with the above procedures.

(Act 2011-705, p. 2184, § 4.)

### **§ 26-16-114. Investigations; training; protocol and reporting forms.**

(a) An investigation shall be performed utilizing protocol and forms approved by the Alabama Sudden Unexplained Infant Death Investigation (SUIDI) Team in all incidents of infant deaths.

(b) All law enforcement agencies within this state are responsible to ensure that all personnel who investigate infant deaths obtain training developed by the SUIDI Team on investigation protocol and completing reporting forms.

(c) All elected and appointed coroners and deputy coroners are responsible for obtaining training on investigation protocol and completing reporting forms in cases of infant deaths.

(d) The training, which shall be developed by the SUIDI Team, shall include a focus on the importance of being sensitive to the grief of family members and shall be consistent with the death scene investigation protocol approved by the SUIDI Team.

(e) The Alabama Department of Public Health shall be responsible for developing a team of trainers to provide infant death investigation training to law enforcement personnel, as well as coroners and deputy coroners.

(f) The Alabama Department of Public Health shall be responsible for disseminating infant death investigation protocol and reporting forms to the various law enforcement associations and the Alabama Coroner's Association within the state which shall in turn disseminate the protocol and reporting forms to the respective law enforcement agencies and coroners in this state.

(g) When changes occur in protocol pertaining to SUID investigations, the Alabama Department of Public Health shall promptly notify various law enforcement associations and the Alabama Coroner's Association within the

state. The changes shall then be communicated in a timely manner to the respective law enforcement agencies and coroners for dissemination to their enforcement personnel.

(Act 2011-705, p. 2184, § 5.)

**§ 26-16-115. Duties of county coroner or medical examiner.**

(a) In every case of SUID, the county coroner or medical examiner shall be notified and cooperate and assist law enforcement with the death investigation.

(b) The county coroner or medical examiner shall obtain legal authorization to send the infant to a forensic pathologist for examination.

(c) The county coroner or medical examiner shall contact the appropriate law enforcement personnel to conduct a death investigation according to the protocol developed by the SUIDI Team. The investigation shall be initiated within 24 hours of the time the appropriate law enforcement personnel is contacted.

(d) The county coroner or medical examiner shall send a copy of the SUIDI Team approved investigative form to the forensic pathologist conducting the autopsy.

(Act 2011-705, p. 2184, § 6.)

### Chapter 21, Parental Consent to Performing Abortion upon Minor

#### § 26-21-1. Legislative purpose and findings.

(a) It is the intent of the Legislature in enacting this parental consent provision to further the important and compelling state interests of: (1) protecting minors against their own immaturity, (2) fostering the family structure and preserving it as a viable social unit, and (3) protecting the rights of parents to rear children who are members of their household.

(b) The Legislature finds as fact that: (1) immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, (2) the medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature, (3) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related, (4) parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child, and (5) parents who are aware that their minor daughter has had an abortion may better insure that she receives adequate medical attention after her abortion. The Legislature further finds that parental consultation is usually desirable and in the best interests of the minor.

(c) The Legislature further finds that the United States Supreme Court has held under certain circumstances a minor may seek permission to have an abortion without her parent's consent by petitioning a court. The Legislature enacts a judicial by-pass procedure for the purposes of meeting the Constitutional standard and finds that in order to do substantial justice it is necessary that the Alabama courts be provided guidance in determining appropriate procedure and evidence.

(d) The Legislature further finds the public policy of the State of Alabama is to respect life and provide safeguards to protect life in the criminal, health, and other laws of the State of Alabama; that in respecting and protecting life, there is included the unborn life of a child whose life may be subject to termination before birth by abortion and that when the mother of the unborn life is a minor who seeks an abortion through the judicial by-pass procedure, it is the interest of the State of Alabama to not only establish and protect the rights of the minor mother, but also to protect the state's public policy to protect unborn life; the protection of these interests is done, in part, by requiring judges to make determinations pursuant to the judicial by-pass procedure and to require judges be provided with sufficient evidence and information upon which they may make informed and proper decisions.

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

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

(Acts 1987, No. 87-286, p. 397, § 1; Act 2014-445, p. 1660, § 1.)

### **§ 26-21-2. Definitions.**

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

- (1) MINOR. Any person under the age of 18 years;
- (2) EMANCIPATED MINOR. Any minor who is or has been married or has by court order otherwise been legally freed from the care, custody, and control of her parents;
- (3) ABORTION. The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver the unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child. The term “abortion” as used herein does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman where the unborn child has a lethal anomaly. For the purposes of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7, a “lethal anomaly” means the child would die at birth, or be stillborn. For purposes of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7, the term “ectopic pregnancy” means any pregnancy resulting from a fertilized egg that was implanted or attached outside the uterus. The term “ectopic pregnancy” also includes a pregnancy resulting from a fertilized egg implanted inside the cornu of the uterus.
- (4) MEDICAL EMERGENCY. A condition that, absent an abortion performed before the requirements of Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7 are met, and based on the applicable standard of care, is likely to result in the death of the pregnant woman or is likely to result in substantial irreversible impairment of a major bodily function.

(Acts 1987, No. 87-286, p. 397, § 2; Act 2014-445, p. 1660, § 1.)

### **§ 26-21-3. Written consent of parent or guardian to performing abortion on unemancipated minor; written statement where abortion to be performed on emancipated minor; waiver of consent requirement; coercion; forms.**

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

(b) The physician who shall perform the abortion or his or her agents shall obtain or be provided with the written consent from either parent or legal guardian stating the names of the minor, parent, or legal guardian, that he or she is informed that the minor desires an abortion and does consent to the abortion, the date, and the consent shall be signed by either parent or legal guardian. The signatures of the parents, parent, or legal guardian shall be affixed and the information required in this subsection shall be on a form to be provided by,



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

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

(d) A minor, including a ward of the state, who elects not to seek or does not or cannot for any reason, including unavailability or refusal by either or both parents or legal guardian, obtain consent from either of her parents or legal guardian under this section, may petition, on her own behalf, the juvenile court, or court of equal standing, in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this section pursuant to the procedure of Section 26-21-4.

(e) A parent, legal guardian, custodian, or any other person, shall not coerce a minor to have an abortion performed.

(f) The Department of Public Health shall propose within 90 days of July 1, 2014, the forms required in subsections (b) and (c).

(Acts 1987, No. 87-286, p. 397, § 3; Act 2014-445, p. 1660, § 1.)

**§ 26-21-4. Procedure for waiver of consent requirement -- Notice to parents or guardian prohibited; participation in proceedings; right to counsel; assistance in preparing petition; confidentiality; contents of petition; precedence of proceeding; rules of procedure; waiver of consent; guardian ad litem for interests of unborn child; findings and conclusions; appeal; no fees or costs; related criminal charges.**

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

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

(c) The court shall insure that the minor is given assistance in preparing and filing the petition. Such assistance may be provided by court personnel including intake personnel of juvenile probation services. The minor's identity shall be kept confidential, but her identity may be made known to the judge, any guardian ad litem, the district attorney or any representative of the district attorney's office of the county where the minor is a resident or the county where the abortion is to be performed, any appropriate court personnel, any witness who has a need to know the minor's identity, or any other person determined by the court who needs to know. Any person who is given the identity of the minor shall keep her name confidential and shall not give it to any other person, unless otherwise ordered by the court.

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

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

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

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

(e) Court proceedings shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case, except as provided herein, shall the court fail to rule within 48 hours of the time the petition is filed, Saturdays, Sundays, and legal holidays excluded. Provided, however, this time requirement may be extended on the request of the minor or any other participant in the proceeding, or by order of the court for the purpose of obtaining further testimony or evidence necessary for it to make an informed decision and to do substantial justice. If a juvenile court judge is not available for the hearing provided herein, the clerk of the court in which the petition was filed shall forthwith notify the presiding circuit court judge and the presiding circuit court judge of the circuit shall immediately appoint a district or circuit court judge to hear the petition.

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

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

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That performance of the abortion would be in the best interest of the minor.

(h) In determining if either of the requirements in subsection (g) are met, the court shall require that the minor provide probative and admissible evidence, which may include hearsay evidence, that she has been informed and understands the medical procedure of abortion and its consequences and that she has been informed and counseled by a qualified person as to the alternatives to abortion. She shall explain each of the foregoing to the court and the court shall be satisfied that she is making an informed judgment and shall document its finding in its order. The minor shall present such additional probative evidence to the court of her maturity that demonstrates to the court that she has sufficient experience with and understanding of life which enables her to make mature and informed decisions. Further, the minor may provide to the court a substantive explanation of why she cannot consult with her parent, parents, or legal guardian to assist her in making the decision. It shall not be sufficient that the court find the minor mature because she has requested relief from the court, but rather the totality of the evidence must be probative and of such weight to prove that the minor is mature and well-informed enough to make the abortion decision on her own, or that the performance of the abortion will be in her best interest. Uncorroborated legal conclusions by the minor shall not be sufficient to support a determination by the court to grant her petition. In the event of a denial of the petition by the court, the minor may re-file the petition once for a de novo hearing with the court.

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(i) The court shall immediately notify the district attorney's office of the county in which the minor is a resident, or the county where the petition was filed of the filing of the petition on the day of such filing and the district attorney or his or her representative shall participate as an advocate for the state to examine the petitioner and any witnesses, and to present evidence for the purpose of providing the court with a sufficient record upon which to make an informed decision and to do substantial justice.

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

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

(l) Although the court shall not be required or permitted to contact the minor's parent, parents, or legal guardian, in the event that the minor's parent, parents, or legal guardian are otherwise aware of the by-pass proceeding, they, he, or she shall be given notice of and be permitted to participate in the proceeding and be represented by counsel with all of the rights and obligations of any party to the proceeding.

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

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

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

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

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

(Acts 1987, No. 87-286, p. 397, § 4; Act 2014-445, p. 1660, § 1.)

### **§ 26-21-5. Medical emergencies.**

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

(Acts 1987, No. 87-286, p. 397, § 5.)

### **§ 26-21-6. Penalties for violation of chapter.**

(a) (1) Any person who intentionally performs or causes to be performed an abortion in violation of the provisions of this chapter or intentionally fails to conform to any requirement of this chapter, shall be guilty of a Class A misdemeanor.

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

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

(Acts 1987, No. 87-286, p. 397, § 6; Act 2014-445, p. 1660, § 1.)

#### **§ 26-21-6.1. Civil action under chapter.**

In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall provide a basis for a civil action for compensatory and/or punitive damages. Any criminal conviction under this chapter shall be admissible in a civil suit as prima facie evidence of a failure to obtain an informed consent or parental or judicial consent. The civil action may be based on a claim that the action was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or breach of other legal standard of care. The Medical Liability Act of 1987 shall not apply to any civil causes of action brought pursuant to Sections 26-21-1, 26-21-2, 26-21-3, 26-21-4, 26-21-6, 26-21-6.1, and 26-21-7.

(Act 2014-445, p. 1660, § 2.)

### **§ 26-21-7. Nonliability of physician for claims arising out of disclosure of information; nondisclosure of information regarding abortion pursuant to court order; physician has no duty to secure waiver.**

(a) No physician who complies with the parental consent requirements of this chapter shall be liable in any manner to the minor upon whom the abortion was performed for any claim whatsoever arising out of or based on the disclosure of any information concerning the medical condition of such minor to her parent, parents, or legal guardian. Notwithstanding the foregoing, a physician who performs an abortion pursuant to a court order obtained under this chapter, shall not disclose any information regarding same to the parent, parents, or legal guardian of the minor unless such disclosure is made pursuant to a court order. In no event shall the physician be under any duty to initiate proceedings in any court to secure a waiver of the parental consent requirement on behalf of any minor who has requested that an abortion be performed.

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

(c) A physician or his or her agents who demonstrates compliance with the requirements of this chapter shall not bear criminal or civil liability for the deliberate, intentional, or willful action by the minor or any other person acting in concert with or on behalf of the minor to present fabricated, altered, forged, or counterfeit identification, certificates, or other documentation to satisfy the parental consent requirements of this chapter.

(Acts 1987, No. 87-286, p. 397, § 7; Act 2014-445, p. 1660, § 1.)

### **§ 26-21-8. Confidentiality of records and information involving court proceedings; statistical records; penalty for disclosure; reports to Bureau of Vital Statistics.**

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

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

(c) Provided, however, any person who performs abortions, or his or her agent, shall furnish to the Bureau of Vital Statistics, on confidential forms furnished by the bureau, the following: (1) the number of abortions performed on each unemancipated and emancipated minor with written consent; (2) the number of abortions performed on each unemancipated and emancipated minor pursuant to juvenile or other court proceedings pursuant to Section 26-21-3(e); and (3) the number of abortions performed pursuant to Section 26-21-5 on each unemancipated and emancipated minor. Such reporting shall be provided annually as prescribed by the Bureau of Vital Statistics which shall be retained by the bureau for at least seven years. Such information prescribed shall include nonconfidential statistics, including, but not limited to: age, race, and education level of minor.

(Acts 1987, No. 87-286, p. 397, § 8.)

### Chapter 22, Abortion of Viable Unborn Child

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

- (a) The public policy of the State of Alabama is to protect life, born, and unborn. This is particularly true concerning unborn life that is capable of living outside the womb. The Legislature of the State of Alabama finds there are abortions being done in Alabama after the time of viability and in violation of its public policy.
- (b) The Legislature specifically finds the following:
- (1) Medical evidence shows there is a survival rate of babies born between ages 23 weeks to 29 weeks gestational age of 64 percent to 94 percent.
  - (2) In *Webster v. Reproductive Health Services*, 492 U.S. 499 (1989), the United States Supreme Court determined that viability may occur as early as 23 to 24 weeks gestational age. Also, the United States Supreme Court determined that requiring fetal viability testing at 20 weeks gestational age is constitutional, because there is up to a four week margin of error in determining gestational age.
  - (3) In the latest year of Alabama statistical reporting, 1994, there were reported to be 182 abortions performed at 20 or more weeks gestational age. There were also 70 abortions performed where no gestational age was stated.
- (c) Subject to life and health exceptions to the mother, it is the intent of the Legislature to ban abortions of any unborn child that is capable of living outside the womb. To permit otherwise is a wanton disregard of human life.

(Acts 1997, No. 97-442, p. 746, § 1.)

#### § 26-22-2. Definitions.

The following words shall have the following meanings:

- (1) ABORTION. The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child.
- (2) FERTILIZATION. The fusion of a human spermatozoon with a human ovum.
- (3) GESTATIONAL AGE. The age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.
- (4) HOSPITAL. An institution licensed pursuant to the provisions of the law of this state.
- (5) LIVE BIRTH. When used with regard to a human being, means that the human being was completely expelled or extracted from his or her mother and after such separation, breathed or showed evidence of

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any of the following: Beating of the heart, pulsation of the umbilical cord, definite movement of voluntary muscles, or any brain-wave activity.

- (6) **MEDICAL EMERGENCY.** The condition, which, on the basis of the physician's good-faith clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.
- (7) **PREGNANT.** The female reproductive condition of having a developing fetus in the body and commences with fertilization.
- (8) **UNBORN CHILD and FETUS.** An individual organism of the species *Homo sapiens* from fertilization until live birth.
- (9) **VIABLE and VIABILITY.** The stage of fetal development when, in the judgment of the physician based upon the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

(Acts 1997, No. 97-442, p. 746, § 2.)

### **§ 26-22-3. Prohibition, exceptions, and regulations.**

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

(b) **Exceptions.**

- (1) It shall not be a violation of subsection (a) if an abortion is performed by a physician and that physician reasonably believes that it is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman. No abortion shall be deemed authorized under this paragraph if performed on the basis of a claim or a diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible impairment of a major bodily function.
- (2) It shall not be a violation of subsection (a) if the abortion is performed by a physician and that physician reasonably believes, after making a determination of the viability of the unborn child in compliance with Section 26-22-4 relating to the determination of viability, that the unborn child is not viable.

(c) **Abortion regulated.** Except in the case of a medical emergency which, in the reasonable medical judgment of the physician performing the abortion, prevents compliance with a particular requirement of this subsection, no abortion which is authorized under subsection (b)(1) shall be performed unless each of the following conditions are met:

- (1) The physician performing the abortion certifies in writing that, based upon his or her medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to



prevent either the death of the pregnant woman or serious risk of substantial and irreversible impairment of a major bodily function.

- (2) The physician's judgment with respect to the necessity for the abortion has been concurred in by one other licensed physician who certifies in writing that, based upon his or her separate personal medical examination of the pregnant woman and his or her medical judgment, the abortion is necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman.
- (3) The abortion is performed in a hospital.
- (4) The physician terminates the pregnancy in a manner which provides the best opportunity for the unborn child to survive, unless the physician determines, in his or her good faith medical judgment, that termination of the pregnancy in that manner poses a significantly greater risk either of the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman than would other available methods.
- (5) The physician performing the abortion arranges for the attendance, in the same room in which the abortion is to be completed, of a second physician who shall take control of the child immediately after complete extraction from the mother and shall provide immediate medical care for the child, taking all reasonable steps necessary to preserve the child's life and health.

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

(Acts 1997, No. 97-442, p. 746, § 3.)

### **§ 26-22-4. Viability testing.**

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

(Acts 1997, No. 97-442, p. 746, § 4.)

### **§ 26-22-5. Interpretation.**

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

(Acts 1997, No. 97-442, p. 746, § 5.)

### Chapter 23, Alabama Partial-Birth Abortion Ban Act of 1997

(Held unconstitutional; contact Office of General Counsel for more information.)

#### § 26-23-1. Short title.

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

(Acts 1997, No. 97-485, p. 843, § 1.)

#### § 26-23-2. Definitions.

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

- (1) FATHER. The biological father of the human fetus.
- (2) MOTHER. The female who is pregnant with a live human fetus which may be subject to a partial-birth abortion under this chapter.
- (3) PARTIAL-BIRTH ABORTION. An abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.
- (4) PHYSICIAN. A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state or any other individual legally authorized by the state to perform abortions. This definition shall also include any individual who is not a physician or is not otherwise legally authorized by the state to perform abortions, but who nevertheless performs a partial-birth abortion.

(Acts 1997, No. 97-485, p. 843, § 2.)

#### § 26-23-3. Felony conviction.

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

(Acts 1997, No. 97-485, p. 843, § 3.)

#### § 26-23-4. Life of mother exception.

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

(Acts 1997, No. 97-485, p. 843, § 4.)

#### § 26-23-5. Civil action.

The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus,

may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. The relief shall be limited to monetary compensation for all injuries, psychological and physical, occasioned by a violation under this chapter and monetary punitive compensation as allowed by law.

(Acts 1997, No. 97-485, p. 843, § 5.)

### **§ 26-23-6. Conspiracy.**

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

(Acts 1997, No. 97-485, p. 843, § 6.)

### Chapter 23A, The Woman's Right to Know Act

#### § 26-23A-1. Short title.

This chapter shall be known and cited as the Woman's Right to Know Act.

(Act 2002-419, p. 1074, § 1.)

#### § 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.

(Act 2002-419, p. 1074, § 2.)

#### § 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.

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- (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.

(Act 2002-419, p. 1074, § 3.)

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

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- (1) The name of the physician who will perform the abortion in writing or a business card.
- (2) The nature of the proposed abortion method and associated risks and alternatives that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
- (3) The probable gestational age of the unborn child at the time the abortion is to be performed, and the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed. If the unborn child is viable or has reached a gestational age of more than 19 weeks, that:
  - a. The unborn child may be able to survive outside the womb.
  - b. The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child, provided such abortion is not otherwise prohibited by law.
  - c. If the unborn child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.
- (4) The physician who is to perform the abortion or the referring physician is required to perform an ultrasound on the unborn child before the abortion. The woman has a right to view the ultrasound before an abortion. The woman shall complete a required form to acknowledge that she either saw the ultrasound image of her unborn child or that she was offered the opportunity and rejected it.
- (5) She has the right to view the videotape and ultrasound of her unborn child as described in Section 26-23A-6.
- (6) Any need for anti-Rh immune globulin therapy, and if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.
- (7) She cannot be forced or required by anyone to have an abortion. She is free to withhold or withdraw her consent for an abortion without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
- (c) The woman shall complete and sign a form that she has received the information of subsections (a) and (b), and does provide her informed consent for an abortion on her unborn child.
- (d) Prior to the performance of an abortion, the physician who is to perform the abortion or his or her agent shall receive the signed receipt of the certified mail dated 48 hours before the abortion, if mailed, and the signed forms that she has received the information of subsections (a) and (b) before the abortion, had the opportunity to view the video and the ultrasound of her unborn child, and provided her informed consent for an abortion. The abortion facility shall retain the signed receipt, signed forms, and the ultrasound in the woman's medical file for the time required by law, but not less than four years.

(Act 2002-419, p. 1074, § 4; Act 2014-441, p. 1650, § 1.)

### § 26-23A-5. Publication of required materials.

**(Held unconstitutional in part; contact Office of General Counsel for more information.)**

(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.

(Act 2002-419, p. 1074, § 5.)

### **§ 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.

(Act 2002-419, p. 1074, § 6.)

### **§ 26-23A-7. Abortions to be performed by physician.**

Only a physician may perform an abortion.

(Act 2002-419, p. 1074, § 7.)

### **§ 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.

(Act 2002-419, p. 1074, § 8.)



### § 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.

(Act 2002-419, p. 1074, § 9.)

### § 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.

(Act 2002-419, p. 1074, § 10.)

### § 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.

(Act 2002-419, p. 1074, § 11.)

### **§ 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.

(Act 2002-419, p. 1074, § 12.)

### **§ 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.

(Act 2002-419, p. 1074, § 14.)

### Chapter 23B, Alabama Pain-Capable Unborn Child Protection Act

#### § 26-23B-1. Short title.

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

(Act 2011-672, p. 1784, § 1.)

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

The Legislature makes all of the following findings:

- (1) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks.
- (2) By eight weeks after fertilization, the unborn child reacts to touch. After 20 weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.
- (3) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without such anesthesia.
- (4) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.
- (5) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.
- (6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.
- (7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.
- (8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

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- (9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.
- (10)The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.
- (11)Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization.
- (12)It is the purpose of this state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.
- (13)Alabama's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of Alabama's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.
- (14)Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of this state that if any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. Moreover, this state declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words, or any of their applications, were to be declared unconstitutional.

(Act 2011-672, p. 1784, § 2.)

### **§ 26-23B-3. Definitions.**

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

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

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- (2) **ATTEMPT TO PERFORM OR INDUCE AN ABORTION.** An act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this chapter.
- (3) **FERTILIZATION.** The fusion of a human spermatozoon with a human ovum.
- (4) **MEDICAL EMERGENCY.** A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- (5) **POSTFERTILIZATION AGE.** The age of the unborn child as calculated from the fertilization of the human ovum.
- (6) **REASONABLE MEDICAL JUDGMENT.** A medical judgment that would be made by a reasonable prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (7) **PHYSICIAN.** Any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.
- (8) **PROBABLE POSTFERTILIZATION AGE OF THE UNBORN CHILD.** What, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.
- (9) **UNBORN CHILD or FETUS.** An individual organism of the species homo sapiens from fertilization until live birth.
- (10) **WOMAN.** A female human being whether or not she has reached the age of majority.

(Act 2011-672, p. 1784, § 3.)

### **§ 26-23B-4. Determination of postfertilization age of unborn child.**

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

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

(Act 2011-672, p. 1784, § 4.)

### **§ 26-23B-5. Abortion prohibited where postfertilization age of unborn child at least 20 weeks; exception.**

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

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

(Act 2011-672, p. 1784, § 5.)

### **§ 26-23B-6. Criminal penalties.**

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

(Act 2011-672, p. 1784, § 7.)

### **§ 26-23B-7. Civil remedies.**

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

(b) A cause of action for injunctive relief against any person who has intentionally, knowingly, or recklessly violated this chapter and Section 22-9A-13 may be maintained by the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this chapter, by a district attorney with appropriate jurisdiction, or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing, or attempting to perform or induce, further abortions in violation of this chapter in this state.

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

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

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

(Act 2011-672, p. 1784, § 8.)

### **§ 26-23B-8. Preservation of anonymity.**

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

(Act 2011-672, p. 1784, § 9.)

### **§ 26-23B-9. Construction with other laws.**

The provisions of this chapter are supplemental to and shall be read in pari materia with Chapter 22 of this title, relating to the abortion of viable unborn children, and the Alabama Partial-Birth Abortion Ban Act of 1997. This chapter shall not be construed to repeal, by implication or otherwise, Section 26-22-3, Section 26-23-3, or any otherwise applicable provision of Alabama's law regulating or restricting abortion. An abortion that complies with this chapter but violates the provisions of Section 26-22-3, Section 26-23-3, or any otherwise applicable

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provision of Alabama's law shall be deemed unlawful as provided in such provision. An abortion that complies with the provisions of Section 26-22-3, Section 26-23-3, or any otherwise applicable provision of Alabama's law regulating or restricting abortion but violates this chapter shall be deemed unlawful as provided in this chapter.

(Act 2011-672, p. 1784, § 10.)



### Chapter 23C, Federal Abortion Mandate Opt Out Act

#### § 26-23C-1. Short title.

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

(Act 2012-405, p. 1108, § 1.)

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

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

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

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

(Act 2012-405, p. 1108, § 2.)

### **§ 26-23C-3. Opt out of abortion coverage.**

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

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

(Act 2012-405, p. 1108, § 3.)

### **§ 26-23C-4. Construction of chapter.**

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

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

(Act 2012-405, p. 1108, § 4.)

### Chapter 23D, Termination of Ectopic Pregnancy

#### § 26-23D-1. Ectopic pregnancies.

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

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

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

(Act 2012-261, p. 506, §§ 1-3.)

### Chapter 23E, Women's Health and Safety Act

#### § 26-23E-1. Short title.

This chapter shall be known and may be cited as the “Women's Health and Safety Act.”

(Act 2013-79, p. 165, § 1.)

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

The Legislature finds all of the following:

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

(Act 2013-79, p. 165, § 2.)

### § 26-23E-3. Definitions.

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

- (1) **ABORTION.** The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use or prescription is not an abortion if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, or to deliver the unborn child prematurely in order to preserve the health of both the mother (pregnant woman) and her unborn child. The term abortion as used in this chapter, does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly. For the purposes of this chapter, a lethal anomaly means that the child would die at birth or be still born. For the purposes of this chapter, the term, ectopic pregnancy, means any pregnancy resulting from a fertilized egg that has implanted or attached outside the uterus. The term, ectopic pregnancy, also includes a pregnancy resulting from a fertilized egg implanted inside the cornu of the uterus.
- (2) **ABORTION INDUCING DRUG.** A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with the knowledge that the termination will with reasonable likelihood cause the death of the unborn child. Use of such drugs to induce abortion is also known as medical abortion. This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.
- (3) **ABORTION OR REPRODUCTIVE HEALTH CENTER.** A facility defined and regulated as an abortion or reproductive health center by the rules of the Alabama State Board of Health.
- (4) **ADMINISTER.** To give or apply a pharmacologic or other therapeutic agent to a patient.
- (5) **DISPENSE.** To sell, distribute, administer, leave with, give away, dispose of, deliver, or supply a drug or medicine to the ultimate user or the user's agent.
- (6) **PHYSICIAN.** A person currently licensed by the Medical Licensure Commission, State of Alabama, to practice medicine or osteopathy pursuant to Section 34-24-50, et seq.
- (7) **PRESCRIPTION.** A physician's order for the preparation and administration of a drug or device for a patient.
- (8) **REGISTERED PROFESSIONAL NURSE (RN).** A person currently licensed in the State of Alabama pursuant to Section 34-21-21.

(Act 2013-79, p. 165, § 3.)

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

**(Held unconstitutional in part; contact Office of General Counsel for more information.)**

(a) Only a physician may perform an abortion.

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

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

(Act 2013-79, p. 165, § 4.)

### **§ 26-23E-5. Nursing care.**

At all times during procedures in an abortion or reproductive health center, nursing care shall be under the supervision of a registered professional nurse currently licensed in Alabama. At least one registered professional nurse shall be on duty to provide or supervise all nursing care of patients in preparation for and during the abortion procedure, during the recovery period, and through the initial discharge by the attending physician. Other nursing service personnel shall remain on duty as required to meet the needs of each patient.

(Act 2013-79, p. 165, § 5.)

### **§ 26-23E-6. Patient care.**

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

(Act 2013-79, p. 165, § 6.)

### **§ 26-23E-7. Prescription of abortion-inducing drugs.**

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

medical chart, the gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

(Act 2013-79, p. 165, § 7.)

### **§ 26-23E-8. Office-based procedure requirements.**

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

(Act 2013-79, p. 165, § 8.)

### **§ 26-23E-9. Abortion or reproductive health center requirements.**

An abortion or reproductive health center shall be classified as ambulatory health care occupancy and shall meet all standards in the NFPA 101 Life Safety Code 2000 edition, or such standards in any later edition of the NFPA 101 Life Safety Code that the Board of Health may adopt for facilities classified as ambulatory health care occupancy. Not later than December 28, 2013, each licensed abortion or reproductive health center shall submit to the Department of Public Health architectural drawings and plans and sprinkler system plans and such other materials as may be required to show compliance or prospective compliance with the applicable life safety code. These shall be submitted and reviewed pursuant to the Board of Health Rules for Plan Review, including the payment of plan review fees. Not later than July 1, 2014, each abortion or reproductive health center shall obtain from the Department of Public Health a certificate of completion which shall certify that the facility meets all ambulatory health care occupancy standards in the applicable NFPA 101 Life Safety Code, as well as all other life safety and building standards required by law or rule. Any facility that fails to submit architectural drawings and plans, sprinkler system plans, and such other materials as may be required to the Department of Public Health within the deadline for such submission shall have its license revoked. Any facility that fails to obtain a certificate of occupancy within the deadline for obtaining such certificate shall have its license revoked.

(Act 2013-79, p. 165, § 9.)

### **§ 26-23E-10. Paternity inquiries of pregnant minor child; reporting requirements.**

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

(b) In addition to any other abuse reporting requirements that may apply to the staff of an abortion or reproductive health center, if the reported age of the father is two or more years greater than the age of the minor child, the facility shall report the names of the pregnant minor child and the father to both local law

enforcement and the county department of human resources. If the pregnant minor child is less than 14 years old, the name of the minor child shall be reported to the Department of Human Resources, regardless of whether the father is two or more years older than the minor child. The receipt of reportable information by any member of a facility staff shall trigger the requirement for the facility to report such information. Nothing in this section shall be construed to constructively repeal any other provisions of law requiring parental consent before an abortion procedure is performed.

(Act 2013-79, p. 165, § 10.)

### **§ 26-23E-11. Promulgation of rules.**

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

(Act 2013-79, p. 165, § 11.)

### **§ 26-23E-12. Violations.**

**(Held unconstitutional in part; contact Office of General Counsel for more information.)**

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

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

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

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

(Act 2013-79, p. 165, § 12.)

### **§ 26-23E-13. Civil action for damages.**

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

(Act 2013-79, p. 165, § 13.)



### **§ 26-23E-14. Adverse licensure action.**

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

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

(Act 2013-79, p. 165, § 14.)

### **§ 26-23E-15. Remedies.**

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

(Act 2013-79, p. 165, § 15.)

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

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

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

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

(d) Nothing in this chapter shall be construed to modify, supersede, or constructively repeal any provisions of the Alabama Medical Liability Act of 1987, the Alabama Medical Liability Act of 1996, or any amendments thereto.

(Act 2013-79, p. 165, § 16.)

### **§ 26-23E-17. Intervention.**

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

(Act 2013-79, p. 165, § 17.)

### Chapter 27, Unborn Child Protection from Dismemberment Abortion Act

**(This chapter is being challenged in litigation; contact Office of General Counsel for more information.)**

#### § 26-27-1. Short title.

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

(Act 2016-397, § 1.)

#### § 26-27-2. Definitions.

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

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

(2) ATTEMPT TO PERFORM AN ABORTION.

- a. To do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion. Such substantial steps include, but are not limited to, any of the following:
  1. Agreeing with an individual to perform an abortion on that individual or on some other individual, whether or not the term abortion is used in the agreement, and whether or not the agreement is contingent on another factor, such as receipt of payment or a determination of pregnancy.
  2. Scheduling or planning a time to perform an abortion on an individual, whether or not the term abortion is used, and whether or not the performance is contingent on another factor, such as receipt of payment or a determination of pregnancy.
- b. This definition may not be construed to require that an abortion procedure actually be initiated for an attempt to occur.

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

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

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

- a. If the element involves the nature of his or her conduct or a result thereof, it is his or her conscious objective to engage in conduct of that nature or to cause such a result.
- b. If the element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

(6) **SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER.** In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

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

(Act 2016-397, § 2.)

**§ 26-27-3. Dismemberment abortion prohibited unless necessary to prevent serious health risk to mother of unborn child.**

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

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

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

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

(Act 2016-397, § 3.)

### § 26-27-4. Injunctive relief.

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

- (1) A woman upon whom a dismemberment abortion was performed or attempted to be performed.
- (2) An individual who is the spouse, parent, or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed.
- (3) A prosecuting attorney with appropriate jurisdiction.

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

(Act 2016-397, § 4.)

### § 26-27-5. Civil damages.

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

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

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

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

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

(Act 2016-397, § 5.)

### § 26-27-6. Attorney fees.

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

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

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

(Act 2016-397, § 6.)

### **§ 26-27-7. Criminal penalties.**

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

(Act 2016-397, § 7.)

### **§ 26-27-8. Anonymity of certain individuals in court proceedings.**

In every civil, criminal, or administrative proceeding or action brought under this act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 4 or Section 5 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

(Act 2016-397, § 8.)

### **§ 26-27-9. Construction of chapter.**

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

(Act 2016-397, § 9.)

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### Title 31, Military Affairs and Civil Defense Chapter 9, Emergency Management Article 1, Alabama Emergency Management Act of 1955

#### § 31-9-1. Short title.

This article may be cited as the "Alabama Emergency Management Act of 1955."

(Acts 1955, No. 47, p. 267, § 1.)

#### § 31-9-2. Findings and declarations of necessity; purpose of article 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 article.
- (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 article.

(b) It is further declared to be the purpose of this article 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 article 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.

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(Acts 1955, No. 47, p. 267, § 2; Acts 1978, No. 852, p. 1276, § 1.)

### § 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.

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- (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.

(Acts 1955, No. 47, p. 267, § 3; Act 2006-522, p. 1210, § 1.)

### **§ 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.

(Acts 1955, No. 47, p. 267, § 4; Acts 1983, No. 83-612, p. 949; Act 2006-522, p. 1210, § 1.)

### **§ 31-9-6. Powers and duties of Governor with respect to emergency management.**

In performing his or her duties under this article, 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 article within the limits of the authority conferred upon him or her in this article, 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 article; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this article; 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.

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- (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 or her under this article, 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 article and with the orders, rules, and regulations made pursuant thereto.

(Acts 1955, No. 47, p. 267, § 6; Act 2011-546, p. 1004, § 1.)

### **§ 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. If the state of emergency affects less than the entire state, the Governor or the Legislature shall designate in the proclamation or resolution those counties to which the state of emergency applies. The emergency, whether proclaimed by the Governor or by the Legislature, shall terminate 60 days after the date on which it was

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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.

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- (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.

(Acts 1955, No. 47, p. 267, § 8; Act 2006-522, p. 1210, § 1; Act 2009-572, p. 1679, § 1; Act 2014-17, p. 53, § 1.)

### **§ 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.

(Acts 1955, No. 47, p. 267, § 9; Act 2011-546, p. 1004, § 1.)

### **§ 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.

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- (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.

(Acts 1955, No. 47, p. 267, § 10; Act 2006-522, p. 1210, § 1; Act 2009-572, p. 1679, § 1.)

### **§ 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.

(Acts 1955, No. 47, p. 267, § 11.)

### **§ 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.

(Acts 1955, No. 47, p. 267, § 12.)

### **§ 31-9-13. Orders, rules, and regulations of Governor -- Effect; distribution.**

All orders, rules, and regulations promulgated by the Governor as authorized by this article 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 article or of any order, rule, or regulation issued under the authority of this article, 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 article.

(Acts 1955, No. 47, p. 267, § 13.)

### **§ 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 article.

(Acts 1955, No. 47, p. 267, § 14.)

### **§ 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 article. This authority shall be limited to those rules and regulations which affect the public generally.

(Acts 1955, No. 47, p. 267, § 15.)

§ 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 article 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 article or any order, rule, or regulation promulgated pursuant to the provisions of this article 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 article or under the Workers' 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.

(Acts 1955, No. 47, p. 267, § 16.)

**§ 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.

(Acts 1955, No. 47, p. 267, § 17.)

**§ 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.

(Acts 1955, No. 47, p. 267, § 18.)

**§ 31-9-19. Political activities by emergency management organizations.**

No organization for emergency management established under the authority of this article shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes.

(Acts 1955, No. 47, p. 267, § 19.)

### **§ 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 article 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 or her duties, take an oath, in writing, before a person authorized to administer oaths, or the State Emergency Management Director, or his or her 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.”

(Acts 1955, No. 47, p. 267, § 20.)

### **§ 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.

(Acts 1955, No. 47, p. 267, § 21.)

### **§ 31-9-22. Penalties.**

Any person violating any provision of this article or any rule, order, or regulation made pursuant to this article shall, upon conviction thereof, be fined not more than \$500, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

(Acts 1955, No. 47, p. 267, § 22.)

### **§ 31-9-23. Article to be liberally construed.**

This article shall be construed liberally in order to effectuate its purpose.

(Acts 1955, No. 47, p. 267, § 24.)

### **§ 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 article shall be expended solely for the purposes designated in the 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. In addition to any other appropriation, there is hereby appropriated out of any moneys in the State Treasury the sum of \$250,000, or so much thereof as may be necessary, for the expenses incident to the operation and enforcement of the provisions of this article 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.

(Acts 1955, No. 47, p. 267, § 26; Acts 1978, No. 852, p. 1276, § 2.)

### 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.

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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.

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(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

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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

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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, 2003, 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.

(Act 2001-1065, 4th Sp. Sess., p. 1065, § 1.)



### Chapter 9B, Disaster Shelters for Individuals with Medical Needs

#### **§ 31-9B-1. Applicability; coordination of disaster shelter development.**

(a) For purposes of this chapter, “an individual with medical needs” means an individual who is not qualified to be housed in a mass care shelter and who meets the criteria established in rules of the State Board of Health.

(b) The State Health Department is designated as the lead agency for coordination with other state and local agencies in the development of disaster shelters for those individuals with medical needs.

(Act 2006-599, p. 1636, § 1.)

#### **§ 31-9B-2. Adoption of rules.**

The State Health Department shall adopt rules necessary to implement this chapter, in accordance with Section 22-2-2.

(Act 2006-599, p. 1636, § 2.)

#### **§ 31-9B-3. Providing of information; requirements for emergency and disaster planning provisions; immunity.**

(a) All appropriate agencies and community-based service providers, including, but not limited to, home health care providers, hospices, community mental health centers, and related facilities, but not including health care facilities which provide inpatient care to include general and specialized hospitals including ancillary services, skilled nursing facilities, intermediate care facilities, or any assisted living facility, shall provide information on the number of individuals with medical needs and shall assist the State Health Department in the establishment of programs to increase the awareness of medical needs shelters, and in educating clients and sponsors or caregivers about the procedures that may be necessary for their safety during disasters.

(b) State agencies that regulate or contract with providers of services, or both, for persons with disabilities or limitations that make the persons dependent upon the care of others including, but not limited to, home health care providers, hospices, community mental health centers, and related facilities, but not including health care facilities which provide inpatient care to include general and specialized hospitals including ancillary services, skilled nursing facilities, intermediate care facilities, or any assisted living facility, shall include emergency and disaster planning provisions in their certification or regulatory standard, or both, or in the contracts at the time the contracts are initiated or upon renewal. These provisions may include, but shall not be limited to, the following:

- (1) The designation of an emergency coordinating officer.
- (2) A procedure whereby the primary caregiver at the place where the individual with medical needs resides would be required to contact, prior to or immediately following an emergency or disaster, all persons, on a priority basis, who need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities and whose care is provided under the contract.

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- (3) A procedure to transport persons who need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities to the location identified in each plan.
- (4) A procedure to dispatch the emergency coordinating officer or other staff members to medical needs shelters in the event any clients are placed in a medical needs shelter.
- (5) A procedure for providing the essential services the organization currently provides to clients with medical needs in preparation for and during and following a disaster.

(c) All functions provided by the state and any political subdivision thereof or other agencies of the state or political subdivisions under this chapter are declared to be governmental functions and are subject to the same immunities provided for emergency management activities under Section 31-9-16.

(d) Nothing in this chapter is intended to limit or alter the statutory authority granted to state agencies.

(Act 2006-599, p. 1636, § 3.)

### Chapter 13, Illegal Immigration

#### § 31-13-1. Short title.

This chapter shall be known and may be cited as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act.

(Act 2011-535, p. 888, § 1.)

#### § 31-13-2. Legislative findings.

The State of Alabama finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. Because the costs incurred by school districts for the public elementary and secondary education of children who are aliens not lawfully present in the United States can adversely affect the availability of public education resources to students who are United States citizens or are aliens lawfully present in the United States, the State of Alabama determines that there is a compelling need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the United States, in order to forecast and plan for any impact that the presence such population may have on publicly funded education in this state. The State of Alabama further finds that certain practices currently allowed in this state impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Alabama. Therefore, the people of the State of Alabama declare that it is a compelling public interest to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The State of Alabama also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

(Act 2011-535, p. 888, § 2.)

#### § 31-13-3. Definitions.

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

- (1) ALIEN. Any person who is not a citizen or national of the United States, as described in 8 U.S.C. § 1101, et seq., and any amendments thereto.
- (2) BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. Business entity shall include, but not be limited to, the following:
  - a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

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- b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.
- (3) **CONTRACTOR.** A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity.
- (4) **EMPLOYEE.** Any person directed, allowed, or permitted to perform labor or service of any kind by an employer. The employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity, for the purposes of this chapter. This term does not include any inmate in the legal custody of the state, a county, or a municipality.
- (5) **EMPLOYER.** Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.
- (6) **EMPLOYMENT.** The act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the State of Alabama, including any job, task, work, labor, personal services, or any other activity for which compensation is provided, expected, or due, including, but not limited to, all activities conducted by a business entity or employer. This term shall not include casual domestic labor performed in a household on behalf of the occupant of the household or the relationship between a contractor and the employees of a subcontractor performing work for the contractor.
- (7) **E-VERIFY.** The electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C. § 1324(a), and operated by the United States Department of Homeland Security, or its successor program.
- (8) **FEDERAL WORK AUTHORIZATION PROGRAM.** Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603 or the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C. § 1324(a).
- (9) **KNOWS or KNOWINGLY.** A person acts knowingly or with knowledge with respect to either of the following:
- a. The person's conduct or attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist.

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b. A result of the person's conduct when the person is reasonably aware that the person's conduct is likely to cause that result.

(10) **LAWFUL PRESENCE or LAWFULLY PRESENT.** A person shall be regarded as an alien unlawfully present in the United States only if the person's unlawful immigration status has been verified by the federal government pursuant to 8 U.S.C. § 1373(c). No officer of this state or any political subdivision of this state shall attempt to independently make a final determination of an alien's immigration status. An alien possessing self-identification in any of the following forms is entitled to the presumption that he or she is an alien lawfully present in the United States:

a. A valid, unexpired Alabama driver's license.

b. A valid, unexpired Alabama nondriver identification card.

c. A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.

d. Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, including a valid Uniformed Services Privileges and Identification Card if issued by an entity that requires proof of lawful presence in the United States before issuance.

e. A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.

f. A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.

(11) **POLICY OR PRACTICE.** A guiding principle or rule that may be written or adopted through repeated actions or customs.

(12) **PROTECTIVE SERVICES PROVIDER.** A child protective services worker; adult protective services worker; protective services provider; or provider of services to victims of domestic violence, stalking, sexual assault, or human trafficking that receives federal grants under the Victim of Crimes Act, the Violence Against Women Act, or the Family Violence Prevention and Services Act.

(13) **PUBLIC EMPLOYER.** Every department, agency, or instrumentality of the state or a political subdivision of the state including counties and municipalities.

(14) **STATE-FUNDED ENTITY.** Any governmental entity of the state or a political subdivision thereof or any other entity that receives any monies from the state or a political subdivision thereof; provided, however, an entity that merely provides a service or a product to any governmental entity of the state or a political subdivision thereof, and receives compensation for the same, shall not be considered a state-funded entity.

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(15)SUBCONTRACTOR. A person, business entity, or employer who is awarded a portion of an existing contract by a contractor, regardless of its tier.

(16)UNAUTHORIZED ALIEN. An alien who is not authorized to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

(Act 2011-535, p. 888, § 3; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-4. Memorandum of agreement with U.S. Department of Homeland Security.**

(a) The Attorney General shall attempt to negotiate the terms of a memorandum of agreement between the State of Alabama and the United States Department of Homeland Security, as provided in 8 U.S.C. Section 1357(g), concerning the enforcement of federal immigration laws, detentions and removals, and related investigations in the State of Alabama by certain state law enforcement officers designated by the Attorney General.

(b) The memorandum of agreement negotiated pursuant to subsection (a) shall be signed on behalf of this state by the Attorney General and the Governor or as otherwise required by the appropriate federal agency.

(c) A report of the results of the attempt of the Attorney General to enter into a memorandum of agreement shall be submitted to the Legislature by March 1, 2012.

(Act 2011-535, p. 888, § 4.)

### **§ 31-13-5. Enforcement of and compliance with federal immigration laws; information relating to immigration status; violations; penalties.**

(a) No official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the enforcement of federal immigration laws by limiting communication between its officers and federal immigration officials in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644, or that restricts its officers in the enforcement of this chapter. If, in the judgment of the Attorney General of Alabama, an official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court in this state, is in violation of this subsection, the Attorney General shall report any violation of this subsection to the Governor and the state Comptroller and that agency or political subdivision shall not be eligible to receive any funds, grants, or appropriations from the State of Alabama until such violation has ceased and the Attorney General has so certified. Any appeal of the determination of the Attorney General as considered in this section shall be first appealed to the circuit court of the respective jurisdiction in which the alleged offending agency resides.

(b) All state officials, agencies, and personnel, including, but not limited to, an officer of a court of this state, shall fully comply with and, to the full extent permitted by law, support the enforcement of federal law prohibiting the entry into, presence, or residence in the United States of aliens in violation of federal immigration law.

(c) Except as provided by federal law, officials or agencies of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may not be prohibited or in any way be restricted

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from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state, or local governmental entity for any of the following official purposes:

- (1) Determining the eligibility for any public benefit, service, or license provided by any state, local, or other political subdivision of this state.
- (2) Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding of this state.
- (3) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

(d) A person who is a United States citizen or an alien who is lawfully present in the United States and is a resident of this state may file a petition with the appropriate local district attorney or the Attorney General requesting that he or she bring an action in circuit court to challenge any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, that adopts or implements a policy or practice that is in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644. If the district attorney or the Attorney General elects to not bring an action, he or she shall publicly state in writing the justification for such a decision. A district attorney or the Attorney General must either bring an action or publicly state why no action was brought within 90 days of receiving a petition. The petition must be signed under oath and under penalty of perjury, and must allege with specificity any alleged violations. The district attorney or the Attorney General shall give the official or head of an agency, including, but not limited to, an officer of a court of this state, 30 days' notice of his or her intent to file such an action. If there is a judicial finding that an official or head of an agency, including, but not limited to, an officer of a court in this state, has violated this section, the court shall order that the officer, official, or head of an agency pay a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day that the policy or practice has remained in effect after the filing of an action pursuant to this section.

(e) A court shall collect the civil penalty prescribed in subsection (d) and remit one half of the civil penalty to the Alabama Department of Homeland Security and the second half shall be remitted to the Department of Public Safety.

(f) Every person working for the State of Alabama or a political subdivision thereof, including, but not limited to, a law enforcement agency in the State of Alabama or a political subdivision thereof, shall have a duty to report violations of this section of which the person has knowledge. Any person who willfully fails to report any violation of this section when the person knows that this section is being violated shall be guilty of obstructing governmental operations as defined in Section 13A-10-2.

(g) For the purposes of this section, the term official or head of an agency of this state shall not include a law enforcement officer or personnel employed in a jail acting within the line and scope of his or her duty, except for a sheriff, a chief of police, or the head of any law enforcement agency.

(h) For the purposes of this section, any proceedings against an official shall be only in his or her official capacity. For the purposes of this section, the relevant statute of repose for assessing penalties shall be no more than 30 days prior to the initial allegation of the violations of this section.

(i) For the purposes of this section, the term “officer of the court” shall not be interpreted to interfere with the relationship between an attorney and his or her client.

(Act 2011-535, p. 888, § 5; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-6. Enforcement of and compliance with state immigration laws; information relating to immigration status; violations; penalties.**

(a) No official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the enforcement of this chapter to less than the full extent permitted by this chapter or that in any way limits communication between its officers or officials in furtherance of the enforcement of this chapter. If, in the judgment of the Attorney General of Alabama, an official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, is in violation of this subsection, the Attorney General shall report any violation of this subsection to the Governor and the state Comptroller and that agency or political subdivision shall not be eligible to receive any funds, grants, or appropriations from the State of Alabama until such violation has ceased and the Attorney General has so certified.

(b) All state officials, agencies, and personnel, including, but not limited to, an officer of a court of this state, shall fully comply with and, to the full extent permitted by law, support the enforcement of this chapter.

(c) Except as provided by this chapter, officials or agencies of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may not be prohibited or in any way be restricted from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state, or local governmental entity for any of the following official purposes:

- (1) Determining the eligibility for any public benefit, service, or license provided by any state, local, or other political subdivision of this state.
- (2) Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding of this state.
- (3) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

(d) A person who is a United States citizen or an alien who is lawfully present in the United States and is a resident of this state may file a petition with the appropriate local district attorney or the Attorney General requesting that he or she bring an action in circuit court to challenge any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, that adopts or implements a policy or practice that limits or restricts the enforcement of this chapter to less than the full extent permitted by this chapter. If the district attorney or the Attorney General elects to not bring an action, he or she shall publicly state in writing the justification for such a decision. A district attorney or the Attorney General must either bring an action or publicly state why no action was brought within 90 days of receiving a petition. The petition must be signed under oath and under penalty of perjury and must allege with specificity any alleged violations. Such person shall have actual knowledge that any official or head of an agency of this state or political subdivision thereof, including, but not limited to, an officer of a court in this state, has adopted



or implemented a policy or practice that limits or restricts the enforcement of this chapter to less than the full extent permitted by this chapter. The district attorney or the Attorney General shall give the official or head of an agency, including, but not limited to, an officer of a court in this state, 30 days' notice of his or her intent to file such an action. If there is a judicial finding that an official or head of an agency, including, but not limited to, an officer of a court in this state, has violated this section, the court shall order that the officer, official, or head of an agency pay a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day that the policy or practice has remained in effect after the filing of an action pursuant to this section.

(e) A court shall collect the civil penalty prescribed in subsection (d) and remit one half of the civil penalty to the Alabama Department of Homeland Security and the second half shall be remitted to the Department of Public Safety.

(f) Every person working for the State of Alabama or a political subdivision thereof, including, but not limited to, a law enforcement agency in the State of Alabama or a political subdivision thereof, shall have a duty to report violations of this section of which the person has knowledge. Any person who willfully fails to report any violation of this section when the person knows that this section is being violated shall be guilty of obstructing governmental operations as defined in Section 13A-10-2.

(g) For the purposes of this section, the term official or head of an agency of this state shall not include a law enforcement officer or personnel employed in a jail who is acting within the line and scope of his or her duty, except for a sheriff, a chief of police, or the head of any law enforcement agency.

(h) For the purposes of this section, the term "officer of the court" shall not be interpreted to interfere with the relationship between an attorney and his or her client.

(Act 2011-535, p. 888, § 6; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-7. Receipt of state or local public benefits; verification of lawful presence in the United States; violations; annual reports.**

(a) As used in this section, the following terms have the following meanings:

(1) EMERGENCY MEDICAL CONDITION. The same meaning as provided in 42 U.S.C. § 1396b(v)(3).

(2) FEDERAL PUBLIC BENEFITS. The same meaning as provided in 8 U.S.C. § 1611.

(3) STATE OR LOCAL PUBLIC BENEFITS. The same meaning as provided in 8 U.S.C. § 1621.

(b) An alien who is not lawfully present in the United States and who is not defined as an alien eligible for public benefits under 8 U.S.C. § 1621(a) or 8 U.S.C. § 1641 shall not receive any state or local public benefits.

(c) Except as otherwise provided in subsection (e) or where exempted by federal law, commencing on September 1, 2011, each agency or political subdivision of the state shall verify with the federal government the lawful presence in the United States of each alien who applies for state or local public benefits, pursuant to 8 U.S.C. §§ 1373(c), 1621, and 1625.

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(d) An agency of this state or a county, city, town, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section.

(e) Verification of lawful presence in the United States shall not be required for any of the following:

- (1) For primary or secondary school education, and state or local public benefits that are listed in 8 U.S.C. § 1621(b).
- (2) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure.
- (3) For short term, noncash, in kind emergency disaster relief.
- (4) For public health assistance for immunizations with respect to immunizable diseases, for the Special Supplemental Nutrition Program for Women, Infants, and Children, and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease.
- (5) For programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that satisfy all of the following:
  - a. Deliver in-kind services at the community level, including services through public or private nonprofit agencies.
  - b. Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient.
  - c. Are necessary for the protection of life or safety.
- (6) For prenatal care.
- (7) For child protective services and adult protective services and domestic violence services workers.

(f) No official of this state or political subdivision of this state shall attempt to independently make a final determination of whether an alien is lawfully present in the United States. An alien's lawful presence in the United States shall be verified by the federal government pursuant to 8 U.S.C. § 1373(c).

(g) Any United States citizen applying for state or local public benefits, except those benefits described in subsection (e), shall sign a declaration that he or she is a United States citizen.

(h) Any person who knowingly makes a false, fictitious, or fraudulent statement or representation in a declaration executed pursuant to subsection (g) shall be guilty of perjury in the second degree pursuant to Section 13A-10-102. Each time that a person receives a public benefit based upon such a statement or representation shall constitute a separate violation of Section 13A-10-102.

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(i) The verification that an alien seeking state or local public benefits is an alien lawfully present in the United States shall be made through the Systematic Alien Verification for Entitlements (SAVE) program, operated by the United States Department of Homeland Security. If for any reason the verification of an alien's lawful presence through the SAVE program is delayed or inconclusive, the alien shall be eligible for state or local public benefits in the interim period if the alien signs a declaration that he or she is an alien lawfully present in the United States. The penalties under subsection (h) shall apply to any false, fictitious, or fraudulent statement or representation made in a declaration.

(j) Each state agency or department that administers a program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the Government Affairs Committee of the Senate and the Government Operations Committee of the House of Representatives, or any successor committees.

(k) Errors and significant delays resulting from use of the SAVE program shall be reported to the United States Department of Homeland Security and to the Alabama Department of Homeland Security to assist the federal government in ensuring that the application of the SAVE program is not wrongfully denying benefits to aliens lawfully present in the United States.

(l) For the purposes of administering the Alabama Child Health Insurance Program, verification and documentation of lawful presence through any alternative means expressly authorized by federal law shall satisfy the requirements of this section.

(Act 2011-535, p. 888, § 7.)

### **§ 31-13-8. Enrollment or attendance at institutions of postsecondary education.**

An alien who is not lawfully present in the United States shall not be permitted to enroll in or attend any public postsecondary education institution in this state. For the purposes of this section, a public postsecondary education institution officer may seek federal verification of an alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). A public postsecondary education institution officer or official shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. Except as otherwise provided by law, an alien who is not lawfully present in the United States shall not be eligible for any postsecondary education benefit, including, but not limited to, scholarships, grants, or financial aid.

(Act 2011-535, p. 888, § 8; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-9. Verification of employment eligibility by employers seeking economic incentives.**

(a) As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

(b) As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees within

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the State of Alabama, the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program. During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

(c) Any subcontractor on a project paid for by contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama and shall also enroll in the E-Verify program prior to performing any work on the project. Furthermore, during the performance of the contract, the subcontractor shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. This subsection shall only apply to subcontractors performing work on a project subject to the provisions of this section and not to collateral persons or business entities hired by the subcontractor.

(d) A contractor of any tier shall not be liable under this section when such contractor contracts with its direct subcontractor who violates subsection (c) unless it is shown that the contractor knew or should have known that the direct subcontractor was in violation of subsection (c).

(e) (1) Upon a finding by a court of competent jurisdiction of a first violation of subsection (a) by any business entity or employer, including a subcontractor:

a. The business entity or employer shall be deemed in breach of contract and the state, political subdivision thereof, or state-funded entity may terminate the contract after providing notice and an opportunity to be heard.

b. The court shall do all of the following:

1. Order the business entity or employer to terminate the employment of every unauthorized alien.

2. Subject the business entity or employer to a three-year probationary period throughout the state. During the probationary period, the business entity or employer shall file quarterly reports with the Department of Labor of each new employee who is hired by the business entity or employer in the state.

3. Order the business entity or employer to file, subject to the penalty of perjury, a signed, sworn affidavit with the Department of Labor within three days after the order is issued by the court stating that the business entity or employer has terminated the employment of every unauthorized alien and the business entity or employer will not knowingly or intentionally employ an unauthorized alien in this state.

c. 1. If the court determines that the business entity or employer has a policy or practice that violates this section, the court shall direct the applicable state, county, or municipal governing bodies to suspend the business licenses or permits of the business entity or employer for a period not to exceed 60 days specific to the location or locations where the unauthorized alien performed work.

2. Before a business license or permit that has been suspended under this paragraph is reinstated, a legal representative of the business entity or employer shall submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this subdivision and a copy of the Memorandum of Understanding issued to the business entity or employer at the time of enrollment in E-Verify.

(2) Upon a finding by a court of competent jurisdiction of a second violation of subsection (a) by a business entity or employer, including a subcontractor, awarded a contract by the state, any political subdivision thereof, or any state-funded entity that occurs within ten years of a finding by a court of competent jurisdiction of a first violation by the business entity or employer:

a. The business entity or employer shall be deemed in breach of contract and the state, political subdivision thereof, or state-funded entity shall terminate the contract after providing notice and an opportunity to be heard.

b. The court shall do all of the following:

1. Order the business entity or employer to terminate the employment of every unauthorized alien.

2. Subject the business entity or employer to a five-year probationary period throughout the state. During the probationary period, the business entity or employer shall file quarterly reports with the Department of Labor of each new employee who is hired by the business entity or employer in the state.

3. Order the business entity or employer to file, subject to the penalty of perjury, a signed, sworn affidavit with the Department of Labor within three days after the order is issued by the court stating that the business entity or employer has terminated the employment of every unauthorized alien and the business entity or employer will not knowingly or intentionally employ an unauthorized alien in this state.

c. 1. If the court determines that the business entity or employer has a policy or practice that violates this section, the court shall direct the applicable state, county, or municipal governing bodies to suspend the business licenses or permits of the business entity or employer for a period not less than 60 days and not to exceed 120 days specific to the location or locations where the unauthorized alien performed work.

2. Before a business license or permit that has been suspended under this paragraph is reinstated, a legal representative of the business entity or employer shall submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this subdivision and a copy of the Memorandum of Understanding issued to the business entity or employer at the time of enrollment in E-Verify.

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d. A finding by a court of competent jurisdiction of a second violation of subsection (a) that does not occur within ten years of a first violation shall still be considered a second violation of subsection (a) by the business entity or employer, even though the penalty for the second violation shall be governed by subdivision (1).

(3) Upon a finding by a court of competent jurisdiction of a third violation of subsection (a) by a business entity or employer, including a subcontractor, awarded a contract by the state, any political subdivision thereof, or any state-funded entity:

a. The business entity or employer shall be deemed in breach of contract and the state, political subdivision thereof, or state-funded entity shall terminate the contract after providing notice and an opportunity to be heard.

b. The court shall direct the applicable state, county, or municipal governing bodies to permanently revoke all business licenses or permits of the business entity or employer.

(f) (1) This section shall not be construed to deny any procedural mechanisms or legal defenses included in the E-Verify program or any other federal work authorization program.

(2) A business entity or employer that has enrolled in the E-Verify program and has used the program to verify the work authorization of an employee shall not be liable under this section for violations resulting from the hiring of that employee.

(g) The Secretary of State may adopt rules to administer this section and shall report any rules adopted to the Legislature.

(h) Compliance with this section may be verified by the contracting authority or any state or local law enforcement agency at any time to ensure a contractual agreement as provided for in this section is being met.

(i) Anything to the contrary notwithstanding, this section shall not apply to agreements by the state, any political subdivision thereof, or any state-funded entity relating to debt obligations by such entities.

(j) Any business entity or employer found in violation of this section that has had their business license or permit suspended shall not, for the duration of the suspension, be allowed, directly or indirectly, to procure or execute a license or permit similar to those that have been suspended.

(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: "By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

(l) For purposes of this section, "contract" shall mean a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee.

(m) All actions brought under this section shall be brought in circuit court.

(Act 2011-535, p. 888, § 9; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-10. Willful failure to complete or carry alien registration documentation.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an alien unlawfully present in the United States.

(b) In the enforcement of this section, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

(c) A law enforcement official or agency of this state or a county, city, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution and the Constitution of Alabama of 1901.

(d) This section does not apply to a person who maintains authorization from the federal government to be present in the United States.

(e) Any record that relates to the immigration status of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's immigration status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether an alien is lawfully present in the United States.

(f) An alien unlawfully present in the United States who is in violation of this section shall be guilty of a Class C misdemeanor and subject to a fine of not more than one hundred dollars (\$100) and not more than 30 days in jail.

(g) A court shall collect the assessments prescribed in subsection (f) and remit 50 percent of the assessments to the general fund of the local government where the person was apprehended to be earmarked for law enforcement purposes, 25 percent of the assessments to the Alabama Department of Homeland Security, and 25 percent of the assessments to the Department of Public Safety.

(Act 2011-535, p. 888, § 10.)

### § 31-13-11. Unauthorized aliens prohibited from seeking employment in state.

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) It is unlawful for a person who is an unauthorized alien to knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor in this state.

(b) In the enforcement of this section, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States.

(c) A law enforcement official or agency of this state or a county, city, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution and the Constitution of Alabama of 1901.

(d) This section does not apply to a person who maintains authorization from the federal government to be employed in the United States.

(e) Any record that relates to the employment authorization of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's immigration status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether a person is an unauthorized alien.

(f) It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway, or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

(g) It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

(h) A person who is in violation of this section shall be guilty of a Class C misdemeanor and subject to a fine of not more than five hundred dollars (\$500).

(i) A court shall collect the assessments prescribed in subsection (h) and remit 50 percent of the assessments to the general fund of the local government where the person was apprehended to be earmarked for law enforcement purposes, 25 percent of the assessments to the Alabama Department of Homeland Security, and 25 percent of the assessments to the Department of Public Safety.

(j) The terms of this section shall be interpreted consistently with 8 U.S.C. § 1324a and any applicable federal rules and regulations.

(Act 2011-535, p. 888, § 11.)



### **§ 31-13-12. Verification by law enforcement officers of citizenship and immigration status of persons under certain circumstances.**

(a) Upon any lawful stop, detention, or arrest made by a state, county, or municipal law enforcement officer of this state in the enforcement of any state law or ordinance of any political subdivision thereof, where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct an investigation. Such determination shall be made by contacting the federal government pursuant to 8 U.S.C. § 1373(c) and relying upon any verification provided by the federal government.

(b) Any alien who is arrested and booked into custody shall have his or her immigration status determined pursuant to 8 U.S.C. § 1373(c). The alien's immigration status shall be verified by contacting the federal government pursuant to 8 U.S.C. § 1373(c) within 24 hours of the time of the alien's arrest. If for any reason federal verification pursuant to 8 U.S.C. § 1373(c) is delayed beyond the time that the alien would otherwise be released from custody, the alien shall be released from custody.

(c) A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. A law enforcement officer may not consider race, color, or national origin in implementing the requirements of this section except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901.

(d) A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer any of the following:

- (1) A valid, unexpired Alabama driver's license.
- (2) A valid, unexpired Alabama nondriver identification card.
- (3) A valid tribal enrollment card or other form of tribal identification bearing a photograph or other biometric identifier.
- (4) Any valid United States federal or state government issued identification document bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful presence in the United States before issuance.
- (5) A foreign passport with an unexpired United States Visa and a corresponding stamp or notation by the United States Department of Homeland Security indicating the bearer's admission to the United States.
- (6) A foreign passport issued by a visa waiver country with the corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the United States Department of Homeland Security indicating the bearer's admission to the United States.

(e) If an alien is determined by the federal government to be an alien who is unlawfully present in the United States pursuant to 8 U.S.C. § 1373(c), the law enforcement agency shall cooperate in the transfer of the alien to the custody of the federal government, if the federal government so requests.

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(Act 2011-535, p. 888, § 12.)

### **§ 31-13-13. Concealing, harboring, shielding, etc., unauthorized aliens.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) It shall be unlawful for a person to do any of the following:

- (1) Conceal, harbor, or shield from detection or attempt to conceal, harbor, or shield from detection or conspire to conceal, harbor, or shield from detection an alien in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered, or remains in the United States in violation of federal law. This subdivision should be interpreted consistent with 8 U.S.C. § 1324(a)(1)(A).
- (2) Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such alien's coming to, entering, or residing in the United States is or will be in violation of federal law. This subdivision should be interpreted consistent with 8 U.S.C. § 1324(a)(1)(A).
- (3) Transport, or attempt to transport, or conspire to transport in this state an alien in furtherance of the unlawful presence of the alien in the United States, knowingly, or in reckless disregard of the fact, that the alien has come to, entered, or remained in the United States in violation of federal law. Conspiracy to be so transported shall be a violation of this subdivision. This subdivision should be interpreted consistent with 8 U.S.C. § 1324(a)(1)(A).
- (4) It shall not be a violation of this section for a religious denomination having a bona fide nonprofit religious organization in the United States, or the agents or officers of the denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year. This subdivision should be interpreted consistent with 8 U.S.C. § 1324(a)(1)(C).

(b) Any person violating this section is guilty of a Class A misdemeanor for each unlawfully present alien, the illegal presence of which in the United States and the State of Alabama, he or she is facilitating or is attempting to facilitate.

(c) A person violating this section is guilty of a Class C felony when the violation involves five or more aliens, the illegal presence of which in the United States and the State of Alabama, he or she is facilitating or is attempting to facilitate.

(d) Notwithstanding any other law, a law enforcement agency may securely transport an alien whom the agency has received verification from the federal government pursuant to 8 U.S.C. § 1373(c) is unlawfully present in the United States and who is in the agency's custody to a state approved facility, to a federal facility in this state, or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial or executive authorization from the Governor before securely

transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this state.

(e) Notwithstanding any other law, any person acting in his or her official capacity as a first responder or protective services provider may harbor, shelter, move, or transport an alien unlawfully present in the United States pursuant to state law.

(f) Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of this section, and the gross proceeds of such a violation, shall be subject to civil forfeiture under the procedures of Section 20-2-93.

(g) In the enforcement of this section, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). A law enforcement officer shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

(h) Any record that relates to the immigration status of a person is admissible in any court of this state without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's immigration status received from the federal government pursuant to 8 U.S.C. § 1373(c) shall constitute proof of that alien's status. A court of this state shall consider only the federal government's verification in determining whether an alien is lawfully present in the United States.

(Act 2011-535, p. 888, § 13; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-14. Dealing in false identification documents; vital records identity fraud.**

(a) A person commits the crime of dealing in false identification documents if he or she knowingly reproduces, manufactures, sells, or offers for sale any identification document which does both of the following:

- (1) Simulates, purports to be, or is designed so as to cause others reasonably to believe it to be an identification document.
- (2) Bears a fictitious name or other false information.

(b) A person commits the crime of vital records identity fraud related to birth, death, marriage, and divorce certificates if he or she does any of the following:

- (1) Supplies false information intending that the information be used to obtain a certified copy of a vital record.
- (2) Makes, counterfeits, alters, amends, or mutilates any certified copy of a vital record without lawful authority and with the intent to deceive.
- (3) Obtains, possesses, uses, sells, or furnishes, or attempts to obtain, possess, or furnish to another a certified copy of a vital record, with the intent to deceive.

- (c) (1) Dealing in false identification documents is a Class C felony.
- (2) Vital records identity fraud is a Class C felony.
- (d) This section shall not apply to any of the following:
- (1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage.
- (2) A person less than 19 years of age who uses the identification documents of another person to acquire any of the following:
- a. Cigarettes or tobacco products.
  - b. A periodical, videotape, or other communication medium that contains or depicts nudity.
  - c. Admittance to a performance, live or film, that prohibits the attendance of the person based on age.
  - d. An item that is prohibited by law for use or consumption by such person.
- (e) As used in this section, identification document means any card, certificate, or document or banking instrument, including, but not limited to, a credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondriver identification cards, certified copies of birth, death, marriage, and divorce certificates, Social Security cards, and employee identification cards.
- (f) Any person convicted of dealing in false identification documents as defined in this section shall be fined up to one thousand dollars (\$1,000) for every card or document he or she creates or possesses and be subject to any and all other state laws that may apply. A court shall collect the fines prescribed by this subsection and shall remit 50 percent of the fines to the general fund of the local government that apprehended the person to be earmarked for law enforcement purposes, 25 percent of the fines to the Alabama Department of Homeland Security, and 25 percent of the fines to the Department of Public Safety.

(Act 2011-535, p. 888, § 14.)

### **§ 31-13-15. Employment of unauthorized aliens prohibited.**

(a) No business entity, employer, or public employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Alabama. Knowingly employ, hire for employment, or continue to employ an unauthorized alien means the actions described in 8 U.S.C. § 1324a.

(b) Effective April 1, 2012, every business entity or employer in this state shall enroll in E-Verify and thereafter, according to the federal statutes and regulations governing E-Verify, shall verify the employment eligibility of the employee through E-Verify. A business entity or employer that uses E-Verify to verify the work authorization

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of an employee shall not be deemed to have violated this section with respect to the employment of that employee.

(c) On a finding of a first violation by a court of competent jurisdiction that a business entity or employer knowingly violated subsection (a), the court shall do all of the following:

- (1) Order the business entity or employer to terminate the employment of every unauthorized alien.
- (2) Subject the business entity or employer to a three-year probationary period throughout the state. During the probationary period, the business entity or employer shall file quarterly reports with the local district attorney of each new employee who is hired by the business entity or employer in the state.
- (3) Order the business entity or employer to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the business entity or employer has terminated the employment of every unauthorized alien and the business entity or employer will not knowingly or intentionally employ an unauthorized alien in this state.
- (4) Direct the applicable state, county, or municipal governing bodies to suspend the business licenses and permits, if such exist, of the business entity or employer for a period not to exceed 10 business days specific to the business location where the unauthorized alien performed work.

(d) (1) Before a business license or permit that has been suspended under subsection (c) is reinstated, a legal representative of the business entity or employer shall submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this chapter and a copy of the memorandum of understanding issued to the business entity or employer at the time of enrollment in E-Verify.

(2) The suspension of a business license or permit under subsection (c) shall terminate one business day after a legal representative of the business entity or employer submits a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of this chapter to the court.

(e) For a second violation of subsection (a) by a business entity or employer, the court shall direct the applicable state, county, or municipal governing body to permanently revoke all business licenses and permits, if such exist, held by the business entity or employer specific to the business location where the unauthorized alien performed work. On receipt of the order, and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses and permits held by the business entity or employer.

(f) For a subsequent violation of subsection (a), the court shall direct the applicable governing bodies to forever suspend the business licenses and permits, if such exist, of the business entity or employer throughout the state.

(g) This section shall not be construed to deny any procedural mechanisms or legal defenses included in the E-Verify program or any other federal work authorization program. A person or entity that establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that the business entity or employer did not knowingly hire or employ an unauthorized alien.

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(h) In proceedings of the court, the determination of whether an employee is an unauthorized alien shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an employee is an unauthorized alien. The court may take judicial notice of any verification of an individual's immigration status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.

(i) Any business entity or employer that terminates an employee to comply with this section shall not be liable for any claims made against the business entity or employer by the terminated employee, provided that such termination is made without regard to the race, ethnicity, or national origin of the employee and that such termination is consistent with the anti-discrimination laws of this state and of the United States.

(j) If any agency of the state or any political subdivision thereof fails to suspend the business licenses or permits, if such exist, as a result of a violation of this section, the agency shall be deemed to have violated subsection (a) of Section 31-13-5 and shall be subject to the penalties thereunder.

(k) In addition to the district attorneys of this state, the Attorney General shall also have authority to bring a civil complaint in any court of competent jurisdiction to enforce the requirements of this section.

- (1) Any resident of this state may petition the Attorney General to bring an enforcement action against a specific business entity or employer by means of a written, signed petition. A valid petition shall include an allegation that describes the alleged violator or violators, as well as the action constituting the violation, and the date and location where the action occurred.
- (2) A petition that alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be acted upon.
- (3) The Attorney General shall respond to any petition under this subsection within 60 days of receiving the petition, either by filing a civil complaint in a court of competent jurisdiction or by informing the petitioner in writing that the Attorney General has determined that filing a civil complaint is not warranted.

(l) This section does not apply to the relationship between a party and the employees of an independent contractor performing work for the party and does not apply to casual domestic labor performed within a household.

(m) It is an affirmative defense to a violation of subsection (a) of this section that a business entity or employer was entrapped.

- (1) To claim entrapment, the business entity or employer must admit by testimony or other evidence the substantial elements of the violation.
- (2) A business entity or employer who asserts an entrapment defense has the burden of proving by clear and convincing evidence the following:
  - a. The idea of committing the violation started with law enforcement officers or their agents rather than with the business entity or employer.

b. The law enforcement officers or their agents urged and induced the business entity or employer to commit the violation.

c. The business entity or employer was not already predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

(n) In addition to actions taken by the state or political subdivisions thereof, the Attorney General or the district attorney of the relevant county may bring an action to enforce the requirements of this section in any county district court of this state wherein the business entity or employer does business.

(o) The terms of this section shall be interpreted consistently with 8 U.S.C. § 1324a and any applicable federal rules and regulations.

(Act 2011-535, p. 888, § 15.)

### **§ 31-13-16. Certain business expense deductions prohibited.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) No wage, compensation, whether in money or in kind or in services, or remuneration of any kind for the performance of services paid to an unauthorized alien shall be allowed as a deductible business expense for any state income or business tax purposes in this state. This subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(b) Any business entity or employer who knowingly fails to comply with the requirements of this section shall be liable for a penalty equal to 10 times the business expense deduction claimed in violation of subsection (a). The penalty provided in this subsection shall be payable to the Alabama Department of Revenue.

(Act 2011-535, p. 888, § 16.)

### **§ 31-13-17. Discriminatory employment practices.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) It shall be a discriminatory practice for a business entity or employer to fail to hire a job applicant who is a United States citizen or an alien who is authorized to work in the United States as defined in 8 U.S.C. § 1324a(h)(3) or discharge an employee working in Alabama who is a United States citizen or an alien who is authorized to work in the United States as defined in 8 U.S.C. § 1324a(h)(3) while retaining or hiring an employee who the business entity or employer knows, or reasonably should have known, is an unauthorized alien.

(b) A violation of subsection (a) may be the basis of a civil action in the state courts of this state. Any recovery under this subsection shall be limited to compensatory relief and shall not include any civil or criminal sanctions against the employer.

(c) The losing party in any civil action shall pay the court costs and reasonable attorneys fees for the prevailing party; however, the losing party shall only pay the attorneys fees of the prevailing party up to the amount paid by the losing party for his or her own attorneys fees.

(d) The amount of the attorneys fees spent by each party shall be reported to the court before the verdict is rendered.

(e) In proceedings of the court, the determination of whether an employee is an unauthorized alien shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an employee is an unauthorized alien. The court may take judicial notice of any verification of an individual's immigration status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.

(Act 2011-535, p. 888, § 17.)

### **§ 31-13-18. Verification of legal status of person charged with a crime for which bail is required; detention.**

(a) When a person is charged with a crime for which bail is required, or is confined for any period in a state, county, or municipal jail, a reasonable effort shall be made to determine if the person is an alien unlawfully present in the United States by verification with the federal government pursuant to 8 U.S.C. § 1373(c).

(b) A verification inquiry, pursuant to 8 U.S.C. § 1373(c), shall be made within 48 hours to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the federal government. If the person is determined to be an alien unlawfully present in the United States, the person shall be considered a flight risk and shall be detained until prosecution or until handed over to federal immigration authorities.

(Act 2011-535, p. 888, § 19.)

### **§ 31-13-19. Notification of federal and state authorities when unauthorized alien convicted of violating state or local law.**

If an alien who is unlawfully present in the United States is convicted of a violation of state or local law and is within 30 days of release, the agency legally responsible for his or her custody at that time shall notify the United States Bureau of Immigration and Customs Enforcement and the Alabama Department of Homeland Security, pursuant to 8 U.S.C. § 1373. The Alabama Department of Homeland Security shall assist in the coordination of the transfer of the prisoner to the appropriate federal immigration authorities; however, the agency legally responsible for his or her custody at that time shall maintain custody during any transfer of the individual.

(Act 2011-535, p. 888, § 20; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-20. Stay of chapter when unauthorized alien is a victim, critical witness, etc., under certain conditions.**

If a person is an alien who is unlawfully present in the United States and is a victim of a criminal act, is the child of a victim of a criminal act, is a biological parent or legal guardian of a victim of a criminal act who is a minor, is



a critical witness in any prosecution, is the biological parent or legal guardian of a critical witness in any prosecution who is a minor, or is the child of a critical witness in any prosecution of a state or federal crime, all provisions of this chapter shall be stayed until all of the related legal proceedings are concluded. However, the relevant state, county, or local law enforcement agency shall comply with any request by federal immigration officers to take custody of the person.

(Act 2011-535, p. 888, § 21; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-21. Employment of state law enforcement officers by Alabama Department of Homeland Security.**

(a) Notwithstanding Section 31-9A-9, the Alabama Department of Homeland Security may hire, appoint, and maintain APOST certified state law enforcement officers. Such officers shall receive the same rights and benefits as those prescribed to officers of the Alabama Department of Public Safety, except for the purposes of retirement. The officers shall have the same retirement benefits as a law enforcement officer as defined under Section 36-27-59.

(b) Unless a violation of state law occurs in their presence, officers authorized under this section shall not engage in routine law enforcement activity, except for those investigative and analytical duties necessary to carry out the enforcement of this chapter and to fulfill the mission of the Alabama Department of Homeland Security or those duties necessary to provide assistance to other law enforcement agencies.

(c) The Director of the Alabama Department of Homeland Security shall have the authority to promulgate rules for the enforcement of this chapter.

(Act 2011-535, p. 888, § 22.)

### **§ 31-13-22. Enforcement of chapter in coordination with federal immigration laws.**

The Alabama Department of Homeland Security shall have the authority to coordinate with state and local law enforcement the practice and methods required to enforce this chapter in cooperation with federal immigration authorities and consistent with federal immigration laws.

(Act 2011-535, p. 888, § 23.)

### **§ 31-13-23. Enforcement report.**

(a) The Alabama Department of Homeland Security shall file an annual report to the Legislature on the progress being made regarding the enforcement of this chapter and the status of the progress being made in the effort to reduce the number of illegal aliens in the State of Alabama. The report shall include, but is not limited to, the statistics and results from the enforcement of the sections of this chapter, and suggestions on what can be done including additional legislation to further assist the federal government in its efforts to apprehend illegal aliens in the State of Alabama. This report shall also be made available to the public and shall be announced through a press release from the Attorney General's office.

(b) The Alabama Department of Homeland Security shall create a mechanism for receiving tips from the general public regarding possible violations of this chapter, including the unlawful enforcement of this chapter.

(Act 2011-535, p. 888, § 24; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-24. Solicitation, attempt, or conspiracy to violate chapter.**

(a) A solicitation to violate any criminal provision of this chapter, an attempt to violate any criminal provision of this chapter, or a conspiracy to violate any criminal provision of this chapter shall have the same penalty as a violation of this chapter.

(b) For the purposes of this section, solicitation shall have the same principles of liability and defenses as criminal solicitation under subsections (b) through (e) of Section 13A-4-1 and Section 13A-4-5.

(c) For the purposes of this section, attempt shall have the same principles of liability and defenses as attempt under subsections (b) and (c) of Section 13A-4-2 and Section 13A-4-5.

(d) For the purposes of this section, conspiracy shall have the same principles of liability and defenses as criminal conspiracy under subsections (b) through (f) of Section 13A-4-3 and Sections 13A-4-4 and 13A-4-5.

(Act 2011-535, p. 888, § 25.)

### **§ 31-13-25. E-Verify employer agent service.**

(a) (1) The Alabama Department of Homeland Security shall establish and maintain an E-Verify employer agent service for any business entity or employer in this state with 25 or fewer employees to use the E-Verify program to verify an employee's employment eligibility on behalf of the business entity or employer. The Alabama Department of Homeland Security shall establish an E-Verify employer agent account with the United States Department of Homeland Security, shall enroll a participating business entity or employer in the E-Verify program on its behalf, and shall conform to all federal statutes and regulations governing E-Verify employer agents. The Alabama Department of Homeland Security shall not charge a fee to a participating business entity or employer for this service.

(2) The Alabama Department of Homeland Security E-Verify employer agent service shall be in place by November 30, 2011. The service shall accommodate a business entity or employer who wishes to communicate with the Alabama Department of Homeland Security by internet, by electronic mail, by facsimile machine, by telephone, or in person, provided that such communication is consistent with federal statutes and regulations governing E-Verify employer agents.

(b) On or after January 1, 2012, before receiving any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity, a business entity or employer shall provide proof to the state, political subdivision thereof, or state-funded entity that the business entity or employer is enrolled and is participating in the E-Verify program, either independently or through the Alabama Department of Homeland Security E-Verify employer agent service.

(c) Every three months, the Alabama Department of Homeland Security shall request from the United States Department of Homeland Security a list of every business entity or employer in this state that is enrolled in the E-Verify program. On receipt of the list, the Alabama Department of Homeland Security shall make the list available on its website.

(d) A business entity or employer that is enrolled in the E-Verify program and that verifies the employment eligibility of an employee in good faith pursuant to this section, and acts in conformity with all applicable federal statutes and regulations is immune from liability under Alabama law for any action by an employee for wrongful discharge or retaliation based on a notification from the E-Verify program that the employee is an unauthorized alien.

(Act 2011-535, p. 888, § 26.)

### **§ 31-13-26. Enforcement of certain contracts prohibited.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) No court of this state shall enforce the terms of, or otherwise regard as valid, any contract between a party and an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present in the United States at the time the contract was entered into, and the performance of the contract required the alien to remain unlawfully present in the United States for more than 24 hours after the time the contract was entered into or performance could not reasonably be expected to occur without such remaining.

(b) This section shall not apply to a contract for lodging for one night, a contract for the purchase of food to be consumed by the alien, a contract for medical services, or a contract for transportation of the alien that is intended to facilitate the alien's return to his or her country of origin.

(c) This section shall not apply to a contract authorized by federal law, to a contract entered into prior to May 18, 2012, or to a contract for the appointment or retention of legal counsel in legal matters.

(d) In proceedings of the court, the determination of whether an alien is unlawfully present in the United States shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the federal government's determination when deciding whether an alien is unlawfully present in the United States. The court may take judicial notice of any verification of an individual's immigration status previously provided by the federal government and may request the federal government to provide further automated or testimonial verification.

(Act 2011-535, p. 888, § 27; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-27. Verification of citizenship and immigration status of students enrolling in public schools; annual reports; disclosure of information.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

(a) (1) Every public elementary and secondary school in this state, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States and qualifies for assignment to an English as Second Language class or other remedial program.

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(2) The public school, when making the determination required by subdivision (1), shall rely upon presentation of the student's original birth certificate, or a certified copy thereof.

(3) If, upon review of the student's birth certificate, it is determined that the student was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States, or where such certificate is not available for any reason, the parent, guardian, or legal custodian of the student shall notify the school within 30 days of the date of the student's enrollment of the actual citizenship or immigration status of the student under federal law.

(4) Notification shall consist of both of the following:

a. The presentation for inspection, to a school official designated for such purpose by the school district in which the child is enrolled, of official documentation establishing the citizenship and, in the case of an alien, the immigration status of the student, or alternatively by submission of a notarized copy of such documentation to such official.

b. Attestation by the parent, guardian, or legal custodian, under penalty of perjury, that the document states the true identity of the child. If the student or his or her parent, guardian, or legal representative possesses no such documentation but nevertheless maintains that the student is either a United States citizen or an alien lawfully present in the United States, the parent, guardian, or legal representative of the student may sign a declaration so stating, under penalty of perjury.

(5) If no such documentation or declaration is presented, the school official shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States.

(b) Each school district in this state shall collect and compile data as required by this section.

(c) Each school district shall submit to the State Board of Education an annual report listing all data obtained pursuant to this section.

(d) (1) The State Board of Education shall compile and submit an annual public report to the Legislature.

(2) The report shall provide data, aggregated by public school, regarding the numbers of United States citizens, of lawfully present aliens by immigration classification, and of aliens believed to be unlawfully present in the United States enrolled at all primary and secondary public schools in this state. The report shall also provide the number of students in each category participating in English as a Second Language Programs enrolled at such schools.

(3) The report shall analyze and identify the effects upon the standard or quality of education provided to students who are citizens of the United States residing in Alabama that may have occurred, or are expected to occur in the future, as a consequence of the enrollment of students who are aliens not lawfully present in the United States.

- (4) The report shall analyze and itemize the fiscal costs to the state and political subdivisions thereof of providing educational instruction, computers, textbooks and other supplies, free or discounted school meals, and extracurricular activities to students who are aliens not lawfully present in the United States.
- (5) The State Board of Education shall prepare and issue objective baseline criteria for identifying and assessing the other educational impacts on the quality of education provided to students who are citizens of the United States, due to the enrollment of aliens who are not lawfully present in the United States, in addition to the statistical data on citizenship and immigration status and English as a Second Language enrollment required by this chapter. The State Board of Education may contract with reputable scholars and research institutions to identify and validate such criteria. The State Board of Education shall assess such educational impacts and include such assessments in its reports to the Legislature.

(e) Public disclosure by any person of information obtained pursuant to this section which personally identifies any student shall be unlawful, except for purposes permitted pursuant to 8 U.S.C. §§ 1373 and 1644. Any person intending to make a public disclosure of information that is classified as confidential under this section, on the ground that such disclosure constitutes a use permitted by federal law, shall first apply to the Attorney General and receive a waiver of confidentiality from the requirements of this subsection.

(f) A student whose personal identity has been negligently or intentionally disclosed in violation of this section shall be deemed to have suffered an invasion of the student's right to privacy. The student shall have a civil remedy for such violation against the agency or person that has made the unauthorized disclosure.

(g) The State Board of Education shall construe all provisions of this section in conformity with federal law.

(h) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(Act 2011-535, p. 888, § 28.)

### **§ 31-13-28. Voter registration eligibility and requirements.**

(a) Applications for voter registration shall contain voter eligibility requirements and such information as is necessary to prevent duplicative voter registrations and enable the county board of registrars to assess the eligibility of the applicant and to administer voter registration, identify the applicant and to determine the qualifications of the applicant as an elector and the facts authorizing such person to be registered. Applications shall contain a statement that the applicant shall be required to provide qualifying identification when voting.

(b) The Secretary of State shall create a process for the county board of registrars to check to indicate whether an applicant has provided with the application the information necessary to assess the eligibility of the applicant, including the applicant's United States citizenship. This section shall be interpreted and applied in accordance with federal law. No eligible applicant whose qualifications have been assessed shall be denied registration.

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(c) The county board of registrars shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship. Satisfactory evidence of United States citizenship shall be provided in person at the time of filing the application for registration or by including, with a mailed registration application, a photocopy of one of the documents listed as evidence of United States citizenship in subsection (k). After a person has submitted satisfactory evidence of citizenship, the county board of registrars shall indicate this information in the person's permanent voter file.

(d) Any person who is registered in this state on September 1, 2011, is deemed to have provided satisfactory evidence of United States citizenship and shall not be required to submit evidence of citizenship.

(e) For purposes of this section, proof of voter registration from another state is not satisfactory evidence of United States citizenship.

(f) A registered voter who moves from one residence to another within the state or who modifies his or her voter registration records for any other reason shall not be required to submit evidence of United States citizenship.

(g) If evidence of United States citizenship is deemed to be unsatisfactory due to an inconsistency between the document submitted as evidence and the name or sex provided on the application for registration, such applicant may sign an affidavit containing both of the following:

- (1) Stating the inconsistency or inconsistencies related to the name or sex, and the reason therefor.
- (2) Swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship.

(h) There shall be no inconsistency between the date of birth on the document provided as evidence of citizenship and the date of birth provided on the application for registration. If such an affidavit is submitted by the applicant, the county board of registrars shall assess the eligibility of the applicant without regard to any inconsistency stated in the affidavit.

(i) All documents submitted as evidence of United States citizenship shall be kept confidential by the county board of registrars and maintained as provided by record retention laws.

(j) Nothing in this section shall prohibit an applicant from providing, or the county board of registrars from obtaining, satisfactory evidence of United States citizenship, as described in this section, at a different time or in a different manner than an application for registration is provided, as long as the applicant's eligibility can be adequately assessed by the county board of registrars as required by this section.

(k) Evidence of United States citizenship shall be demonstrated by one of the following documents, or a legible photocopy or a copy in a digital or other electronic format of one of the following documents:

- (1) The applicant's driver's license or nondriver's identification card issued by the division of motor vehicles or the equivalent governmental agency of another state within the United States provided that the governmental agency of another state within the United States requires proof of lawful presence in the United States as a condition of issuance of the driver's license or nondriver's identification card.

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- (2) The applicant's birth certificate indicating birth in the United States or one of its territories.
- (3) Pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number, or presentation to the county board of registrars of the applicant's United States passport.
- (4) The applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States Bureau of Citizenship and Immigration Services by the county election officer or the Secretary of State, pursuant to 8 U.S.C. § 1373(c).
- (5) Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, and amendments thereto.
- (6) The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
- (7) The applicant's consular report of birth abroad of a citizen of the United States of America.
- (8) The applicant's certificate of citizenship issued by the United States Citizenship and Immigration Services.
- (9) The applicant's certification of report of birth issued by the United States Department of State.
- (10) The applicant's American Indian card, with KIC classification, issued by the United States Department of Homeland Security.
- (11) The applicant's final adoption decree showing the applicant's name and United States birthplace.
- (12) The applicant's official United States military record of service showing the applicant's place of birth in the United States.
- (13) An extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.

(l) If an applicant is a United States citizen but does not have any of the documentation listed in this section as satisfactory evidence of United States citizenship, the applicant may submit any evidence that the applicant believes demonstrates the applicant's United States citizenship. Any applicant seeking an assessment of evidence under this section may directly contact the county board of registrars by submitting a voter registration application or the national voter registration form and any supporting evidence of United States citizenship. The county board of registrars shall give the applicant an opportunity for a hearing, upon the applicant's request in writing, and an opportunity to present any additional evidence to the county board of registrars. Notice of such hearing shall be given to the applicant at least five days prior to the hearing date. An applicant shall have the opportunity to be represented by counsel at such hearing. The county board of

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registrars shall assess the evidence provided by the applicant to determine whether the applicant has provided satisfactory evidence of United States citizenship. If the county board of registrars finds that the evidence presented by an applicant does not constitute satisfactory evidence of United States citizenship, the applicant shall have the right to appeal such determination by a county board of registrars by instituting an action under 8 U.S.C. § 1503. Any negative assessment of an applicant's eligibility by a county board of registrars shall be reversed if the applicant obtains a declaratory judgment pursuant to 8 U.S.C. § 1503, demonstrating that the applicant is a national of the United States.

- (m) (1) The Department of Public Health shall not charge or accept any fee for a certified copy of a birth certificate if the certificate is requested by any person who is 17 years of age or older for purposes of meeting the voter registration requirements of this chapter. The person requesting a certified copy of a birth certificate shall swear under oath to both of the following:
- a. That the person plans to register to vote in this state.
  - b. That the person does not possess any of the documents that constitute evidence of United States citizenship as defined in this chapter.
- (2) The affidavit shall specifically list the documents that constitute evidence of United States citizenship as defined in this chapter.

(Act 2011-535, p. 888, § 29; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-29. Limitations on public records transactions conducted by unauthorized aliens.**

(a) For the purposes of this section, public records transaction means applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or nondriver identification card, applying for or renewing a business license, applying for or renewing a commercial license, or applying for or renewing a professional license. Public records transaction does not include applying for a marriage license, any transaction relating to housing under Title 24 or the ownership of real property, including the payment of property taxes, or the payment of any other tax to the state or a political subdivision thereof, or any other transaction.

(b) An alien not lawfully present in the United States shall not enter into or attempt to enter into a public records transaction with the state or a political subdivision of the state and no person shall enter into a public records transaction or attempt to enter into a public records transaction on behalf of an alien not lawfully present in the United States.

(c) (1) Any person entering into a public records transaction or attempting to enter into a public records transaction with this state or a political subdivision of this state shall be required to demonstrate his or her United States citizenship, as provided in subsection (g), or his or her lawful presence in the United States, as provided in subdivision (10) of Section 31-13-3. An alien's lawful presence in the United States may be verified through the Systematic Alien Verification for Entitlements program operated by the Department of Homeland Security, or by other verification with the Department of Homeland Security pursuant to 8 U.S.C. § 1373(c).



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- (2) a. A citizen shall not be required to demonstrate citizenship for subsequent public records transactions after an initial verification of citizenship is made.
- b. An alien demonstrating lawful permanent residence in the United States by the presentation of proper documentation proving that the alien is a lawfully permanent resident in the United States shall not be required to demonstrate lawful status for subsequent public records transactions after an initial verification is made.

(d) A violation of this section by an alien not lawfully present or by a person knowingly acting on behalf of an alien not lawfully present is a Class C felony.

(e) An agency of this state or a county, city, town, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901.

(f) In the enforcement of this section, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). An official of this state or political subdivision of this state shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

(g) A person's United States citizenship may be demonstrated or confirmed by any one of, or a legible photocopy or a copy in a digital or other electronic format of one of, the following documents:

- (1) A driver's license or nondriver's identification card issued by the Alabama Department of Public Safety or the equivalent governmental agency of another state within the United States, provided that the governmental agency of another state within the United States requires proof of lawful presence in the United States as a condition of issuance of the driver's license or nondriver's identification card.
- (2) A birth certificate indicating birth in the United States or one of its territories.
- (3) Pertinent pages of a United States valid or expired passport identifying the person and the person's passport number, or the person's United States passport.
- (4) United States naturalization documents or the number of the certificate of naturalization.
- (5) Other documents or methods of proof of United States citizenship issued by the federal government pursuant to the Immigration and Nationality Act of 1952, as amended.
- (6) Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.
- (7) A consular report of birth abroad of a citizen of the United States of America.
- (8) A certificate of citizenship issued by the United States Citizenship and Immigration Services.
- (9) A certification of report of birth issued by the United States Department of State.

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(10) An American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

(11) Final adoption decree showing the person's name and United States birthplace.

(12) An official United States military record of service showing the applicant's place of birth in the United States.

(13) An extract from a United States hospital record of birth created at the time of the person's birth indicating the place of birth in the United States.

(14) AL-verify.

(15) A valid Uniformed Services Privileges and Identification Card.

(16) Any other form of identification that the Alabama Department of Revenue authorizes, through an administrative rule promulgated pursuant to the Alabama Administrative Procedure Act, to be used to demonstrate or confirm a person's United States citizenship or lawful presence in the United States, provided that the identification requires proof of lawful presence in the United States as a condition of issuance.

(h) If the state or a political subdivision thereof is notified by the federal government that a person is an alien unlawfully present in the United States, the person's motor vehicle license plate, driver's license, nondriver identification card, business license, professional license, or commercial license shall, should they exist, be immediately revoked or rescinded by the appropriate authorities and shall not be reinstated until the state or a political subdivision thereof is notified by the federal government that the person is an alien lawfully present in the United States.

(Act 2011-535, p. 888, § 30; Act 2012-491, p. 1410, § 1.)

### **§ 31-13-30. Relation to Real ID Act of 2005.**

Nothing in this chapter is in any way meant to implement, authorize, or establish the Real ID Act of 2005 (P.L. 109-13, Division D; 119 Stat. 302).

(Act 2011-535, p. 888, § 31.)

### **§ 31-13-31. Defense of law enforcement officers in enforcement of chapter.**

(a) The Legislature finds that the United States Department of Justice has unnecessarily and recklessly threatened Alabama law enforcement officers with personal law suits if the officer appears to make what the Department of Justice deems a misstep in enforcing the Beason-Hammon Alabama Taxpayer and Citizen Protection Act.

(b) Because of this finding, it is necessary for the Legislature to defend Alabama law enforcement officers against federal overreach.

(c) If the Attorney General of Alabama deems that an Alabama law enforcement officer performed his or her duties enforcing Act 2011-535 according to accepted standards of Alabama law enforcement, the state shall defend the law enforcement officer against actions brought personally against the officer by the United States Department of Justice.

(Act 2012-491, p. 1410, § 4.)

### **§ 31-13-32. Report to Alabama Department of Homeland Security.**

(a) The Administrative Office of Courts shall submit a quarterly report, organized by county, to the Alabama Department of Homeland Security summarizing the number of cases in which an unlawfully present alien was detained by law enforcement and appeared in court for any violation of state law and shall include all of the following information in the report:

- (1) The name of the unlawfully present alien.
- (2) The violation or charge alleged to have been committed by the unlawfully present alien.
- (3) The name of the judge presiding over the case.
- (4) The final disposition of the case, including whether the unlawfully present alien was released from custody, remained in detention, or was transferred to the custody of the appropriate federal immigration authorities.

(b) The Alabama Department of Homeland Security shall publish on its public website, in a convenient and prominent location, the information provided in the quarterly report from the Administrative Office of Courts. The display of this information on the department's public website shall be searchable by county and presiding judge.

(c) For the purposes of this section, the determination of whether a person is an unlawfully present alien shall be verified by the federal government pursuant to 8 U.S.C. § 1373(c).

(Act 2012-491, p. 1410, § 5.)

### **§ 31-13-33. Rental agreements with unauthorized aliens prohibited.**

**(Held unconstitutional; contact Office of General Counsel for more information.)**

Notwithstanding any other provision of law to the contrary, it shall be unlawful for a person to harbor an alien unlawfully present in the United States by entering into a rental agreement, as defined by Section 35-9A-141, with an alien to provide accommodations, if the person knows or recklessly disregards the fact that the alien is unlawfully present in the United States.

(Act 2012-491, p. 1410, § 6.)

### **§ 31-13-34. Enforcement of chapter.**

(a) Any law enforcement agency of the state or any law enforcement agency of a political subdivision of the state shall have the authority to enforce the provisions of this chapter.

(b) The Attorney General and a district attorney investigating or prosecuting any violation of this chapter shall have the power to issue subpoenas to compel the production of relevant documents and other evidence necessary to enforce the provisions of this chapter.

(Act 2012-491, p. 1410, § 7.)

### **§ 31-13-35. Records searches by Department of Revenue; investigations.**

(a) The Department of Revenue shall conduct annual searches of its records to determine if multiple individuals have filed tax returns under the same Social Security number or the same individual tax identification number.

(b) If the department determines that multiple individuals have filed tax returns under the same Social Security number or the same individual tax identification number, the department shall further investigate the use of the Social Security numbers or individual tax identification numbers.

(c) After its investigation, if the department determines that a Social Security number or an individual tax identification number has been stolen or misused by another individual in violation of Article 10, Chapter 8, of Title 13A, the department shall report the violation to the Attorney General or the appropriate district attorney.

(Act 2012-491, p. 1410, § 8.)

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### Title 36, Public Officers and Employees Chapter 12, Maintenance, Use, Etc., of Public Property, Records, Etc. Article 1, General Provisions

#### **§ 36-12-1. Public officer or servant defined.**

A public officer or servant, as used in this article, is intended to and shall include, in addition to the ordinary public offices, departments, commissions, bureaus and boards of the state and the public officers and servants of counties and municipalities, all persons whatsoever occupying positions in state institutions.

(Acts 1915, No. 237, p. 287, § 7; Code 1923, § 2694; Code 1940, T. 41, § 144.)

#### **§ 36-12-2. Public officers and servants to accurately maintain and preserve from loss, destruction, etc., complete books, papers, files, etc.**

All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.

(Acts 1915, No. 237, p. 287, § 1; Code 1923, § 2690; Code 1940, T. 41, § 139.)

#### **§ 36-12-3. Permanence and uniformity in size, style, etc., of books, papers, files, etc., required; factors in selection of record books, writing paper, inks, typewriter ribbons, etc.**

The books, documents and files shall be uniform in size and general style of makeup and binding throughout the several state offices and departments, and in their manufacture the best grades of paper, inks and binding shall be employed. Only papers, inks, typewriter ribbons, carbon papers and ink pads of a permanent and nondestructible character shall be used in any of such offices or departments. In contracting for the record books, letterheads or other writing papers, follow sheets, inks, typewriter ribbons, carbon papers and stamp pads, the officer, officers or agents charged with the selection or purchase thereof shall require substantial uniformity as above provided and shall select only such books or other materials as conform to the requirements specified in this section, to the end that all state, county, municipal and institutional records may be lasting and permanent.

(Acts 1915, No. 237, p. 287, § 2; Code 1923, § 2691; Code 1940, T. 41, § 140.)

#### **§ 36-12-4. Public officers and servants to deliver current papers, books, etc., to successors in office.**

All public officers and servants of this state shall turn over to their successors in office, together with a list thereof, all current books, papers and documents pertaining to the business, affairs or transactions of their

office, taking a receipt therefor, which said receipt shall also contain a list of all such books, papers and documents.

(Acts 1915, No. 237, p. 287, § 4; Code 1923, § 2693; Code 1940, T. 41, § 142.)

### **§ 36-12-5. Disposition of books, papers, etc., when no longer current.**

All public officers and servants of the state, whenever any book, paper or document pertaining to the affairs, business or transactions of their office has ceased to be current, shall deliver the same together with a list of such books, papers and documents to the Director of the Department of Archives and History, receiving in return therefor a receipt from such director which shall also contain a list of such books, papers and documents, and all such books, papers, and documents of officers and servants of counties and municipalities shall be, when they cease to be current, in like manner delivered to the probate judge of such county and to the mayor, president of the board of commissioners or other executive officer of the municipality and, in like manner, such officer to whom such books, papers and documents are delivered shall give his receipt therefor.

(Acts 1915, No. 237, p. 287, § 3; Code 1923, § 2692; Code 1940, T. 41, § 141.)

### Article 3, Inspection and Copying of Records

#### **§ 36-12-40. Rights of citizens to inspect and copy public writings; exceptions.**

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended) the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.

(Code 1923, § 2695; Code 1940, T. 41, § 145; Acts 1983, No. 83-565, p. 866, § 3; Act 2004-487, p. 906, § 1.)

#### **§ 36-12-41. Public officers to provide certified copies of writings upon payment of fees therefor; admissibility in evidence of copies.**

Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

(Code 1923, § 2696; Code 1940, T. 41, § 147.)

### Chapter 25, Code of Ethics for Public Officials, Employees, Etc.

#### § 36-25-1. Definitions.

Whenever used in this chapter, the following words and terms shall have the following meanings:

- (1) **BUSINESS.** Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
- (2) **BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.** Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.
- (3) **CANDIDATE.** This term as used in this chapter shall have the same meaning ascribed to it in Section 17-22A-2.
- (4) **COMMISSION.** The State Ethics Commission.
- (5) **COMPLAINT.** Written allegation or allegations that a violation of this chapter has occurred.
- (6) **COMPLAINANT.** A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.
- (7) **CONFIDENTIAL INFORMATION.** A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.
- (8) **CONFLICT OF INTEREST.** A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:
  - a. A loan or financial transaction made or conducted in the ordinary course of business.
  - b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.
  - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.



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d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10)DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11)DE MINIMIS. A value twenty-five dollars (\$25) or less per occasion and an aggregate of fifty dollars (\$50) or less in a calendar year from any single provider, or such other amounts as may be prescribed by the Ethics Commission from time to time by rule pursuant to the Administrative Procedure Act or adjusted each four years from August 1, 2012, to reflect any increase in the cost of living as indicated by the United States Department of Labor Consumer Price Index or any succeeding equivalent index.

(12)ECONOMIC DEVELOPMENT FUNCTION. Any function reasonably and directly related to the advancement of a specific, good-faith economic development or trade promotion project or objective.

(13)EDUCATIONAL FUNCTION. A meeting, event, or activity held within the State of Alabama, or if the function is predominantly attended by participants from other states, held within the continental United States, which is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants' official duties or other matters of public policy, including social services and community development policies, economic development or trade, ethics, government services or programs, or government operations, and which, taking into account the totality of the program or agenda, could not reasonably be perceived as a subterfuge for a purely social, recreational, or entertainment function.

(14)FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(15)FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

(16)GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.

(17)HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(18)LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

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(19)LEGISLATIVE BODY. The term “legislative body” includes the following:

- a. The Legislature of Alabama, which includes both the Senate of Alabama and the House of Representatives of Alabama, unless specified otherwise by the express language of any provision herein, and any committee or subcommittee thereof.
- b. A county commission, and any committee or subcommittee thereof.
- c. A city council, city commission, town council, or other municipal council or commission, and any committee or subcommittee thereof.

(20)LOBBY or LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

(21)LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person's official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

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3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.

(22)MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives an economic gain in an amount less than two hundred fifty dollars (\$250) or the governmental entity has an economic loss of less than two hundred fifty dollars (\$250).

(23)PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(24)PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.

(25)PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(26)PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(27)PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or

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municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

- (28)REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.
- (29)REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.
- (30)REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.
- (31)RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.
- (32)STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.
- (33)SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.
- (34)THING OF VALUE.
- a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.
  - b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:
    1. A contribution reported under Chapter 5 of Title 17 or a contribution to an inaugural or transition committee.
    2. Anything given by a family member of the recipient under circumstances which make it clear that it is motivated by a family relationship.
    3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.

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4. Greeting cards, and other items, services with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies, promotional items commonly distributed to the general public, and items or services of de minimis value.
5. Loans from banks and other financial institutions on terms generally available to the public.
6. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees.
7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public.
8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.
9. Anything for which the recipient pays full value.
10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.
11. Any assistance provided or rendered in connection with a safety or a health emergency.
12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function.
13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function.
14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event,

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such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.

15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollars (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the foregoing, the lobbyist's limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

18. Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(35)VALUE. The fair market price of a like item if purchased by a private citizen. In the case of tickets to social and sporting events and associated passes, the value is the face value printed on the ticket.

(36)WIDELY ATTENDED EVENT. A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present.

(Acts 1973, No. 1056, p. 1699, § 2; Acts 1975, No. 130, p. 603, § 1; Acts 1979, No. 79-698, p. 1241, § 1; Acts 1982, No. 82-429, p. 677, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1; Act 2010-764, 1st Sp. Sess., p. 29, § 1; Act 2012-433, p. 1202, § 1; Act 2012-509, p. 1507, § 1; Act 2014-440, p. 1638, § 1.)

### § 36-25-1.1. Lobbying.

Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

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No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

(Act 2010-762, 1st Sp. Sess., p. 14, § 1.)

### **§ 36-25-2. Legislative findings and declarations; purpose of chapter.**

(a) The Legislature hereby finds and declares:

- (1) It is essential to the proper operation of democratic government that public officials be independent and impartial.
- (2) Governmental decisions and policy should be made in the proper channels of the governmental structure.
- (3) No public office should be used for private gain other than the remuneration provided by law.
- (4) It is important that there be public confidence in the integrity of government.
- (5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.
- (6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the Executive Branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the Executive Branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.

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(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto.

(Acts 1973, No. 1056, p. 1699, § 1; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-3. State Ethics Commission -- Creation, composition; annual reports; compensation; political activities; director; personnel.**

(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a fair, equitable citizen of this state and of high moral character and ability. The following persons shall not be eligible to be appointed as members: (1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission. No member of the commission shall be eligible for reappointment to succeed himself or herself. The members of the commission shall be appointed by the following officers: The Governor, the Lieutenant Governor, or in the absence of a Lieutenant Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives. Appointments shall be subject to Senate confirmation and persons appointed shall assume their duties upon confirmation by the Senate. The members of the first commission shall be appointed for terms of office expiring one, two, three, four, and five years, respectively, from September 1, 1975. Successors to the members of the first commission shall serve for a term of five years beginning service on September 1 of the year appointed and serving until their successors are appointed and confirmed. If at any time there should be a vacancy on the commission, a successor member to serve for the unexpired term applicable to such vacancy shall be appointed by the Governor. The commission shall elect one member to serve as chair of the commission and one member to serve as vice chair. The vice chair shall act as chair in the absence or disability of the chair or in the event of a vacancy in that office. Beginning with the first vacancy on the Ethics Commission after October 1, 1995, if there is not a Black member serving on the commission, that vacancy shall be filled by a Black appointee. Any vacancy thereafter occurring on the commission shall also be filled by a Black appointee if there is no Black member serving on the commission at that time.

Beginning with the first vacancy on the State Ethics Commission after January 1, 2011, the commission shall always have as a member a State of Alabama-licensed attorney in good standing.

Beginning with the first vacancy on the State Ethics Commission after January 1, 2016, the commission shall always have as a member a former elected public official who served at least two terms of office.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and three members thereof shall constitute a quorum.

(c) The commission shall at the close of each fiscal year, or as soon thereafter as practicable, report to the Legislature and the Governor concerning the actions it has taken, the name, salary, and duties of the director, the names and duties of all individuals in its employ, the money it has disbursed, other relevant matters within its jurisdiction, and such recommendations for legislation as the commission deems appropriate.

(d) Members of the commission, while serving on the business of the commission, shall be entitled to receive compensation at the rate of fifty dollars (\$50) per day, and each member shall be paid his or her travel expenses incurred in the performance of his or her duties as a member of the commission as other state employees and



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officials are paid when approved by the chair. If for any reason a member of the commission wishes not to claim and accept the compensation or travel expenses, the member shall inform the director, in writing, of the refusal. The member may at any time during his or her term begin accepting compensation or travel expenses; however, the member's refusal for any covered period shall act as an irrevocable waiver for that period.

(e) All members, officers, agents, attorneys, and employees of the commission shall be subject to this chapter. The director, members of the commission, and all employees of the commission may not engage in partisan political activity, including the making of campaign contributions, on the state, county, and local levels. The prohibition shall in no way act to limit or restrict such persons' ability to vote in any election.

(f) The commission shall appoint a full-time director. Appointment of the director shall be subject to Senate confirmation, and the person appointed shall assume his or her duties upon confirmation by the Senate. If the Senate fails to vote on an appointee's confirmation before adjourning sine die during the session in which the director is appointed, the appointee is deemed to be confirmed. No appointee whose confirmation is rejected by the Senate may be reappointed. The director shall serve at the pleasure of the commission and shall appoint such other employees as needed. All such employees, except the director, shall be employed subject to the state Merit System law, and their compensation shall be prescribed pursuant to that law. The employment of attorneys shall be subject to subsection (h). The compensation of the director shall be fixed by the commission, payable as the salaries of other state employees. The director shall be responsible for the administrative operations of the commission and shall administer this chapter in accordance with the commission's policies. No rule shall be implemented by the director until adopted by the commission in accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act.

(g) The director may appoint part-time stenographic reporters or certified court reporters, as needed, to take and transcribe the testimony in any formal or informal hearing or investigation before the commission or before any person authorized by the commission. The reporters are not full-time employees of the commission, are not subject to the Merit System law, and may not participate in the State Retirement System.

(h) The director, with the approval of the Attorney General, may appoint competent attorneys as legal counsel for the commission. Each attorney so appointed shall be of good moral and ethical character, licensed to practice law in this state, and be a member in good standing of the Alabama State Bar Association. Each attorney shall be commissioned as an assistant or deputy attorney general and, in addition to the powers and duties herein conferred, shall have the authority and duties of an assistant or deputy attorney general, except, that his or her entire time shall be devoted to the commission. Each attorney shall act on behalf of the commission in actions or proceedings brought by or against the commission pursuant to any law under the commission's jurisdiction or in which the commission joins or intervenes as to a matter within the commission's jurisdiction or as a friend of the court or otherwise.

(i) The director shall designate in writing the chief investigator, should there be one, and a maximum of eight full-time investigators who shall be and are hereby constituted law enforcement officers of the State of Alabama with full and unlimited police power and jurisdiction to enforce the laws of this state pertaining to the operation and administration of the commission and this chapter. Investigators shall meet the requirements of the Alabama Peace Officers' Standards and Training Act, Sections 36-21-40 to 36-21-51, inclusive, and shall in all ways and for all purposes be considered law enforcement officers entitled to all benefits provided in Section 36-15-6(f). Notwithstanding the foregoing, the investigators shall only exercise their power of arrest as granted under this chapter pursuant to an order issued by a court of competent jurisdiction.

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(Acts 1973, No. 1056, p. 1699, § 17; Acts 1995, No. 95-194, p. 269, § 1; Act 2009-225, p. 401, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1; Act 2015-495, § 1.)

### **§ 36-25-4. State Ethics Commission -- Duties; complaint; investigation; hearing; fees; finding of violation.**

(a) The commission shall do all of the following:

- (1) Prescribe forms for statements required to be filed by this chapter and make the forms available to persons required to file such statements.
- (2) Prepare guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter.
- (3) Accept and file any written information voluntarily supplied that exceeds the requirements of this chapter.
- (4) Develop, where practicable, a filing, coding, and cross-indexing system consistent with the purposes of this chapter.
- (5) Make reports and statements filed with the commission available during regular business hours and online via the Internet to public inquiry subject to such regulations as the commission may prescribe.
- (6) Preserve reports and statements for a period consistent with the statute of limitations as contained in this chapter. The reports and statements, when no longer required to be retained, shall be disposed of by shredding the reports and statements and disposing of or recycling them, or otherwise disposing of the reports and statements in any other manner prescribed by law. Nothing in this section shall in any manner limit the Department of Archives and History from receiving and retaining any documents pursuant to existing law.
- (7) Make investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter and, upon complaint by any individual, with respect to alleged violation of any part of this chapter to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.
- (8) Report suspected violations of law to the appropriate law-enforcement authorities.
- (9) Issue and publish advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability to the state, a county, or a municipal subdivision of the state because of any action performed or action refrained from in

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reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, or is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein. On October 1, 1995, all prior advisory opinions of the commission in conflict with this chapter, shall be ineffective and thereby deemed invalid and otherwise overruled unless there has been any action performed or action refrained from in reliance of a prior advisory opinion.

(10) Initiate and continue, where practicable, programs for the purpose of educating candidates, officials, employees, and citizens of Alabama on matters of ethics in government service.

(11) In accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this chapter.

(b) Additionally, the commission shall work with the Secretary of State to implement the reporting requirements of the Alabama Fair Campaign Practices Act and shall do all of the following:

- (1) Approve all forms required by the Fair Campaign Practices Act.
- (2) Suggest accounting methods for candidates, principal campaign committees, and political action committees in connection with reports and filings required by the Fair Campaign Practices Act.
- (3) Approve a retention policy for all reports, filings, and underlying documentation required by the Fair Campaign Practices Act.
- (4) Approve a manual for all candidates, principal campaign committees, and political action committees, describing the requirements of the Fair Campaign Practices Act that shall be published by the Secretary of State.
- (5) Investigate and hold hearings for receiving evidence regarding alleged violations of the Fair Campaign Practices Act as set forth in this chapter that demonstrates a likelihood that the Fair Campaign Practices Act has been violated.
- (6) Conduct or authorize audits of any filings required under the Fair Campaign Practices Act if evidence exists that an audit is warranted because of the filing of a complaint in the form required by this chapter or if there exists a material discrepancy or conflict on the face of any filing required by the Fair Campaign Practices Act.
- (7) Affirm, set aside, or reduce civil penalties as provided in Section 17-5-19.2.
- (8) Refer all evidence and information necessary to the Attorney General or appropriate district attorney for prosecution of any criminal violation of the Fair Campaign Practices Act as set forth in this chapter.
- (9) Make investigations with respect to statements filed pursuant to the Fair Campaign Practices Act, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to the Fair Campaign Practices Act and, upon complaint by any individual, with respect to alleged

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violation of any part of that act to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be made in order to determine whether the Fair Campaign Practices Act has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.

(10) Issue and publish advisory opinions on the requirements of the Fair Campaign Practices Act, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability of any kind because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, or is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein.

(11) In accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this section.

(c) Except as necessary to permit the sharing of information and evidence with the Attorney General or a district attorney, a complaint filed pursuant to this chapter or the Fair Campaign Practices Act, together with any statement, evidence, or information received from the complainant, witnesses, or other persons shall be protected by and subject to the same restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive, except that a violation of this section shall constitute a Class C felony. Such restrictions shall apply to all investigatory activities taken by the director, the commission, or a member thereof, staff, employees, or any person engaged by the commission in response to a complaint filed with the commission and to all proceedings relating thereto before the commission. Such restrictions shall also apply to all information and evidence supplied to the Attorney General or district attorney.

(d) The commission shall not take any investigatory action on a telephonic or written complaint against a respondent so long as the complainant remains anonymous. Investigatory action on a complaint from an identifiable source shall not be initiated until the true identity of the source has been ascertained and written verification of such ascertainment is in the commission's files. The complaint may only be filed by a person who has or persons who have credible and verifiable information supporting the allegations contained in the complaint. A complainant may not file a complaint for another person or persons in order to circumvent this subsection. Prior to commencing any investigation, the commission shall: (1) receive a written and signed complaint which sets forth in detail the specific charges against a respondent, and the factual allegations which support such charges; and (2) the director shall conduct a preliminary inquiry in order to make an initial determination that the complaint, on its face alleges facts which if true, would constitute a violation of this chapter or the Fair Campaign Practices Act and that reasonable cause exists to conduct an investigation. If the director determines that the complaint does not allege a violation or that reasonable cause does not exist, the charges shall be dismissed, but such action must be reported to the commission. The commission shall be entitled to authorize an investigation upon written consent of four commission members, upon an express

finding that probable cause exists that a violation or violations of this chapter or the Fair Campaign Practices Act have occurred. Upon the commencement of any investigation, the Alabama Rules of Criminal Procedure as applicable to the grand jury process promulgated by the Alabama Supreme Court shall apply and shall remain in effect until the complaint is dismissed or disposed of in some other manner. A complaint may be initiated by a vote of four members of the commission, provided, however, that the commission shall not conduct the hearing, but rather the hearing shall be conducted by three active or retired judges, who shall be appointed by the Chief Justice of the Alabama Supreme Court, at least one of whom shall be Black. The three-judge panel shall conduct the hearing in accordance with the procedures contained in this chapter and in accordance with the rules of the commission. If the three-judge panel unanimously finds that a person covered by this chapter has violated it or that the person covered by the Fair Campaign Practices Act has violated that act, the three-judge panel shall forward the case to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. In all matters that come before the commission concerning a complaint on an individual, the laws of due process shall apply.

(e) Not less than 45 days prior to any hearing before the commission, the respondent shall be given notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. Upon the timely request of the respondent, a continuance of the hearing for not less than 30 days shall be granted for good cause shown. The respondent charged in the complaint shall have the right to be represented by retained legal counsel. The commission may not require the respondent to be a witness against himself or herself.

(f) The commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure as promulgated by the Alabama Supreme Court.

(g) (1) All fees, penalties, and fines collected by the commission pursuant to this chapter shall be deposited into the State General Fund.

(2) All monies collected as reasonable payment of costs for copying, reproductions, publications, and lists shall be deemed a refund against disbursement and shall be deposited into the appropriate fund account for the use of the commission.

(h) In the course of an investigation, the commission may subpoena witnesses and compel their attendance and may also require the production of books, papers, documents, and other evidence. If any person fails to comply with any subpoena lawfully issued, or if any witness refuses to produce evidence or to testify as to any matter relevant to the investigation, it shall be the duty of any court of competent jurisdiction or the judge thereof, upon the application of the director, to compel obedience upon penalty for contempt, as in the case of disobedience of a subpoena issued for such court or a refusal to testify therein. A subpoena may be issued only upon the vote of four members of the commission upon the express written request of the director. The subpoena shall be subject to Rules 17.1, 17.2, 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The commission upon seeking issuance of the subpoena shall serve a notice to the recipient of the intent to serve such subpoena. Upon the expiration of 10 days from the service of the notice and the proposed subpoena shall be attached to the notice. Any person or entity served with a subpoena may serve an objection to the issuance of the subpoena within 10 days after service of the notice on the grounds set forth under Rule 17.3(c) of the Alabama Rules of Criminal Procedure, and in such event the subpoena shall not issue until an order to dismiss, modify, or issue the subpoena is entered by a state court of proper jurisdiction, the order to be entered within 30 days after making of the objection. Any vote taken by the members of the commission relative to the

issuance of a subpoena shall be protected by and subject to the restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive.

(i) After receiving or initiating a complaint, the commission has 180 days to determine whether probable cause exists. At the expiration of 180 days from the date of receipt or commencement of a complaint, if the commission does not find probable cause, the complaint shall be deemed dismissed and cannot be reinstated based on the same facts alleged in the complaint. Upon good cause shown from the general counsel and chief investigator, the director may request from the commission a one-time extension of 180 days. Upon the majority vote of the commission, the staff may be granted a one-time extension of 180 days in which to complete the investigation. If the commission finds probable cause that a person covered by this chapter has violated it or that the person covered by the Fair Campaign Practices Act has violated that act, the case and the commission's findings shall be forwarded to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. The case, along with the commission's findings, shall be referred for appropriate legal action. Nothing in this section shall be deemed to limit the commission's ability to take appropriate legal action when so requested by the district attorney for the appropriate jurisdiction or by the Attorney General.

(j) Within 180 days of receiving a case referred by the commission, the Attorney General or district attorney to whom the case was referred may, upon written request of the commission notify the commission, in writing, stating whether he or she intends to take action against the respondent, including an administrative disposition or settlement, conduct further investigation, or close the case without taking action. If the Attorney General or district attorney decides to pursue the case, he or she, upon written request of the commission, may inform the commission of the final disposition of the case. The written information pursuant to this section shall be maintained by the commission and made available upon request as a public record. The director may request an oral status update from the Attorney General or district attorney from time to time.

(Acts 1973, No. 1056, p. 1699, § 18; Acts 1975, No. 130, p. 603, § 1; Acts 1979, No. 79-460, p. 814, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1; Act 2015-495, § 1.)

### **§ 36-25-4.1. State Ethics Commission -- Public access to complaint, investigation, and disposition.**

Notwithstanding any other law, regulation, or rule, no complaints shall be made available to the public or available on the Internet until the disposition of the matter. In no event may a complaint be made public or available on the Internet if the complaint is dismissed or found not to have probable cause. In the matters where the complaint is dismissed or found not to have probable cause, only the disposition of the matter may be made available to the public or available on the Internet. Nothing in this section shall be deemed a direct grant of authority for the commission to publicize or make available on the Internet any complaint or investigation if not permitted by any other law, regulation, or rule.

(Act 2010-763, 1st Sp. Sess., p. 17, § 2.)

### **§ 36-25-4.2. State Ethics Commission -- State Ethics Law training programs.**

(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional

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officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

- (1) The training program for legislators shall be held at least once at the beginning of each quadrennium for members of the Legislature. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The time and place of the training programs shall be determined by the Executive Director of the State Ethics Commission and the Legislative Council. Each legislator must attend the training programs. The State Ethics Commission shall also provide a mandatory program for any legislator elected in a special election within three months of the date that the legislator assumes office.
- (2) The training program for the state constitutional officers, cabinet members, and executive staff, as determined by the Governor, shall be held within the first 30 days after the Governor has been sworn into office. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The specific date of the training program shall be established by the Executive Director of the State Ethics Commission with the advice of the Governor and other constitutional officers.
- (3) The training program for lobbyists shall be held four times annually as designated by the Executive Director of the State Ethics Commission, the first of which shall be held within the first 30 days of the year. Each lobbyist must attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or public employees. After attending one training program, a lobbyist shall not be required to attend an additional training program unless any changes are made to this chapter. Such additional mandatory training program shall be held within three months of the effective date of the changes.
- (4) All municipal mayors, council members and commissioners, county commissioners, and members of any local board of education in office as of January 1, 2011, shall obtain training within 120 days of that date. Thereafter, all municipal mayors, council members and commissioners, and county commissioners shall obtain training within 120 days of being sworn into office. Training shall be available online and may be conducted either online or in person. Evidence of completion of the training shall be provided to the commission via an electronic reporting system provided on the official website. The scheduling of training opportunities for municipal mayors, council members and commissioners, and county commissioners shall be established by the Executive Director of the State Ethics Commission with the advice and assistance of the Alabama League of Municipalities and the Association of County Commissions of Alabama. Any provision of this section to the contrary notwithstanding, the training for county commissioners required by this subdivision shall be satisfied by the successful completion of the 10-hour course on ethical requirements of public officials provided by the Alabama Local Government Training Institute established pursuant to Article 2 of Chapter 3 of Title 11. The Alabama Local Government Training Institute shall quarterly provide written notice to the State Ethics Commission the names of those county commissioners completing the institute's program.

(b) The curriculum of each session and faculty for the training program shall be determined by the Executive Director of the State Ethics Commission. The curriculum shall include, but not be limited to, a review of the current law, a discussion of actual cases and advisory opinions on which the State Ethics Commission has ruled,

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and a question and answer period for attendees. The faculty for the training program may include the staff of the State Ethics Commission, members of the faculties of the various law schools in the state, and other persons deemed appropriate by the Executive Director of the State Ethics Commission and shall include experts in the field of ethics law, persons affected by the ethics law, and members of the press and media.

(c) Except as provided herein, attendance at any session of the training program shall be mandatory, except in the event the person is suffering a catastrophic illness.

(d) This section shall not preclude the penalizing, prosecution, or conviction of any member of the Legislature, any public official, or public employee prior to such person attending a mandatory training program.

(e) All public employees required to file the Statement of Economic Interests required by Section 36-25-14, no later than May 1, 2011, shall participate in an online educational review of the Alabama Ethics Law provided on the official website of the commission. Employees hired after January 1, 2011, shall have 90 days to comply with this subsection. Evidence of completion of the educational review shall be provided to the commission via an electronic reporting system provided on the official website.

(Act 2010-762, 1st Sp. Sess., p. 14, § 2.)

### **§ 36-25-4.3. Ethics Commission -- Electronic database filing and access.**

(a) The commission, by April 1, 2012, shall implement and maintain each of the following:

- (1) A system for electronic filing of all statements, reports, registrations, and notices required by this chapter.
- (2) An electronic database accessible to the public through an Internet website which provides at least the following capabilities:
  - a. Search and retrieval of all statements, reports, and other filings required by this chapter, excluding complaints made confidential by Section 36-25-4(b), by the name of the public official or public employee to which they pertain.
  - b. Generation of an aggregate list of all things of value provided to each public official or public employee and family member of a public official or public employee as reported pursuant to Section 36-25-19, searchable and retrievable by the name of the public official or public employee.

(b) Notwithstanding subsection (a), the commission shall exclude from any electronic database accessible to the public, identifying information, as defined in Section 41-13-7, that is included in any statement of economic interest filed by any public official or public employee.

(c) The commission shall redact all identifying information on any electronic database accessible to the public, as defined in Section 41-13-7, that is included in any statement of economic interest filed by a public official or public employee and was in the database on August 1, 2013.

(Act 2010-762, 1st Sp. Sess., p. 14, § 3; Act 2013-172, p. 320, § 1; Act 2014-71, p. 118, § 1.)



### § 36-25-5. Use of official position or office for personal gain.

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

(f) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.

(Acts 1973, No. 1056, p. 1699, § 3; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2000-797, p. 1895, § 1.)

### **§ 36-25-5.1. Limitation on actions of lobbyists, subordinates of lobbyists, and principals.**

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal.

Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items.

(Act 2010-764, 1st Sp. Sess., p. 29, § 3.)

### **§ 36-25-5.2. Public disclosure of information regarding officials, candidates, or spouses employed by or contracting with the state or federal government.**

(a) For purposes of this section, the term state shall include the State of Alabama and any of its agencies, departments, political subdivisions, counties, colleges and universities and technical schools, the Legislature, the appellate courts, district courts, circuit courts and municipal courts, municipal corporations, and city and county school systems.

(b) Each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal government, or who works for a company that receives 50% or more of its revenue from the state, shall notify the commission of such employment or contract within 30 days of beginning employment or within 30 days of the beginning of the contract. Additionally, each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal government on August 14, 2011, shall notify the commission of such employment or contract by September 13, 2011. Notification shall be in the form of a filing as described in subsection (c).

(c) The filing with the commission shall include all of the following:

- (1) The name of the public official or, when applicable, the name of the candidate.
- (2) The name of the spouse of the public official or, when applicable, the name of the spouse of the candidate.
- (3) The department or agency or county or municipality with whom the public official, candidate, or spouse is employed or with whom the public official, candidate, or spouse has a contract.
- (4) The exact job description or, if applicable, a description of the contract.
- (5) The beginning and ending dates of employment or, if applicable, the beginning and ending dates of the contract.

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(6) The compensation, including any and all salary, allowances, and fees, received by the public official or his or her spouse or the candidate or his or her spouse.

(d) If the terms of employment or of the contract change, the public official or his or her spouse or the candidate or his or her spouse shall promptly provide updated information concerning the change with the commission, which shall revise such information in its files.

(e) Filings collected by the commission pursuant to this section are public record and shall be made available on the commission's website.

(Act 2011-674, p. 1800, § 1.)

### **§ 36-25-6. Use of contributions.**

Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund shall not be converted to personal use.

(Acts 1973, No. 1056, p. 1699, § 4; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1.)

### **§ 36-25-7. Offering, soliciting, or receiving anything for purpose of influencing official action; money solicited or received in addition to that received in official capacity.**

(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(e) For purposes of this section, to act corruptly means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.

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(Acts 1973, No. 1056, p. 1699, § 5; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2010-764, 1st Sp. Sess., p. 29, § 2; Act 2011-632, p. 1505, § 1.)

### **§ 36-25-8. Use or disclosure of confidential information for private financial gain.**

No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.

(Acts 1973, No. 1056, p. 1699, § 6; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-9. Service on regulatory boards and commissions regulating business with which person associated; members who have financial interest in matter prohibited from voting.**

(a) Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated. Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission.

(b) All county or municipal regulatory boards, authorities, or commissions currently comprised of any real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate industry may allow these individuals to continue to serve out their current term if appointed before December 31, 1991, except that at the conclusion of such term subsequent appointments shall reflect that membership of real estate brokers and agents shall not exceed more than one less of a majority of any county or municipal regulatory board or commission effective January 1, 1994.

(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.

(d) All acts, actions, and votes taken by such local boards and commissions between January 1, 1991 and December 31, 1993 are affirmed and ratified.

(Acts 1973, No. 1056, p. 1699, § 7; Acts 1975, No. 130, p. 603, § 1; Acts 1992, No. 92-342, p. 719, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-10. Representation of client or constituent before board, regulatory body, department, etc.**

If a public official or public employee, or family member of the public employee or family member of the public official, or a business with which the person is associated, represents a client or constituent for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency, notice of the representation shall be given within 10 days after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it. No member of the Legislature shall for a fee, reward, or other

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compensation represent any person, firm, or corporation before the Public Service Commission or the State Board of Adjustment.

(Acts 1973, No. 1056, p. 1699, § 8; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-11. Public officials or employees entering into contracts which are to be paid out of government funds.**

Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.

(Acts 1973, No. 1056, p. 1699, § 9; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-12. Offering, soliciting, etc., thing of value to or by member of regulatory body.**

No person shall offer or give to a member or employee of a governmental agency, board, or commission that regulates a business with which the person is associated, and no member or employee of a regulatory body, shall solicit or accept a thing of value while the member or employee is associated with the regulatory body other than in the ordinary course of business. In addition to the foregoing, the Commissioner of the Department of Agriculture and Industries and any candidate for the office of commissioner may not accept a campaign contribution from a person associated with a business regulated by the department.

(Acts 1973, No. 1056, p. 1699, § 10; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2001-474, p. 635, § 1.)

### **§ 36-25-13. Actions of former public officials or public employees prohibited for two years after departure.**

(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) Notwithstanding the provisions of subsection (a), no public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer, before the board, agency, commission, department, or legislative body of which he or she is a former member for a period of two years following the term of office for which he or she was elected, irrespective of whether the member left the office prior to the expiration of the term to which he or she was elected. For the purposes of this subsection, such

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prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(c) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(d) Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency. Notwithstanding the prohibition in this subsection a person serving full-time as the director or a department or division chief who has retired from a governmental agency may enter into a contract with the governmental agency of which the person was an employee for the specific purpose of providing assistance to the governmental agency during the transitional period following retirement, but only if all of the following conditions are met:

- (1) The contract does not extend for more than three months following the date of retirement.
- (2) The retiree is at all times in compliance with Section 36-27-8.2.
- (3) The compensation paid to the retiree through the contract, when combined with the monthly retirement compensation paid to the retiree, does not exceed the gross monthly compensation paid to the retiree on the date of retirement.
- (4) The contract is submitted to and approved by the Director of the Ethics Commission as satisfying the above conditions prior to the date the retiree begins work under the contract.

(e) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

(f) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

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(g) Nothing in this chapter shall be deemed to limit the right of a public official or public employee to publicly or privately express his or her support for or to encourage others to support and contribute to any candidate, political committee as defined in Section 17-22A-2, referendum, ballot question, issue, or constitutional amendment.

(Acts 1973, No. 1056, p. 1699, § 11; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2014-440, p. 1638, § 1; Act 2016-128, § 1.)

### **§ 36-25-14. Filing of statement of economic interests.**

(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

- (1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.
- (2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is seventy-five thousand dollars (\$75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index.
- (3) All candidates, provided the statement is filed on the date the candidate files his or her qualifying papers or, in the case of an independent candidate, on the date the candidate complies with the requirements of Section 17-9-3.
- (4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).
- (5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- (6) Chief clerks and chief managers.
- (7) Chief county clerks and chief county managers.
- (8) Chief administrators.
- (9) Chief county administrators.
- (10) Any public official or public employee whose primary duty is to invest public funds.
- (11) Chief administrative officers of any political subdivision.

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- (12) Chief and assistant county building inspectors.
- (13) Any county or municipal administrator with power to grant or deny land development permits.
- (14) Chief municipal clerks.
- (15) Chiefs of police.
- (16) Fire chiefs.
- (17) City and county school superintendents and school board members.
- (18) City and county school principals or administrators.
- (19) Purchasing or procurement agents having the authority to make any purchase.
- (20) Directors and assistant directors of state agencies.
- (21) Chief financial and accounting directors.
- (22) Chief grant coordinators.
- (23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.
- (24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- (25) Every full-time public employee serving as a supervisor.

(b) Unless otherwise required by law, no public employee occupying a position earning less than seventy-five thousand dollars (\$75,000) per year shall be required to file a statement of economic interests, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index. Notwithstanding the provisions of subsection (a) or any other provision of this chapter, no coach of an athletic team of any four-year institution of higher education which receives state funds shall be required to include any income, donations, gifts, or benefits, other than salary, on the statement of economic interests, if the income, donations, gifts, or benefits are a condition of the employment contract. Such statement shall be made on a form made available by the commission. The duty to file the statement of economic interests shall rest with the person covered by this chapter. Nothing in this chapter shall be construed to exclude any public employee or public official from this chapter regardless of whether they are required to file a statement of economic interests. The statement shall contain the following information on the person making the filing:

- (1) Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult children; name of parents and siblings; name of living parents of spouse.



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Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

- (2) A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.
- (3) A listing of total combined household income of the public official or public employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions, and other compensation and listing the names of each business and the income derived from such business in the following categorical amounts: less than one thousand dollars (\$1,000); at least one thousand dollars (\$1,000) and less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); or at least two hundred fifty thousand dollars (\$250,000) or more. The person reporting shall also name any business or subsidiary thereof in which he or she or his or her spouse or dependents, jointly or severally, own five percent or more of the stock or in which he or she or his or her spouse or dependents serves as an officer, director, trustee, or consultant where the service provides income of at least one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000); or at least five thousand dollars (\$5,000) or more for the reporting period.
- (4) If the filing public official or public employee, or his or her spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services or consultations, then the filing party shall report the number of clients of such business in each of the following categories and the income in categorical amounts received during the reporting period from the combined number of clients in each category: Electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil or gas exploration companies, or both, oil and gas retail companies, banks, savings and loan associations, loan or finance companies, or both, manufacturing firms, mining companies, life insurance companies, casualty insurance companies, other insurance companies, retail companies, beer, wine or liquor companies or distributors, or combination thereof, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties, and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each category shall be reported in the following categorical amounts: Less than one thousand dollars (\$1,000); more than one thousand dollars (\$1,000) and less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than twenty-five thousand dollars (\$25,000); at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); at least one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); or at least two hundred fifty thousand dollars (\$250,000) or more.
- (5) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following categorical amounts: Less than one thousand dollars (\$1,000); at least one

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thousand dollars (\$1,000) and less than five thousand dollars (\$5,000); or at least five thousand dollars (\$5,000) or more.

- (6) If real estate is held for investment or revenue production by a public official, his or her spouse or dependents, then a listing thereof in the following fair market value categorical amounts: Under fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); at least one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); at least one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); at least two hundred fifty thousand dollars (\$250,000) or more. A listing of annual gross rent and lease income on real estate shall be made in the following categorical amounts: Less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) and less than fifty thousand dollars (\$50,000); fifty thousand dollars (\$50,000) or more. If a public official or a business in which the person is associated received rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission.
- (7) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows: Banks, savings and loan associations, insurance companies, mortgage firms, stockbrokers and brokerages or bond firms; and the indebtedness to combined organizations in the following categorical amounts: Less than twenty-five thousand dollars (\$25,000); twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000); fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000); one hundred thousand dollars (\$100,000) and less than one hundred fifty thousand dollars (\$150,000); one hundred fifty thousand dollars (\$150,000) and less than two hundred fifty thousand dollars (\$250,000); two hundred fifty thousand dollars (\$250,000) or more. The commission may add additional business to this listing. Indebtedness associated with the homestead of the person filing is exempted from this disclosure requirement.

(c) Filing required by this section shall reflect information and facts in existence at the end of the reporting year.

(d) If the information required herein is not filed as required, the commission shall notify the public official or public employee concerned as to his or her failure to so file and the public official or public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars (\$10) a day, not to exceed one thousand dollars (\$1,000), for failure to file timely.

(e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty.

(Acts 1973, No. 1056, p. 1699, § 12; Acts 1975, No. 130, p. 603, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1; Act 2012-509, p. 1507, § 1; Act 2015-495, § 1.)

### **§ 36-25-15. Candidates required to file statements of economic interests; notification requirements; failure to submit statement.**

(a) Candidates at every level of government shall file a completed statement of economic interests for the previous calendar year with the State Ethics Commission simultaneously with the date such candidate files his or her qualifying papers with the appropriate election official or in the case of an independent candidate, the date the person complies with the requirements of Section 17-9-3. Nothing in this section shall be deemed to require a second filing of the person's statement of economic interests if a current statement of economic interests is on file with the commission.

(b) Each election official who receives a declaration of candidacy or petition to appear on the ballot for election from a candidate shall, within five days of the receipt, notify the commission of the name of the candidate, as defined in this chapter, and the date on which the person became a candidate. The commission shall, within five business days of receipt of such notification, notify the election official whether the candidate has complied with the provisions of this section.

(c) Other provisions of the law notwithstanding, if a candidate does not submit a statement of economic interests or when applicable, an amended statement of economic interests in accordance with the requirements of this chapter, the name of the person shall not appear on the ballot and the candidate shall be deemed not qualified as a candidate in that election. Notwithstanding the foregoing, the commission may, for good cause shown, allow the candidate an additional five days to file such statement of economic interests. If a candidate is deemed not qualified, the appropriate election official shall remove the name of the candidate from the ballot.

(Acts 1973, No. 1056, p. 1699, § 13; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1997, No. 97-651, p. 1217, § 1; Act 2015-495, § 1.)

### **§ 36-25-16. Reports by persons who are related to public officials or public employees and who represent persons before regulatory body or contract with state.**

(a) When any citizen of the state or business with which he or she is associated represents for a fee any person before a regulatory body of the Executive Branch, he or she shall report to the commission the name of any adult child, parent, spouse, brother, or sister who is a public official or a public employee of that regulatory body of the Executive Branch.

(b) When any citizen of the state or business with which the person is associated enters into a contract for the sale of goods or services to the State of Alabama or any of its agencies or any county or municipality and any of their respective agencies in amounts exceeding seven thousand five hundred dollars (\$7,500), he or she shall report to the commission the names of any adult child, parent, spouse, brother, or sister who is a public official or public employee of the agency or department with whom the contract is made.

(c) This section shall not apply to any contract for the sale of goods or services awarded through a process of public notice and competitive bidding.

(d) Each regulatory body of the Executive Branch, or any agency of the State of Alabama shall be responsible for notifying citizens affected by this chapter of the requirements of this section.

(Acts 1973, No. 1056, p. 1699, § 15; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-17. Reports of violations; cooperation of agency heads.**

(a) Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.

(b) Governmental agency heads shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission.

(Acts 1973, No. 1056, p. 1699, § 16; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-18. Registration of lobbyists required; filing of supplemental registration.**

(a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars (\$100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.

(b) The registration shall be in writing and shall contain the following information:

- (1) The registrant's full name and business address.
- (2) The registrant's normal business and address.
- (3) The full name and address of the registrant's principal or principals.
- (4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.
- (5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.
- (6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.

(c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change.

(Acts 1973, No. 1056, p. 1699, § 19; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-19. Registered lobbyists and other persons required to file quarterly reports.**

(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

- (1) The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(34)b. and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars (\$250) with the name or names of the recipient or recipients and the date of the expenditure.
- (2) The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of five hundred dollars (\$500) in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter 22A (commencing with Section 17-22A-1) of Title 17.
- (3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or candidate.
- (4) A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, engages or attempts to engage in a financial transaction with a public official or public employee in their official capacity and who within a calendar day expends in excess of two hundred fifty dollars (\$250) on such public employee, public official, and his or her respective household shall file a detailed quarterly report of the expenditure with the commission.

(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or employee in the performance of the duties with the organization.

(Acts 1973, No. 1056, p. 1699, § 20; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.**

(a) A person who ceases to engage in activities requiring registration pursuant to Section 36-25-18 shall file a written, verified statement with the commission acknowledging the termination of activities. The notice shall be effective immediately.

(b) A person who files a notice of termination pursuant to this section shall file the reports required pursuant to Sections 36-25-18 and 36-25-19 for any reporting period during which he or she was registered pursuant to this chapter.

(Acts 1973, No. 1056, p. 1699, § 21; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-21. Reports constitute public records; reports available for public inspection.**

All reports filed pursuant to Sections 36-25-18 to 36-25-20, inclusive, are public records and shall be made available for public inspection during regular business hours.

(Acts 1973, No. 1056, p. 1699, § 22; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-22. Sections 36-25-18 to 36-25-21 not to be construed as affecting certain professional services.**

Sections 36-25-18 to 36-25-21, inclusive, shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, rules, or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

(Acts 1973, No. 1056, p. 1699, § 24; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-23. Lobbying activities prohibited during elected term of office; floor privileges of former members of Legislature; solicitation of lobbyists by public officials or employees; contracts to provide lobbying services contingent upon legislative action.**

(a) No public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent a client, including his or her employer, before any legislative body or any branch of state or local government, including the executive and judicial branches of government, and including the Legislature of Alabama or any board, agency, commission, or department thereof, during the term or remainder of the term for which the official was elected. For purposes of this subsection, such prohibition shall not include a former member of the Alabama Judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) No former member of the House of Representatives or the Senate of the State of Alabama shall be extended floor privileges of either body in a lobbying capacity.

(c) No public official, public employee, or group of public officials or public employees shall solicit any lobbyist to give any thing whether or not the thing solicited is a thing of value to any person or entity for any purpose other than a campaign contribution.

(d) No principal or lobbyist shall accept compensation for, or enter into a contract to provide lobbying services which is contingent upon the passage or defeat of any legislative action.

(Acts 1973, No. 1056, p. 1699, § 28; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2014-440, p. 1638, § 1.)

### **§ 36-25-24. Supervisor prohibited from discharging or discriminating against employee where employee reports violation.**

(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying.

(c) No public employee shall file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate.

(d) A supervisor who is alleged to have violated this section shall be subject to civil action in the circuit courts of this state pursuant to the Alabama Rules of Civil Procedure as promulgated by the Alabama Supreme Court.

(e) A public employee who without a good faith belief in the truthfulness and accuracy of a complaint filed against a supervisor, shall be subject to a civil action in the circuit courts in the State of Alabama pursuant to the Alabama Rules of Civil Procedure as promulgated by the Supreme Court. Additionally, a public employee who without a good faith belief in the truthfulness and accuracy of a complaint as filed against a supervisor shall be subject to appropriate and applicable personnel action.

(f) Nothing in this section shall be construed to allow a public employee to file a complaint to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor. A public employee who willfully files such a complaint against a supervisor shall, upon conviction, be guilty of the crime of false reporting.

(Acts 1973, No. 1056, p. 1699, § 30; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-26. False reporting for purpose of influencing legislation.**

No person, for the purpose of influencing legislation, may do either of the following:

- (1) Knowingly or willfully make any false statement or misrepresentation of the facts to a member of the Legislative or Executive Branch.
- (2) Knowing a document to contain a false statement, cause a copy of the document to be received by a member of the Legislative or Executive Branch without notifying the member in writing of the truth.

(Acts 1973, No. 1056, p. 1699, § 23; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

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### § 36-25-27. Penalties; enforcement; jurisdiction, venue, judicial review; limitations period.

- (a) (1) Except as otherwise provided, any person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.
- (2) Any person subject to this chapter who violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class A misdemeanor.
- (3) Any person subject to this chapter who knowingly violates any disclosure requirement of this chapter shall, upon conviction, be guilty of a Class A misdemeanor.
- (4) Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or complaint was filed.
- (5) Any person who makes false statements to an employee of the commission or to the commission itself pursuant to this chapter without reason to believe the accuracy of the statements shall, upon conviction, be guilty of a Class A misdemeanor.
- (6) Any person subject to this chapter who intentionally violates this chapter relating to secrecy shall, upon conviction, be guilty of a Class C felony.
- (7) Any person subject to this chapter who intentionally fails to disclose information required by this chapter shall, upon conviction, be guilty of a Class A misdemeanor.
- (b) The commission, if petitioned or agreed to by a respondent and the Attorney General or district attorney having jurisdiction, by unanimous vote of the members present, may administratively resolve a complaint filed pursuant to this chapter for minor violations. The commission may levy an administrative penalty not to exceed one thousand dollars (\$1,000) for any minor violation of this chapter including, but not limited to, the failure to timely file a complete and correct statement of economic interests. The commission shall, in addition to any administrative penalty, order restitution in the amount of any economic loss to the state, county, and municipal governments and their instrumentalities and such restitution shall when collected be paid by the commission, to the entity having the economic loss. In any case in which an administrative penalty is imposed, the administrative penalty shall not be less than three times the amount of any economic loss to the state, county, and municipal governments or their instrumentalities or any economic gain or benefit to the public official or public employee, or whichever sum is greater. The commission, through its attorney, shall institute proceedings to recover any penalties or restitution or other such funds so ordered pursuant to this section which are not paid by, or on behalf of the public official or public employee or other person who has violated this chapter. Nothing in this section shall be deemed in any manner to prohibit the commission and the respondent from entering into a consent decree settling a complaint which has previously been designated by the commission for administrative resolution, so long as the consent decree is approved by the commission. If the commission, the respondent, and the Attorney General or district attorney having jurisdiction, all concur that a complaint is deemed to be handled administratively, the action shall preclude any criminal prosecution pursuant to this chapter at the state, county, or municipal level.



(c) The enforcement of this chapter shall be vested in the commission; provided, however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the district attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate. In the event the commission, by majority vote, finds that any provision of this chapter has been violated, the alleged violation and any investigation conducted by the commission shall be referred to the district attorney of the appropriate jurisdiction or the Attorney General. The commission shall provide any and all appropriate assistance to such district attorney or Attorney General. Upon the request of such district attorney or the Attorney General, the commission may institute, prosecute, or take such other appropriate legal action regarding such violations, proceeding therein with all rights, privileges, and powers conferred by law upon assistant attorneys general.

(d) Nothing in this chapter limits the power of the state to punish any person for any conduct which otherwise constitutes a crime by statute or at common law.

(e) The penalties prescribed in this chapter do not in any manner limit the power of a legislative body to discipline its own members or to impeach public officials and do not limit the powers of agencies, departments, boards, or commissions to discipline their respective officials, members, or employees.

(f) Each circuit court of this state shall have jurisdiction of all cases and actions relative to judicial review, violations, or the enforcement of this chapter, and the venue of any action pursuant to this chapter shall be in the county in which the alleged violation occurred, or in those cases where the violation or violations occurred outside the State of Alabama, in Montgomery County. In the case of judicial review of any administrative decision of the commission, the commission's order, rule, or decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact except where otherwise authorized by law.

(g) Any felony prosecution brought pursuant to this chapter shall be commenced within four years after the commission of the offense.

(h) Any misdemeanor prosecution brought pursuant to this chapter shall be commenced within two years after the commission of the offense.

(i) Nothing in this chapter is intended to nor is to be construed as repealing in any way the provisions of any of the criminal laws of this state.

(Acts 1973, No. 1056, p. 1699, § 26; Acts 1975, No. 130, p. 603, § 1; Acts 1986, No. 86-321, p. 475, § 1; Acts 1995, No. 95-194, p. 269, § 1; Acts 1996, No. 96-261, p. 307, § 1; Act 2010-763, 1st Sp. Sess., p. 17, § 1.)

### **§ 36-25-28. Chapter not to deprive citizens of constitutional right to communicate with members of Legislature.**

Nothing in this chapter shall be construed as to deprive any citizen, not lobbying, of the citizen's constitutional right to communicate with members of the Legislature.

(Acts 1973, No. 1056, p. 1699, § 25; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

### **§ 36-25-29. Appropriations.**

(a) The Legislature shall appropriate such sums as it deems necessary to implement the provisions of and administer this chapter.

(b) Notwithstanding any other provision of law to the contrary, and beginning with the fiscal year ending September 30, 2012, the annual appropriation to the State Ethics Commission in the State General Fund Appropriations Act shall not be less than one tenth of one percent of the total State General Fund amount appropriated in the State General Fund Appropriations Act unless a lower appropriation amount is expressly approved by two-thirds of the membership of the House of Representatives and two-thirds of the membership of the Senate.

(Acts 1973, No. 1056, p. 1699, § 29; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1; Act 2011-259, p. 473, § 1.)

### **§ 36-25-30. Construction of chapter.**

This chapter shall be construed in pari materia with other laws dealing with the subject of ethics.

(Acts 1973, No. 1056, p. 1699, § 32; Acts 1975, No. 130, p. 603, § 1; Acts 1995, No. 95-194, p. 269, § 1.)

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### Chapter 25A, Alabama Open Meetings Act

#### § 36-25A-1. Purpose; open meetings requirement; short title.

(a) It is the policy of this state that the deliberative process of governmental bodies shall be open to the public during meetings as defined in Section 36-25A-2(6). Except for executive sessions permitted in Section 36-25A-7(a) or as otherwise expressly provided by other federal or state laws or statutes, all meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice pursuant to the requirements of Section 36-25A-3. No executive sessions are required by this chapter to be held under any circumstances. Serial meetings or electronic communications shall not be utilized to circumvent any of the provisions of this chapter.

(b) This chapter shall be known and may be cited as the “Alabama Open Meetings Act.”

(Act 2005-40, p. 55, § 1; Act 2015-340, § 1.)

#### § 36-25A-2. Definitions.

As used in and for determining the applicability of this chapter, the following words shall have the following meanings solely for the purposes of this chapter:

- (1) **DELIBERATION.** An exchange of information or ideas among a quorum of members of a subcommittee, committee, or full governmental body intended to arrive at or influence a decision as to how any members of the subcommittee, committee, or full governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full body immediately following the discussion or at a later time.
- (2) **EXECUTIVE SESSION.** That portion of a meeting of a subcommittee, committee, or full governmental body from which the public is excluded for one or more of the reasons prescribed in Section 36-25A-7(a).
- (3) **GENERAL REPUTATION AND CHARACTER.** Characteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity, not including job performance.
- (4) **GOVERNMENTAL BODY.** All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities; all quasi-judicial bodies of the executive and legislative departments of the state; and all standing, special, or advisory committees or subcommittees of, or appointed by, the body. The term “governmental body” does not include any of the following:
  - a. Legislative party caucuses or coalitions.

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b. Alabama appellate or trial courts, except as required by the constitution of this state or any body governed by rules of the Alabama Supreme Court.

c. Voluntary membership associations comprised of public employees, retirees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.

(5) **JOB PERFORMANCE.** The observed conduct or actions of a public employee or public official while on the job in furtherance of his or her assigned duties. Job performance includes whether a person is meeting, exceeding, or failing to meet job requirements or whether formal employment actions should be taken by the governmental body. Job performance does not include the general reputation and character of the person being discussed.

(6) **MEETING.**

a. Subject to the limitations herein, the term meeting shall only apply to the following:

1. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is set by law or operation of law.

2. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body during which the full governmental body, committee, or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds.

3. The gathering, whether or not it was prearranged, of a quorum of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the full governmental body at a later date.

4. The gathering, whether or not it was prearranged, of a quorum of a committee or subcommittee of a governmental body during which the members of the committee or subcommittee deliberate specific matters relating to the purpose of the committee or subcommittee that, at the time of the exchange, the participating members expect to come before the full governmental body, committee, or subcommittee at a later date.

b. The term “meeting” shall not include:

1. Occasions when a quorum of a governmental body, committee, or subcommittee attends social gatherings, conventions, conferences, training programs, press conferences, media events, association meetings and events or gathers for on-site inspections or meetings with applicants for economic incentives or assistance from the governmental body, or otherwise gathers so long as the subcommittee, committee, or full governmental body does not deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full governmental body at a later date.

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2. Occasions when a quorum of a subcommittee, committee, or full governmental body gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the subcommittee, committee, or full governmental body.

3. Notwithstanding subparagraph 1., occasions when two members of a governmental body, including two members of a governmental body which has three members, gather for the sole purpose of exchanging background and education information or for the sole purpose of discussing an economic, industrial, or commercial prospect or incentive that does not include a conclusion as to recommendations, policy decisions, or final action on the terms or request or an offer of public financial resources.

c. Nothing herein shall restrict or prevent two members of the same full governmental body from talking together without deliberation, including two members of a full governmental body having only three members, and nothing herein shall restrict or prevent a mayor or executive director of a city or municipality who is not a voting member of the city or municipal council from talking or deliberating with a member of the city or municipal council.

- (7) **OPEN OR PUBLIC PORTION OF A MEETING.** The open or public portion of a meeting is that portion which has not been closed for executive session in accordance with this chapter, for which prior notice was given in compliance with this chapter, and which is conducted so that constituents of the governmental body, members of the media, persons interested in the activities of the governmental body, and citizens of this state could, if they desired, attend and observe.
- (8) **PROFESSIONAL COMPETENCE.** The ability of an individual to practice a profession within the profession's acceptable standards of care and responsibility. A profession is a vocation requiring certification by the State of Alabama or passage of a state licensing examination that may only be granted to or taken by persons who have completed at least three years of college-level education and obtained at least a college-level degree.
- (9) **PUBLIC EMPLOYEE.** Any person employed at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations and authorities, who is paid in whole or in part from state, county, or municipal funds. A public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.
- (10) **PUBLIC FUNDS.** Taxes or fees charged or collected by a governmental body or from the sale of public property including, but not limited to, matching funds from the federal government or income derived from the investment of taxes or fees.
- (11) **PUBLIC OFFICIAL.** Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal levels of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations.

(12)QUORUM. Unless otherwise provided by law, a quorum is a majority of the voting members of a governmental body. Except where a governmental body is prohibited from holding a non-emergency meeting as defined in subdivision (6)a.1. between the date of election of members and the date such members take office, any person elected to serve on a governmental body shall be counted in the determination of whether a quorum of that governmental body is present, except for any meeting as defined in subdivisions (6)a.1. and 2., beginning on the date of certification of the results of the general election. In the case of appointment to a governmental body, any person shall be counted in the determination of whether a quorum of that governmental body is present, except for any meeting as defined in subdivisions (6)a.1. and 2., from the date that the appointment is made or issued whether or not the appointment is effective on that date.

(13)SERIAL MEETING.

a. The term serial meeting applies to any series of gatherings of two or more members of a governmental body, at which:

1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series.
2. The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.
3. There is no notice or opportunity to attend provided to the public in accordance with this chapter.
4. The members participating in the gatherings deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee or full governmental body at a later date.
5. The series of gatherings was held for the purpose of circumventing the provisions of this chapter.
6. At least one of the meetings in the series occurs within seven calendar days of a vote on any of the matters deliberated.

b. The term serial meeting does not include:

1. Gatherings, including a gathering of two members of a full governmental body having only three members, at which no deliberations were conducted or the sole purpose was to exchange background and education information with members on specific issues.
2. A series of gatherings related to a search to fill a position required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section 36-25-14 until the search has been narrowed to three or fewer persons under consideration.
3. A gathering or series of gatherings involving only a single member of a governmental body.

4. A series of gatherings by the trustees of an institution of higher education established by the Constitution of Alabama of 1901, as amended, involving a search to fill a position that directs the institution or a department or major divisions thereof, including the position of president, vice president, provost, dean, department head, or athletic coach.

5. A public official who is a member of a non-profit professional association comprised of members of the same profession, when discussing or participating in the formation of the policy or policies of the professional association of which the public official is a member. This exception shall apply to both legislative policies of the professional association and regulatory policies of the professional association of which the public official is a member, and regardless of whether or not a quorum of the members of the governmental body are members of the same professional association.

(Act 2005-40, p. 55, § 2; Act 2015-340, § 1; Act 2015-475, § 1.)

### **§ 36-25A-3. Notice requirements.**

(a) Unless otherwise specified by law and as provided herein, any governmental body subject to this chapter, except for an advisory board, advisory commission, advisory committee, task force, or other advisory body created solely to make recommendations on public policy issues and composed of persons who do not receive compensation for their service as members of the board, commission, committee, task force, or body from public funds, shall post notice of all meetings, as defined in Section 36-25A-2(6)a.1., at least seven calendar days prior to the meeting as follows:

- (1) The Alabama Legislature is solely governed by the Alabama Constitution which establishes that the doors of each house of the Alabama Legislature shall be open to the public unless a vote is taken that secrecy is required under the circumstances. The respective houses of the Alabama Legislature shall develop rules consistent with the Constitution of Alabama of 1901, providing for access to and prior notice of all sessions and standing committee and standing subcommittee meetings and all meetings of permanent and joint legislative committees. Because the Alabama Legislature is solely governed by the Alabama Constitution and sets its own rules to ensure public access as guaranteed by the constitution, no other provision of this chapter applies to the Alabama Legislature.
- (2) Any governmental body with statewide jurisdiction shall submit notice of its meeting to the Secretary of State. The Secretary of State shall post the notice on the Internet for at least seven calendar days prior to the day of the meeting. The Secretary of State shall also send electronic mail notifications to anyone who has registered with the Secretary of State to receive notification of meetings. The Secretary of State may promulgate reasonable rules and regulations necessary for the uniform receipt and posting of notice and of registration for electronic mail notification. The Secretary of State shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the Secretary of State that members of the public may use to view notices of meetings posted by the Secretary of State. Any governmental body with less than statewide jurisdiction may also submit notice to the Secretary of State for posting on the website. Nothing shall prevent a governmental body subject to this subsection from posting notice in any additional manner.

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- (3) A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall, provided, however, that a corporation a majority of whose governing board is appointed or elected by a municipality and that has a principal office separate from the city hall may, in lieu of posting notice in the city hall, post notice of each meeting on a bulletin board at a place convenient to the public in the principal office of the corporation or other instrumentality.
- (4) A local school board shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the board.
- (5) Any other governmental body shall post notice of each meeting in a reasonable location or shall use a reasonable method of notice that is convenient to the public. Any change of the location or method for posting notices of meetings shall not take effect until the change has been approved at an open meeting by the members of the governmental body and announced to the public at an open meeting.
- (6) If practicable, a governmental body other than those with statewide jurisdiction, in addition to the posting requirements, shall provide direct notification of a meeting, as defined in Section 36-25A-2(6)a., to any member of the public or news media covering that governmental body who has registered with the governmental body to receive notification of meetings. A governmental body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body may choose to transmit a notice using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice. The actual cost of issuing notices, if there is one, may be required to be paid in advance by the person requesting notice by the governmental body. Direct notice to persons who have registered with the governmental body shall, at a minimum, contain the time, date, and place of the meeting.

(b) Unless otherwise specified by law directly applicable to the governmental body, notice of a meeting, as defined in Section 36-25A-2(6)a.2. and 3. as well as meetings called pursuant to Section 11-43-50 shall be posted as soon as practicable after the meeting is called and in no event less than 24 hours before the meeting is scheduled to begin, unless such notice (i) is prevented by emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property; or (ii) relates to a meeting to be held solely to accept the resignation of a public official or employee. In such situations, notice shall be given as soon as practical, but in no case less than one hour before the meeting is to begin. At the same time general notice is given, special notice shall be directed to any person who has registered to receive direct notices pursuant to the provisions of subsection (a)(6).

(c) Posted notice pursuant to this section shall include the time, date, and place of meeting. If a preliminary agenda is created, it shall be posted as soon as practicable in the same location or manner as the notice given pursuant to this section. A governmental body may discuss at a meeting additional matters not included in the preliminary agenda. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting.

(d) County commissions which provide proper notice in conformance with Section 11-3-8 shall not be required to comply with subsections (a), (b), and (c) of this section, nor shall committees or subcommittees of such commissions so long as the committees also comply with the notice procedures applicable to the full commission in Section 11-3-8.



(e) Governmental bodies may give, but shall not be required to give, notice of quasi-judicial or contested case hearings which could properly be conducted as an executive session under this chapter or existing state law.

(f) A governmental body is authorized, but not required, to provide notice in addition to that specified in this section and to provide notice for gatherings which are not meetings as defined in Section 36-25A-2(6).

(Act 2005-40, p. 55, § 3; Act 2015-340, § 1.)

### **§ 36-25A-4. Maintenance of records.**

A governmental body shall maintain accurate records of its meetings, excluding executive sessions, setting forth the date, time, place, members present or absent, and action taken at each meeting. Except as otherwise provided by law, the records of each meeting shall become a public record and be made available to the public as soon as practicable after approval.

(Act 2005-40, p. 55, § 4.)

### **§ 36-25A-5. Rules of parliamentary procedure; voting.**

(a) Unless otherwise provided by law, meetings shall be conducted pursuant to the governing body's adopted rules of parliamentary procedure not in conflict with laws applicable to the governmental body.

(b) Unless otherwise permitted by this chapter or directed by provisions in the Constitution of Alabama of 1901, or other existing state law applicable to the governmental body, all votes on matters before a governmental body, including, but not limited to, votes to appropriate or to authorize a governmental body's designated employee, within limits prescribed by the governmental body without further authorization of the governmental body, to spend public funds, to levy taxes or fees, to forgive debts to the governmental body, or to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided pursuant to this chapter. Voice votes may be allowed. Unless permitted by this chapter, existing statute, or constitutional amendment, no votes shall be taken in executive sessions. Unless otherwise directed by provisions in the Constitution of Alabama of 1901, or other existing state law applicable to a governmental body, a governmental body may not vote by secret ballot.

(Act 2005-40, p. 55, § 5.)

#### **§ 36-25A-5.1. Participation by electronic communications.**

(a) Except as provided in subsection (d), members of a governmental body as defined in Section 36-25A-2, that is comprised of members from two or more counties, may participate in a meeting of that governmental body by means of telephone conference, video conference, or other similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting for all purposes, except for the establishment of a quorum.

(b) Every meeting shall have one physical location available for persons wishing to be physically present, at which any interested member of the public shall be able to hear all persons who are participating remotely, and that location shall be published in a manner consistent with this chapter.

(c) Utilization of electronic communication shall be done in a manner that complies with this chapter and allowing members of the public to be present at the physical location required by subsection (b) is sufficient for compliance with this chapter and the electronic communication does not have to be otherwise made available to members of the public.

(d) The members of the following governmental bodies are prohibited from participating in meetings and deliberation via electronic communications as otherwise authorized by this section: The Board of Pardons and Paroles, the Public Service Commission, standing committees of the Legislature while the Legislature is in session, a governing board taking any action under the Students First Act of 2011, any state board or agency acting in any quasi judicial capacity involving employment actions or the promulgation of rules pursuant to statutory authority, any state board, agency, or other governmental body conducting a hearing which could result in loss of licensure or professional censure, and the Alabama Ethics Commission.

(e) Any other provision of this section to the contrary notwithstanding, a majority of a quorum of the members participating in any given meeting shall be physically present at the location noticed and called for the meeting in order to conduct any business or deliberation, and only those members who are physically present may participate in an executive session of the governmental body.

(f) Any vote taken at a meeting utilizing the equipment contemplated by subsection (a) shall be taken as a roll call vote that allows each participant to vote individually in a manner audible to all persons participating or present at the physical location provided for in subsection (b).

(g) No member utilizing this section shall claim any form of reimbursement for expenses, including mileage and per diem.

(h) Any governmental body with specific statutory or constitutional authority to meet via electronic means under a procedure different than that set forth in this section may continue to operate under the requirements of that specific authority or may adopt a resolution opting to come under the requirements of this section.

(Act 2015-526, 1st Sp. Sess., § 1.)

### **§ 36-25A-6. Recording of meeting.**

A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section.

(Act 2005-40, p. 55, § 6.)

### **§ 36-25A-7. Executive sessions.**

(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:

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- (1) To discuss the general reputation and character, physical condition, professional competence, or mental health of individuals, or, subject to the limitations set out herein, to discuss the job performance of certain public employees. However, except as provided elsewhere in this section, discussions of the job performance of specific public officials or specific public employees may not be discussed in executive session if the person is an elected or appointed public official, an appointed member of a state or local board or commission, or a public employee who is one of the classification of public employees required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section 36-25-14. Except as provided elsewhere in this section, the salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.
- (2) When expressly allowed by federal law or state law, to consider the discipline or dismissal of, or to hear formal written complaints or charges brought against a public employee, a student at a public school or college, or an individual, corporation, partnership, or other legal entity subject to the regulation of the governmental body.
- (3) To discuss with their attorney the legal ramifications of and legal options for pending litigation, controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action, or to meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body. Prior to voting to convene an executive session under this exception the governmental body shall receive a written opinion or oral declaration reflected in the minutes from an attorney licensed to practice law in Alabama that this exception is applicable to the planned discussion. Such declaration shall not otherwise constitute a waiver of the attorney-client privilege. Notwithstanding the foregoing, if any deliberation begins among the members of the governmental body regarding what action to take relating to pending or threatened litigation based upon the advice of counsel, the executive session shall be concluded and the deliberation shall be conducted in the open portion of the meeting or the deliberation shall cease.
- (4) To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, including, without limitation, information concerning critical infrastructure, as defined by federal law, and critical energy infrastructure information, as defined by federal law, the public disclosures of which could reasonably be expected to be detrimental to public safety or welfare. Provided, however, that when the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure shall be given notice and an opportunity to attend the session.
- (5) To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the criminal investigation of a person who is not a public official in which allegations or charges of specific criminal misconduct have been made or to discuss whether or not to file a criminal complaint. Provided, however, that prior to such discussions a law enforcement officer with authority to make an arrest or a district or assistant district attorney or the Attorney General or assistant attorney general shall advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would imperil effective law enforcement if disclosed outside of an executive session.

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- (6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract. If an executive session is utilized pursuant to this exception in addition to the members of the governmental body, only persons representing the interests of the governmental body in the transaction may be present during the executive session. This real property discussion exception shall not apply if:
- a. Any member of the governmental body involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property.
  - b. A condemnation action has been filed to acquire the real property involved in the discussion.
- (7) To discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies in Alabama or in other states or foreign nations or to discuss matters or information of the character defined or described in the Alabama Trade Secrets Act. Provided, however, that prior to such discussions a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matter or information of the character defined or described in the Alabama Trade Secrets Act advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or would disclose information protected by the Alabama Trade Secrets Act.
- (8) To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Provided, however, that prior to such discussions a person representing the interests of a governmental body involved in such negotiations advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.
- (9) To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

(b) A governmental body desiring to convene an executive session, other than to conduct a quasi-judicial or contested case hearing, shall utilize the following procedure:

- (1) A quorum of the governmental body must first convene a meeting as defined in Section 36-25A-2(6)a.1 and 2.
- (2) A majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session and setting out the purpose of the executive session, as provided in subsection (a). If subsection (a) requires an oral or written declaration before the executive session can begin, such oral or written declaration shall be made, prior to the vote.

(3) The vote of each member shall be recorded in the minutes.

(4) Prior to calling the executive session to order, the presiding officer shall state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

(Act 2005-40, p. 55, § 7.)

### **§ 36-25A-8. Immunity from suit.**

In addition to any existing applicable immunity, members of a governmental body and any of its employees participating in a meeting conducted in conformance with this chapter shall have an absolute privilege and immunity from suit for any statement made during the meeting which relates to an action pending before the governmental body.

(Act 2005-40, p. 55, § 8.)

### **§ 36-25A-9. Enforcement; hearings; penalties and remedies.**

(a) This chapter is designed and intended to hold members of governmental bodies, and the bodies themselves, accountable to the public for violations of this chapter. Therefore, enforcement of this chapter, except a violation of Section 36-25A-3(a)(1), may be sought by civil action brought in the county where the governmental body's primary office is located by any media organization, any Alabama citizen impacted by the alleged violation to an extent which is greater than the impact on the public at large, the Attorney General, or the district attorney for the circuit in which the governmental body is located; provided, however, that no member of a governmental body may serve as a plaintiff in an action brought against another member of the same governmental body for an alleged violation of this chapter. The complaint shall be verified, shall state specifically the applicable ground or grounds for the complaint as set out in subdivisions (1) through (4) of subsection (b), and shall name in their official capacity all members of the governmental body remaining in attendance at the alleged meeting held in violation of this chapter. If filed by an Alabama citizen, the complaint shall state specifically how the person is or will be impacted by the alleged violation to an extent which is greater than the impact on the public at large. Members of a governmental body who are named as a defendant in a complaint under this chapter shall serve an initial response to the complaint within seven business days of personal service of the complaint. A preliminary hearing on the complaint filed shall be held no later than 10 business days after the date of the filing of the defendant or defendants' initial response to the complaint or, if no response is filed, no later than 17 business days after the filing of the complaint, or on the nearest day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties.

(b) In the preliminary hearing on the complaint, the plaintiff shall establish by a preponderance of the evidence that a meeting of the governmental body occurred and that each defendant attended the meeting. Additionally, to establish a prima facie case the plaintiff must present substantial evidence of one or more of the following claims:

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- (1) That the defendants disregarded the requirements for proper notice of the meeting pursuant to the applicable methods set forth in Section 36-25A-3.
- (2) That the defendants disregarded the provisions of this chapter during a meeting, other than during an executive session.
- (3) That the defendants voted to go into executive session and while in executive session the defendants discussed matters other than those subjects included in the motion to convene an executive session as required by Section 36-25A-7(b).
- (4) That, other than a claim under subdivisions (1) through (3), the defendants intentionally violated other provisions of this chapter.

(c) If the court finds that the plaintiff has met its initial burden of proof as required in subsection (b) at the preliminary hearing, the court shall establish a schedule for discovery and set the matter for a hearing on the merits. If, at the preliminary hearing, the plaintiff has presented its prima facie case that an executive session appears to have been improperly conducted as set out in subsection (b)(3), the defendants shall bear the burden of proof at the hearing on the merits to prove by a preponderance of the evidence that the discussions during the executive session were limited to matters related to the subjects included in the motion to convene an executive session required in Section 36-25A-7(a).

(d) During a proceeding involving claims brought under subsection (b)(3), the court shall conduct an in camera proceeding or adopt another procedure as necessary to protect the confidentiality of the matters discussed during the executive session, and if there is a determination that the executive session was authorized by this chapter, the matters shall not be disclosed or utilized in any other legal proceeding by any individual or attorney who attends the in camera portion of the proceedings.

(e) Upon proof by a preponderance of the evidence of a defendant's violation of this chapter, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure. A final order on the merits shall be issued within 60 days after the preliminary hearing unless a longer period is consented to by all parties and the court.

(f) The court may invalidate the action or actions taken during a meeting held in violation of this chapter, provided that the complaint is filed within 21 days of the date when the action is made public, the violation was not the result of mistake, inadvertence, or excusable neglect, and invalidation of the governmental action taken would not unduly prejudice third parties who have changed their position or taken action in good faith reliance upon the challenged action of the governmental body; provided further, however, that any action taken at an open meeting conducted in a manner consistent with this chapter shall not be invalidated because of a violation of this chapter which occurred prior to such meeting.

(g) A final order issued against a defendant shall state specifically upon which claim or claims in subdivisions (1) through (4) the ruling is based. For each meeting proven to be held in violation of this chapter for one or more reasons, the court shall impose a civil penalty payable to the plaintiff(s). The maximum penalty for each meeting shall not exceed one thousand dollars (\$1,000) or one half of the defendant's monthly salary for service on the

governmental body, whichever is less. The minimum penalty shall be one dollar (\$1). With regard to claims related to improper discussions during executive sessions, monetary penalties may only be assessed against defendant members of a governmental body who voted to go into an executive session and who remained in the executive session during a discussion determined by the court not to have been authorized by this chapter. Penalties imposed against a member of a governmental body found to have acted in violation of this chapter shall not be paid by nor reimbursed to the member by the governmental body he or she serves. If more than one cause of action is filed pursuant to this chapter, all causes of action based on or arising out of the same alleged violation or violations shall be consolidated into the action that was first filed and any party may intervene into the consolidated action pursuant to the Alabama Rules of Civil Procedure, and no member found to have acted in violation of this chapter by a final court order and assessed a penalty as authorized herein shall be subject to further liability or penalty to the same or different plaintiffs in separate causes of action for the same violation or violations.

(h) A governmental body is authorized to pay for or provide for the legal expenses of present or former members of the body named as defendants in a proceeding under this chapter.

(Act 2005-40, p. 55, § 9; Act 2015-340, § 1.)

### **§ 36-25A-10. Limitation period.**

An action under this chapter must be brought within 60 days of the date that the plaintiff knew or should have known of the alleged act which brings rise to the cause of action; provided, however, that any action under this chapter must be brought within two years of the alleged act which brings rise to the cause of action.

(Act 2005-40, p. 55, § 11.)

### **§ 36-25A-11. Repealer and construction.**

Section 13A-14-2 is repealed. All specific references in the Code of Alabama 1975 to Section 13A-14-2 shall be considered a reference to this chapter and where expressly excluded or included from application of Section 13A-14-2, the exclusion or inclusion from application shall remain as it applies to these new sections. The Code Commissioner, when appropriate, shall implement these changes in the Code of Alabama 1975. Nothing in this chapter shall be construed to repeal or amend any portion of the Code of Alabama 1975, in effect on October 1, 2005, except as expressly provided herein.

(Act 2005-40, p. 55, § 10.)

### Chapter 26, State Personnel Department and Merit System Article 1, General Provisions

#### § 36-26-1. Short title.

This article shall be cited and may be known as the Merit System Act.

(Acts 1939, No. 58, p. 68, § 2.)

#### § 36-26-2. Definitions.

The following terms wherever used in this article shall have the meanings respectively ascribed to them in this section, unless the context plainly indicates a contrary meaning:

- (1) APPOINTING AUTHORITY. The officer, board, commission, person or group of persons having the power to make appointments to offices or positions of trust or employment in the state service.
- (2) BOARD. The State Personnel Board.
- (3) CLASSIFIED SERVICE. All offices or positions of trust or employment in the state service now or hereafter created except those placed in the unclassified service or exempt service by this article.
- (4) DIRECTOR. The State Director of Personnel.
- (5) EMPLOYMENT REGISTER. A record containing the names of those persons who have successfully competed in tests, have been ranked in order of their final earned average from highest to lowest and are considered qualified to hold a position in the class for which the test was held.
- (6) INMATE HELP. Persons committed to a state institution who have been granted special privileges and employment due to good conduct.
- (7) POSITION. Any office or place of employment in the state service.
- (8) PUBLIC HEARING. A meeting of the board open to the public held after five days' public notice has been given thereof whereat any citizen, taxpayer or interested party may appear and be heard subject to such rules and regulations as may be fixed by the board.
- (9) PUBLIC RECORD. A record which the public shall have the right to inspect in a reasonable manner during ordinary business hours.
- (10) STATE SERVICE. All offices and positions of trust or employment in the service of the Alabama state government, irrespective of whether the remuneration or compensation of such offices and positions of trust or employment is paid out of the State Treasury or not. Such term shall not include offices and positions of trust or employment of the local governmental subdivisions, county or city boards of education, teachers and employees thereof or those exempted from this article.



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(11)TEMPORARY APPOINTMENT. An appointment for a period not to exceed 104 work days.

(12)EMERGENCY APPOINTMENT. An appointment to serve in any position under emergency conditions for not more than 10 work days.

(13)EXCEPTIONAL APPOINTMENT. An appointment where extraordinary or unusual qualifications are required or where the peculiarities of the position are such as to make it inadvisable to attempt to fill it through open competitive examination.

(14)PROVISIONAL APPOINTMENT. An appointment made for a period of not more than 156 work days to fill a competitive position pending the establishment of an employment register for the classification.

(Acts 1939, No. 58, p. 68, § 3; Code 1940, T. 55, § 294.)

### **§ 36-26-3. Purposes of article.**

The purposes of this article are to assure to all citizens of demonstrated capacity, ability and training an equal opportunity to compete for service with the State of Alabama, to establish conditions in the state service which will attract officers and employees of character and capacity and to increase the efficiency of the governmental departments and agencies by the improvement of methods of personnel administration.

(Acts 1939, No. 58, p. 68, § 1; Code 1940, T. 55, § 293.)

### **§ 36-26-4. State Personnel Department created; composition; executive head; offices.**

There shall be a State Personnel Department with a State Personnel Board and a State Director of Personnel as provided in this article. The director shall be the executive head of the department. Offices shall be provided in the City of Montgomery which shall be the headquarters of the department.

(Acts 1939, No. 58, p. 68, § 4; Code 1940, T. 55, § 295.)

### **§ 36-26-5. State Personnel Board -- Composition; appointment, qualifications, terms of office, removal and compensation of members; procedure for electing classified employee member.**

(a) The State Personnel Board shall consist of five persons, as follows:

(1) Two persons appointed by the Governor, one of them whose term shall expire on February 1, 1985, and one of them whose term shall expire on February 1, 1986, one person appointed by the Speaker of the Alabama House of Representatives, whose term shall expire February 1, 1987, one person appointed by the Lieutenant Governor of the State of Alabama, whose term shall expire February 1, 1988, and one person who shall be a classified employee elected as hereinafter provided, whose term shall expire February 1, 1989.

(2) The terms of the present members of the State Personnel Board shall end on the last day of August, 1983. The new members of the personnel board shall begin their terms on September 1, 1983. If any vacancy occurs on the board, or at the expiration of the original terms therein above established, such

vacancies shall be filled by the original appointing authority, for said position. After the expiration of these original terms herein above outlined, all subsequent terms shall be for six years, except for appointments to fill unexpired terms, which shall expire on the same date their predecessor's term expired. Each member shall be required to take the constitutional oath of office before entering upon their duties. The board shall designate one of its members as chairman. Three members of the board shall constitute a quorum for the transaction of business. Each member shall be a person over 19 years of age, of recognized character and ability, shall have been a bona fide resident and qualified voter of this state for not less than five years and shall not, when appointed nor for three years then last passed before the date of his appointment, have held elected public or party office nor have been a candidate for such office. No two appointed members of said personnel board shall be appointed from any one congressional district of the state. A member of the board may be removed from office for the same causes and by the same procedures as provided by the constitution and statutes of Alabama for impeachment of sheriffs. Each member of the board shall receive a per diem of \$50.00 and expenses for attendance upon meeting of the board. No member shall receive total compensation in excess of \$1,200.00 per annum, excluding expenses and excluding compensation received for attendance upon trial of charges preferred against employees as provided in this article.

(b) One member shall be elected by a majority vote of the full-time state employees. For his or her original term, they shall serve until February 1, 1989, and thereafter elected members shall serve six-year terms. Two months prior to the expiration of the seat for the member of the classified service, employees desiring to serve shall file with the state Comptroller notice of their intent to run for the position. The Comptroller shall cause to be prepared ballots for distribution to all state employees with their paychecks during the first pay period, one month prior to the election. Each state payroll clerk within one week shall collect the executed ballots and return them to the Comptroller who shall forthwith tabulate the ballots and announce the results. A printout of the tabulation along with the ballots shall within three days be delivered by the Comptroller to the Secretary of State, who shall preserve the ballots and the printout for three months. At the expiration of terms of office of the original member elected under this subsection, and every six years thereafter, his successor shall be elected in the same manner as provided by this subsection. If a vacancy occurs in the office of a member elected under the provisions of this subsection, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(Acts 1939, No. 58, p. 68, § 5; Code 1940, T. 55, § 296; Acts 1983, No. 83-673, p. 1060, § 1.)

### **§ 36-26-6. State Personnel Board -- Meetings; powers and duties generally.**

(a) The board shall hold regular meetings at least once each month and may hold such additional meetings as may be required for the proper discharge of its duties.

(b) It shall be the duty of the board as a body:

- (1) To adopt and amend, after public hearings, rules and regulations for the administration of this article as provided in Section 36-26-9;
- (2) To adopt, modify or reject, after public hearings, such classification and compensation plans for the state service, together with rules for their administration, as may be recommended by the director after a thorough survey of the personnel and departmental organizations included in such plan or plans;

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- (3) To make investigations, either on petition of a citizen, taxpayer or interested party or of its own motion, concerning the enforcement and effect of this article and to require observance of its provisions and the rules and regulations made pursuant thereto;
- (4) To conduct hearings and to render decisions, as provided in Section 36-26-27, on charges preferred against persons in the classified service;
- (5) To make such investigations as may be requested by the Governor or the Legislature and to report thereon;
- (6) To consider and act on such matters as may be referred to the board by the director;
- (7) To represent the public interest in the improvement of personnel administration in the state service; and
- (8) To advise and assist the director in fostering the interest of institutions of learning and of civic, professional and employee organizations in the improvement of personnel standards in the state service.

(Acts 1939, No. 58, p. 68, § 6; Code 1940, T. 55, § 297.)

### **§ 36-26-7. Director of personnel -- Appointment; qualifications; salary; removal.**

The board shall appoint a director. He shall be a person over 19 years of age, of recognized character and ability and shall have been a bona fide resident and a qualified voter of this state for not less than five years next preceding his appointment. His salary shall be fixed by the board with the approval of the Governor in accordance with the provisions of Section 36-6-6. He may be removed for cause by the board; provided, that copies of a written statement of the reason for such removal shall be given to the director and to the Governor, and such written statement shall be made public prior to the effective date of his removal.

(Acts 1939, No. 58, p. 68, § 7; Code 1940, T. 55, § 298.)

### **§ 36-26-8. Director of personnel -- Executive head of department; powers and duties generally; agreements with political subdivisions of state; cooperation with other governmental agencies.**

(a) The director, as executive head of the department, shall direct and supervise all its administrative and technical activities.

(b) It shall be the duty of the director to:

- (1) Attend all meetings of the board, act as its secretary, and record its official actions.
- (2) Appoint, with the approval of the board, such employees of the department and such experts and special assistants as necessary to carry out effectively this article.
- (3) Prepare and recommend rules and regulations for the administration of this article.

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- (4) Recommend and, on its adoption, establish, administer, and execute a classification plan for the state service.
  - (5) Submit to the Governor, after its approval by the board, a pay plan for all positions in the state service.
  - (6) Conduct tests, formulate employment registers, and certify persons qualified for appointment, devise and administer employee service ratings and develop employee welfare and training programs.
  - (7) Recommend and, upon adoption by the board, administer an in-service training program.
  - (8) Approve all payrolls or other compensations for personal services within the state service before they may be lawfully authorized for payment.
  - (9) Establish and maintain a roster of all the officers and employees in the state service.
  - (10) Make such investigations pertaining to personnel, salary scales, and employment conditions in the state service as may be requested by the board, the Governor, or the Legislature.
  - (11) Make investigations concerning the administration and effect of this article and the rules made thereunder and report the findings and recommendations to the board.
  - (12) Make an annual report to the board.
  - (13) Perform any other act required under this article or required by the board which may be necessary to effect its purposes and spirit.
  - (14) Appoint one employee of the department to be deputy. In case of the absence of the director or his or her inability to discharge the powers and duties of the office, such powers and duties shall devolve upon the deputy, who shall be a citizen of Alabama.
  - (15) Select officers or employees in the state service to act as examiners in the preparation and rating of tests. An authority may excuse any employee from regular duties for the time required for work as an examiner. Officers and employees shall not be entitled to extra pay for service as examiners but shall be entitled to reimbursement for necessary traveling and other expenses.
- (c) The director may join or subscribe to any association or service having as its purpose the interchange of information relating to the improvement of personnel administration.
- (d) Subject to approval of the State Personnel Board, the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the department to the municipality or political subdivision in the administration of its personnel on merit principles. Any agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished as determined by the director. All municipalities and political subdivisions of the state may enter into those agreements. Funds obtained as reimbursement for services shall be deposited into the accounts of the State Personnel Department and may be expended to help defray the expenses of the department.

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(e) The director may cooperate with governmental agencies for other jurisdictions within this state charged with personnel administration in conducting joint tests for establishing lists from which eligibles shall be certified for appointment in accordance with the respective laws.

(Acts 1939, No. 58, p. 68, § 8; Code 1940, T. 55, § 299; Acts 1953, No. 756, p. 1018; Acts 1993, No. 93-620, p. 1034, § 1.)

### **§ 36-26-9. Promulgation, etc., of rules for implementation of provisions of article.**

The director shall recommend such rules as he may consider necessary, appropriate or desirable to carry out the provisions of this article and may from time to time recommend amendments thereto. When such rules or amendments are recommended by the director, the board shall hold a public hearing thereon and shall have power to approve or reject the recommendations of the director wholly or in part or to modify them and approve them as so modified. Rules or amendments thereto which are approved by the board or on which the board takes no action within 30 days after they are recommended by the director shall be submitted to the Governor by the director, who shall have power to approve or reject them. Such rules or amendments thereto shall become effective when approved by the Governor or on the tenth day after they are submitted to him if prior thereto he shall not have rejected them. Rules adopted under this section, not in conflict with the laws of Alabama, shall have the force and effect of law.

Among other things, such rules shall provide for the method of administering the classification plan and the pay plan; the establishment, maintenance, consolidation and cancellation of lists; the application of service ratings; the hours of work, attendance regulation and leaves of absence for employees in the state service; and the order and manner in which lay-offs shall be effected. Such rules may include any provisions relating to state employment, not inconsistent with the laws of the state, which may be necessary or appropriate to give effect to the provisions and purposes of this article.

The powers conferred upon the director by this section shall be subject only to the provisions of this article and of the rules adopted under this section and may be exercised by regulation or by order as the director sees fit.

(Acts 1939, No. 58, p. 68, § 9; Code 1940, T. 55, § 300.)

### **§ 36-26-10. Exempt, unclassified, and classified service defined; applicability of certain provisions.**

(a) Positions in the service of the state shall be divided into the exempt, the unclassified, and the classified service.

(b) The exempt service shall include:

- (1) Officers elected by the vote of the people.
- (2) Officers and employees of the Legislature.
- (3) All employees of a district attorney's office.

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- (4) Members of boards and commissions, whether appointed or self-perpetuating, and heads of departments required by law to be appointed by the Governor or by boards or commissions with the approval of the Governor.
- (5) All officers and employees of the state's institutions of higher learning, teacher-training institutions and normal schools, educational, eleemosynary and correctional institutions which are governed and controlled by boards of trustees or similar governing bodies, and secondary agricultural schools and vocational schools.
- (6) All inmate help in all charitable, penal, and correctional institutions.
- (7) All commissioned and warrant officers and enlisted personnel of the national guard and naval militia of the state in their respective military and naval grades.
- (8) The Governor's private secretary, legal advisor, recording secretary, and those employees of the Governor's office paid exclusively out of the Governor's Emergency or Contingent Funds.
- (9) The employees of the Alabama State Port Authority engaged in railroad service and subject to the provisions of an act of Congress known as the Railway Labor Act as amended or as it may hereafter be amended.
- (10) For each agency, up to two employees in addition to any other exempt positions as otherwise allowed by law; provided these positions may not be occupied by the head of an agency.

The services listed in this subsection as exempt shall in no respect be subject to the provisions of this article, anything to the contrary notwithstanding.

(c) The unclassified service shall include:

- (1) One confidential assistant or secretary for each board, commission and elected officer and, when requested by the Governor, for each department head appointed by the Governor; and
- (2) All employees of the Governor's office not exempted. The positions in the unclassified service enumerated in this subsection may at the request of the appointing authority be filled by classified employees. Each of the employees thus appointed shall, at the conclusion of his or her occupancy of such position, resume his or her previous status in the classified service.

(d) The classified service shall include all other officers and positions in the state service.

(e) Except as to services denominated as exempt or unclassified services in subsections (b) and (c), the Governor shall have the power by executive order to extend the provisions of this article to include additional positions or classes of positions.

(f) Employees in the unclassified service shall be subject to the same rules and regulations of employment as apply to employees in the classified service except as to appointment and dismissal.

(Acts 1939, No. 58, p. 68, § 10; Acts 1939, No. 554, p. 876, § 1; Code 1940, T. 55, § 301; Acts 1943, No. 349, p. 332, § 1; Acts 1991, No. 91-479, p. 867, § 1; Act 2015-478, § 1.)

### **§ 36-26-11. Classification of positions, etc., in state service.**

The director shall, as soon as practicable after this article takes effect, ascertain and record the duties of each position in the state service and, after consultation with appointing authorities and principal supervising officials, recommend to the board a classification plan, together with proposed rules for its administration. Such classification plan shall show each class of position in the state service and, when approved by the board, shall be made public together with the rules for its administration. Each such class shall include positions requiring duties which are substantially similar in respect to the authority, responsibility and character of the work required in the performance thereof and shall be designated by a title indicative of such duties. Each class shall be so defined that the same requirements as to education, experience, capacity, knowledge and skill are demanded of incumbents for the proper performance of their duties, that the same tests of fitness may be used in choosing qualified appointees and that the same schedule of pay can be made to apply with equity under like working conditions. The class titles shall be used in personnel, budget and financial records and communications. As far as practicable the natural or probable lines of promotion to and from the class of position shall be designated or indicated.

(Acts 1939, No. 58, p. 68, § 12; Code 1940, T. 55, § 303.)

### **§ 36-26-12. Preparation, etc., of pay plan for employees in state service.**

After consultation with appointing authorities and the state fiscal officers, the director shall prepare and recommend to the board a pay plan for all employees in the state service. Such pay plan shall include for each class of positions a minimum and a maximum rate and such intermediate rates as the director considers necessary or equitable. In establishing such rates the director shall give consideration to the experience in recruiting for positions in the state service, the prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received by employees and the state's financial condition and policies. Such pay plan, after adoption by the board, shall be submitted to the Governor, who shall have the power to revise or alter the plan. Such pay plan shall take effect when approved by the Governor. Amendments thereto may from time to time be made in the same manner. Each employee in the state service shall be paid at one of the rates set forth in the pay plan for the class of positions in which he is employed.

(Acts 1939, No. 58, p. 68, § 13; Code 1940, T. 55, § 304.)

### **§ 36-26-13. Certification of payrolls, etc., for payment of state employees; actions to recover moneys improperly paid, restrain improper payments, etc.**

It shall be unlawful for the Comptroller, any county official, officer or employee or any other fiscal officer to draw or issue any warrant on the State Treasury, county treasurer or county depository for the payment of any salary or compensation to any person in the state service for personal services, unless the payroll, estimate, voucher or account for such salary or compensation containing the name of the person to be paid shall bear the certification of the director that the person or persons named therein are employees of the state and are legally entitled to receive the sums stated therein.

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Any sum paid contrary to any provision of this article or of any rule, regulation or order thereunder may be recovered in an action maintained in the name of the state by the Attorney General or by any citizen or taxpayer of Alabama from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the State Treasury.

The Attorney General or any citizen or taxpayer of Alabama may likewise maintain a civil action to restrain a disbursing officer from making any payment in contravention of any provision of this article or of any rule, regulation or order thereunder.

Any person appointed or employed in contravention of any provision of this article or of any rule, regulation or order thereunder who performs service for which he is not paid may maintain an action against the officer or officers who purported so to appoint or employ him to recover the agreed pay for such services or the reasonable value thereof if no pay was agreed upon. No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services.

If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain an action to compel the director to certify such payroll voucher or account.

(Acts 1939, No. 58, p. 68, § 11; Code 1940, T. 55, § 302.)

### **§ 36-26-14. Deferred compensation plans for certain employees.**

(a) The personnel board may adopt, establish, and maintain a deferred compensation plan or plans, except under Internal Revenue Code Section 403(b), for the employees of the State of Alabama or any city, town, county, or public entity or corporation organized pursuant to the laws of this state. Notwithstanding the foregoing, prior to the employees of a county or political subdivision of the county participating in a plan, the employing county or political subdivision of the county shall approve participation in the plan. The personnel board may include in any such plan any provision that does not cause the plan to fail to qualify for its tax-favored treatment under the United States Internal Revenue Code, including, but not limited to, participant loans, unforeseeable emergency or hardship distributions, Roth deferrals, rollovers, transfers to purchase service credit, and distributions to purchase a retired public safety officer's health insurance.

(b) The State of Alabama Personnel Board may adopt and arrange for consolidated billing and efficient investment, trustee, administrative, and professional services in order that any such plans adopted shall operate without cost to or contribution from the State of Alabama except for incidental expenses associated with administering any such plan, the payroll salary-reductions and the remittance thereof to the trustee or custodian of the plan or plans.

(c) Alabama state employees, or the employees of any city, town, county, or public entity or corporation organized pursuant to the laws of this state may participate in these plans on a voluntary basis by authorizing in writing to their employer a reduction in their cash remuneration to be placed in the plan or plans.

(d) The Finance Director, Comptroller, or other appropriate official is hereby authorized and directed to initiate payroll deductions for the plans as directed by each employee.



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(e) Participants who are receiving monthly benefits from the Employees' Retirement System of Alabama, the Judicial Retirement Fund of Alabama, the Teachers' Retirement System of Alabama, or any other public retirement plan may opt to have the cost of their retiree health insurance deducted from their deferred compensation distribution in accordance with the guidelines of the United States Internal Revenue Service.

(f) It is expressly provided that any benefits under the provisions of this section shall be in addition to any other benefits provided by law for any employees of the State of Alabama, and this section is specifically made supplemental to and shall be construed in pari materia with the provisions of the employees' retirement law of Alabama.

(g) Except as otherwise required under the Internal Revenue Code, each such deferred compensation plan and its trust shall be established and maintained for the exclusive benefit, as defined by law of the plan's participants and their beneficiaries, and all assets of any such plan shall be held for the exclusive benefit of the plan's participants and their beneficiaries. For the purposes and within the meaning of Section 19-3B-102, each such plan is declared to be a trust created by statute and is therefore required to be administered in the manner of an express trust.

(Acts 1971, 3rd Ex. Sess., No. 76, p. 4285, §§ 1-4; Act 2012-232, p. 431, § 1; Act 2015-83, § 1.)

### **§ 36-26-15. Tests for establishment of employment registers for positions in classified service; preferences for veterans, etc.; cooperation of board with federal government, etc., in establishing and administering standards of personnel qualifications, pay plans, etc.**

(a) The director shall conduct tests to establish employment registers for the various classes of positions in the classified service. The tests shall take into consideration elements of character, reputation, education, aptitude, experience, knowledge, skill, personality, physical fitness and other pertinent matters and may be written or oral or any other demonstration of fitness as the director may determine. For a promotion test, the qualifications shall include the requirement that an applicant be employed in a position in such class and for such length of time, as the director shall specify, subject to the rules. Public notice of the time, place and general scope of every test shall be given. The director, with the approval of the board, shall determine the qualifications for admission to any test. Admission to tests shall be open to all persons who appear to possess the required qualifications and may be lawfully appointed to a position in the class for which a list is to be established, and no fee shall be charged therefor. The director may, however, reject the application of any person for admission to a test or may strike the name of any person from a list or refuse to certify the name of any person on a list for a position if he finds that such person lacks any of the required qualifications or is physically unfit to perform effectively the duties of the position in which he seeks employment or is addicted to the habitual excessive use of drugs or intoxicating liquor or has been convicted of a crime involving moral turpitude or guilty of any notoriously disgraceful conduct or has been dismissed from the public service for delinquency or has made a false statement of a material fact or practiced or attempted to practice any fraud or deception in his application or test or in attempting to secure appointment.

(b) All persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard who have ever served in the Armed Forces of the United States at any time shall have five points added to any earned ratings in examination for entrance to the classified service. All persons who have ever served in the Armed Forces of the United States at any time who have been honorably discharged and who established by official records of the United States the present existence of a service-connected disability and because of

disability are entitled to pension, compensation or disability allowance under existing laws and widows of such persons who shall have died in line of duty during any such period and widows of such persons who shall have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard and wives of such persons who shall have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard who, because of service-connected disability are not themselves qualified but whose wives are qualified, shall have 10 points added to any earned ratings. In entering upon registers the names of preference claimants entitled to five additional points, they will take the place to which their ratings entitle them on the register with nonveterans (the earned ratings augmented by the five points to which they are entitled) and will be certified when their ratings are reached. The name of a veteran with the augmented rating is entered ahead of the name of a nonveteran when their ratings are the same. The names of persons entitled to a 10-point preference, however, will be placed ahead of all others on the register with the same rating (ahead of veterans entitled to a five-point preference and nonveterans) and shall be then certified in the order of their augmented ratings. An appointing officer who passes over a veteran eligible and selects a nonveteran with the same or lower rating shall file with the director the reasons for so doing, which reasons will become a part of the veteran's record but will not be made available to anyone other than the veteran himself, except in the discretion of the appointing officer. When reductions are being made in any part of the classified service, persons entitled to military preference in appointment shall be the last to be discharged or dropped or reduced in rank or salary if their record is good or if their efficiency rating is equal to that of any employee in competition with them who is retained in the service in their department.

(c) The board shall, in establishing and administering standards of personnel qualifications, pay plans and tests both for personnel now in place as well as that later employed, cooperate with and avail itself fully of the advice and assistance of the appointing authorities involved and of the federal government in those departments administered in whole or in part with federal funds.

(Acts 1939, No. 58, p. 68, § 14; Code 1940, T. 55, § 305; Acts 1951, No. 283, p. 568, § 1; Acts 1971, No. 979, p. 1748, § 1.)

### **§ 36-26-15.1. Proof of registration required for employment or school enrollment.**

(a) No person who is required to register with the Selective Service System under the United States Military Selective Service Act (50 U.S.C. App. 453) shall:

- (1) Be offered employment by the State of Alabama without proof of such registration; nor
- (2) Be eligible to initially enroll in any state postsecondary institution of higher learning without proof of such registration.

(b) No person who has failed to register as required by the United States Military Selective Service Act (50 U.S.C. App. 453) and who is employed by this state as of January 1, 1992, shall be promoted or reclassified to a higher position without proof of such registration.

(c) The State Personnel Board and the institutions of higher learning in this state are hereby authorized to promulgate such rules and regulations as they deem appropriate to effectuate the intent of this section in the manner prescribed by the state administrative procedure statutes. Certification by the applicant of his registration status shall be deemed adequate to effectuate the intent of this section.

(Acts 1991, No. 91-584, p. 1073, §§ 1-3.)

### **§ 36-26-16. Certification for employment of handicapped persons.**

The State Director of Personnel shall, upon the request of an appointing authority, add to any certification of three eligible for employment the name of any handicapped person on the eligible list who is certified by the Director of the Department of Rehabilitation Services, as being eligible for rehabilitation services; but, the Director of the Department of Personnel may nevertheless not give preference in certification for employment to any handicapped person if he finds such person is physically or otherwise unfit to perform effectively the duties of the position in which he seeks employment.

(Acts 1965, 2nd Ex. Sess., No. 119, p. 166, § 1.)

### **§ 36-26-17. Manner of filling of vacancies in classified service generally; appointments in classified service generally.**

Vacancies in the classified service shall be filled either by transfer, promotion, appointment, reappointment or demotion.

Whenever a vacancy is to be filled by appointment, the appointing authority shall submit to the director a statement of the title of the position and, if requested by the director to do so, the duties of the position and desirable qualifications of the person to be appointed and a request that the director certify to him the names of persons eligible for appointment to the position. The director shall thereupon certify to the appointing authority the name of the 10 ranking eligibles from the most appropriate register and, if more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy or all the names on the register if there are fewer than 10. Except that in the appointment of attorneys or legal research aides under this section by the Attorney General for appointment in the office of the Attorney General the director shall certify to the Attorney General the names of all eligibles who meet the minimum qualifications for the particular class of attorneys. The Attorney General may then appoint any person on the register of eligibles without regard to position on that register. If it should prove impossible to locate any of the persons so certified or should it become known to the director that any person is not willing to accept the position, the appointing authority may request that additional names be certified until 10 persons eligible and available for appointment have been certified. Within 10 days after such names are certified, the appointing authority shall appoint one of those whose names are certified to each vacancy which he is to fill; except, that, in the event that he has fewer than the authorized number of persons from which to make his selection, he may choose from the remaining certified names or if he has fewer than three persons from which to make his selection he may make a provisional appointment as provided by Section 36-26-18. In the event that there does not exist an employment register which the director deems to be appropriate for the class in which the position is established, he shall prepare such a register within a reasonable time after receipt of the request of the appointing authority that eligibles be certified. Whenever an eligible has been certified to and rejected by appointing authorities three times, the director may remove the name of such person from the employment register.

(Acts 1939, No. 58, p. 68, § 16; Code 1940, T. 55, § 307; Acts 1980, No. 80-288, p. 402, § 1; Acts 1985, No. 85-459, p. 447, § 1.)

### § 36-26-18. Extraordinary appointments.

(a) Extraordinary appointments include temporary appointments, emergency appointments, exceptional appointments and provisional appointments.

(b) Whenever the services to be rendered by an appointee are for a temporary period not to exceed 104 workdays and the need for such service is important and urgent, the director may select for such temporary service any person on the proper eligible register without regard to his standing on such register. Successive temporary appointments to the same position or of the same candidate shall not be made under this provision. The acceptance or refusal by an eligible of such temporary appointment shall not affect his standing on the register for regular employment, nor shall a period of temporary service be counted as a part of the probationary service in case of subsequent appointment to a regular position.

(c) Whenever there is an emergency condition existing in the service, appointment may be made of a noneligible person to perform work in such position and under such conditions, but in no case shall such appointment be continued for more than 10 days, and in no case shall successive emergency appointments be made.

(d) Whenever there is a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, professional or educational character are required and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by the selection of some designated person of high and recognized attainments in such qualities, the personnel board upon recommendation of the personnel director may suspend the examination requirements in such case, but no suspension shall be general in its application to such place or position, and all such cases of suspension shall be reported in the annual report of the department with the reasons for such action in each case.

(e) Whenever it is impossible to certify eligible persons for appointment to a vacancy in the classified service, the appointing authority may nominate a person to the director. If such nominee is found by the director to have had experience and training which appear to qualify him for the position, the director may authorize the appointment of such person to such vacancy only until an appropriate eligible register can be established and appointment made therefrom. In no event shall a provisional appointment be continued for more than 156 workdays. Successive provisional appointments of the same person shall not be made.

(f) When the Governor declares that an emergency warranting such action exists, such as a war or other national emergency that causes serious manpower problems, limited tenure appointments may be made. Qualification standards may be lowered in such cases, but whenever practicable there shall be competition among those meeting the lowered standards for such appointments. The personnel director may, however, in the absence of any appropriate lists, authorize a limited tenure appointment without examination. In either case such appointments shall be for not longer than the "duration plus six months" and shall give persons so appointed no status in the classified service by reason of such durational appointment. Such limited tenure appointments shall be made by the authority designated by law in accordance with the provisions of this article.

(Acts 1939, No. 58, p. 68, § 17; Code 1940, T. 55, § 308; Acts 1943, No. 348, p. 331, § 1.)

### **§ 36-26-19. Adoption, etc., of procedures for filling of unskilled, semiskilled, domestic, etc., positions.**

For positions involving unskilled or semiskilled labor or domestic attendants or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the procedure prescribed by this article, the director, subject to the rules, may adopt or authorize the use of such other procedures as he determines to be appropriate in order to meet the needs of the service while assuring the selection of such employees on the basis of merit and fitness. Such procedures may, so far as practicable, include the testing of applicants and maintenance of lists of eligibles by localities, the testing of applicants, singly or in groups, at periodic intervals, at the place of employment or elsewhere, after such notice as the director considers adequate, the registration of applicants who pass a noncompetitive test or submit satisfactory evidence of their qualifications and appointment of registered applicants in the order of their application or by lot or any variation or combination of the foregoing or other suitable method.

(Acts 1939, No. 58, p. 68, § 15; Code 1940, T. 55, § 306.)

### **§ 36-26-20. Employee training programs.**

The director shall devise plans for and cooperate with appointing authorities and other supervising officials in the conduct of employee training programs to the end that the quality of service rendered by persons in the classified service may be continually improved.

(Acts 1939, No. 58, p. 68, § 29; Code 1940, T. 55, § 319.)

### **§ 36-26-21. Working test period for employees; removal during test period; notification as to continuation of employee in position prior to expiration of test period; restoration to eligibility, etc., list of employees removed during or at expiration of test period.**

(a) Every person appointed to a position in the classified service after certification of his name from a promotion list or an employment list shall be tested by a working test while occupying such position. The period of such working test shall commence immediately upon appointment and shall continue for such time, not less than six months, as shall be established by the director. At such times during the working test period and in such manner as the director may require, the appointing authority shall report to the director his observation of the employee's work and his judgment of the employee's willingness and ability to perform his duties satisfactorily and as to his habits and dependability.

(b) At any time during his working test period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the working test indicates that such employee is unable or unwilling to perform his duties satisfactorily or that his habits and dependability do not merit his continuance in the service. Upon such removal, the appointing authority shall forthwith report to the director and to the employee removed his action and the reason thereof. No more than three employees shall be removed successively from the same position during their working test periods without the approval of the director. The director may remove an employee during his working test period if he finds, after giving him notice and an opportunity to be heard, that such employee was appointed as a result of fraud or error.

(c) Ten days prior to the expiration of an employee's working test period, the appointing authority shall notify the director in writing whether the services of the employee have been satisfactory and whether he will

continue the employee in his position. A copy of such notice shall be given to the employee. No employee shall be paid for work performed after the expiration of his working test period unless, prior to the performance of such work, the appointing authority has notified the director that the employee will be continued in his position.

(d) If any employee is removed from his position during or at the end of his working test period and the director determines that he is suitable for appointment to another position, his name may be restored to the list from which it was certified. If any such employee was a regular employee in another position in the classified service immediately prior to his appointment, his name shall be placed on the reemployment list for the class of the position in which he was a regular employee.

(Acts 1939, No. 58, p. 68, § 18; Code 1940, T. 55, § 309.)

### **§ 36-26-22. Establishment, etc., of standards of performance and output and service ratings for employees; reporting and inspection of service ratings of employees.**

(a) In cooperation with appointing authorities, the director shall establish and may from time to time amend standards of performance and output for employees in each class of positions in the classified service or for groups of classes and a system of service ratings based upon such standards. In such manner and with such weight as shall be provided in the rules, service ratings shall be considered in determining salary increases and decreases within the limits established by law and by the pay plan, as a factor in promotion tests, as a factor in determining the order of lay-off when forces must be reduced because of lack of funds or work and the order in which names are to be placed on reemployment lists and as a means of discovering employees who should be promoted, demoted, transferred or dismissed.

(b) In such manner and at such time as the rules may require, each appointing authority shall report to the director the service ratings of employees in his division or such information as the director may request as a basis for determining such service ratings. Any employee shall be given reasonable opportunity to inspect the records of the department which show his service ratings and the service ratings of other employees in the same class and division.

(Acts 1939, No. 58, p. 68, § 19; Code 1940, T. 55, § 310.)

### **§ 36-26-23. Promotions.**

Within the discretion of the director, vacancies in positions shall be filled, insofar as practicable, by promotion from among regular employees holding positions in the classified service. Promotion shall be based upon merit and competition.

(Acts 1939, No. 58, p. 68, § 20; Code 1940, T. 55, § 311.)

### **§ 36-26-24. Transfers.**

An appointing authority may, at any time, assign a classified employee under his jurisdiction from one position to another in the same class. Any classified employee may be transferred from one department to another in the same class; provided, that the director shall have authorized the transfer and shall have received the

approval of both appointing authorities concerned. In every case involving transfer, the appointing authority shall submit a written request to the director.

(Acts 1939, No. 58, p. 68, § 21; Code 1940, T. 55, § 312.)

### **§ 36-26-25. Demotions.**

An appointing authority may, upon giving written notice and stating reasons to and with the approval of the director, demote a classified employee under his jurisdiction from a position in one class to a position in a lower class.

(Acts 1939, No. 58, p. 68, § 22; Code 1940, T. 55, § 313.)

### **§ 36-26-26. Layoffs; furloughs.**

(a) In accordance with the rules, an appointing authority may lay off an employee in the classified service whenever he or she deems it necessary by reason of shortage of work or funds or the abolition of a position or other material change in duties or organization. The seniority and service ratings of employees shall be considered, in such manner as the rules shall provide, among the factors in determining the order of layoffs. The appointing authority shall give written notice to the director of every proposed layoff a reasonable time before the effective date thereof, and the director shall make such orders relating thereto as he or she considers necessary to secure compliance with the rules. The name of every regular employee so laid off shall be placed on the appropriate reemployment list.

(b) In addition to any rights currently provided to state employees, any permanent state employee who is laid off from a position under the state Merit System shall have priority for any other position in the same class filled from an open competitive register by any appointing authority in accordance with rules adopted by the State Personnel Board.

(c) No state agency or appointing authority may abolish a classified position through the layoff provisions if the state agency or appointing authority is employing an individual or individuals outside the Merit System to perform similar duties, as determined by the State Personnel Department. In the event of a layoff, the non-merit employee shall be separated before a classified employee is laid off. This subsection shall not apply if there is no classified employee in a substantially similar position, as determined by the State Personnel Department, who will accept the duties and conditions of the non-merit employee who would otherwise be separated.

(d) A non-merit employee shall not be hired until all classified employees who have been laid off from a substantially similar position, as determined by the State Personnel Department, have been offered the position and have likewise rejected the offer for the position.

(e) A state department or appointing authority may enact a voluntary furlough plan for employees if the voluntary furlough plan is approved by the State Personnel Department.

(f) Any furlough plan adopted by a state department or appointing authority shall be applicable to the entire department affected and shall be voluntary at the sole discretion of the employee.

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(g) Any state employee subject to this section shall otherwise remain whole, including, but not limited to, his or her state retirement, state insurance, including, but not limited to, family coverage, other state benefits, leave, time of service, and status.

(h) The provisions of this section are supplemental and shall not be construed to repeal any law not in direct conflict.

(Acts 1939, No. 58, p. 68, § 23; Code 1940, T. 55, § 314; Acts 1983, No. 83-493, p. 691, § 1; Act 2003-501, p. 1521, § 1; Act 2009-502, p. 928, § 1; Act 2010-604, p. 1474, § 1.)

### **§ 36-26-27. Dismissals and disciplining of employees generally.**

(a) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the director, which action shall become a public record. The dismissed employee may, within 10 days after notice, appeal from the action of the appointing authority by filing with the board and the appointing authority a written answer to the charges. The board shall, if demand is made in writing by the dismissed employee within 10 days after notice of discharge, order a public hearing and, if the charges are proved unwarranted, order the reinstatement of the employee under such conditions as the board may determine. Upon a majority vote of the board, the board may impose a punishment other than termination including but not limited to a reinstatement with forfeiture of back wages and benefits between the date of termination and the date of the board's order reinstating the employee, or a suspension up to and including 30 days.

(b) In addition to removal by an appointing authority, persons in the classified service may be removed or disciplined in the manner described in this subsection. Charges may be filed by any officer, citizen or taxpayer of the state with the director who shall, within five days, cause a copy to be served upon the person complained against and shall set a day not less than 10 nor more than 20 days after such charges have been served on such employee for a public hearing of such charges. This hearing may be before the director, a special agent appointed for the purpose by the director or the board itself. If before the director or a special agent, the director or special agent shall take testimony offered in support and denial of such charges and from the same submit to the board, within five days, a finding of facts and law involved and a recommended decision. The board at its next regular or special meeting shall consider said report and modify, alter, set aside or affirm said report and certify its findings to the appointing authority who shall forthwith put the same into effect. If the board hears said charges directly or requires the transcribing and submission of the testimony taken before the director or special agent, it shall make up and file its own findings and decision. The decision of the board based upon its records and the testimony shall be final.

(c) In proceedings under this section it shall be no defense or excuse for a forbidden act or for an omission to observe the laws or rules that such act or omission was directed by a superior, unless a written direction or order from such superior to that effect is proved. If any employee in the state service shall willfully refuse or fail to appear before any court or judge, any legislative committee or any officer, board or body authorized to conduct any hearing or inquiry or, having appeared, shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him or shall refuse to waive immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such conduct shall be cause for removal.



(Acts 1939, No. 58, p. 68, § 24; Code 1940, T. 55, § 315; Acts 1983, No. 83-673, p. 1060, § 1.)

### **§ 36-26-27.1. Placement of disciplinary documents in the personnel file of a state employee.**

Notwithstanding any other laws, rules, or regulations to the contrary, when a document pertaining to disciplinary action, including, but not limited to, written reprimands, suspensions, notes pertaining to oral reprimands or counselings regarding a state employee, or notes pertaining to matters that may be used regarding the employee in a disciplinary action are placed in the employee's personnel file, the agency which is the employer shall supply a copy of the documentation to the employee no later than 10 days after its inclusion in his or her personnel file. In the event that the information is not provided to the employee within 10 days as herein required, the reprimands or notes shall be removed from the employee's file and shall not be used against the employee in any future proceeding or disciplinary action.

(Act 99-401, p. 669, § 1.)

### **§ 36-26-28. Suspensions.**

(a) An appointing authority may, from time to time, peremptorily suspend any employee without pay or other compensation as punishment for improper behavior, but the suspension or total suspension by the appointing authority of the person shall not exceed 30 days in any year of service. The suspension with loss of pay may be effected only by service upon the employee by the appointing authority of written charges setting out clearly the reasons for which the suspension is being considered. Within 10 days, the employee must accept the suspension or request a suspension hearing. If the employee requests a suspension hearing, the appointing authority shall appoint an independent hearing officer to receive evidence and issue a recommendation on the proposed suspension. The appointing authority may accept or reject the recommendation of the hearing officer. If the appointing authority rejects the recommendation, written justification for the rejection must be provided to the employee.

(b) The appointing authority shall appoint an independent hearing officer from a list of eligible hearing officers which shall be maintained by the State Personnel Department. The appointed hearing officer may be employed by the appointing authority, but shall be independent of the division or area in which the employee works. Any challenge as to the appointment of the independent hearing officer shall be made to the State Personnel Director within five days of notification of the appointment. For the purposes of this section, a hearing officer shall be any person or persons approved by the State Personnel Department to hear a suspension case. If it is the preference of the appointing authority, a hearing officer may be appointed from the Governmental Hearing Officer register, which is compiled and maintained by the State Personnel Department.

(c) Nothing in this section limits an appointing authority's power to provide additional due process safeguards to employees.

(d) The burden of proof shall lie with the appointing authority to prove the charges forming the basis of the suspension.

(e) Those departments or agencies currently having an existing process for suspension hearings may continue to use the existing process, provided that they observe tenets of due process including that the burden of proof shall lie with the appointing authority.

(f) Further, this section shall not apply to any department which currently employs and continues to employ as a standard practice in such cases a pre-disciplinary hearing before an independent hearing officer who makes a recommendation for disciplinary action to the appointing authority based upon a fair hearing of the matter.

(Acts 1939, No. 58, p. 68, § 25; Code 1940, T. 55, § 316; Act 2001-670, p. 1404, § 1; Act 2012-463, p. 1282, § 1.)

### **§ 36-26-29. Limitation period for charges for dismissal or disciplinary action.**

No charges for dismissal or disciplinary action shall be preferred against any employee in the classified service of the state after the expiration of three years from the date such cause became known to the authority having the power to dismiss or discipline such employee.

(Acts 1951, No. 986, p. 1661, § 1.)

### **§ 36-26-30. Effect of entry, etc., into active service of United States Armed Forces upon status of classified employees.**

Any person who, at the time he is called into active service in any of the Armed Forces of the United States or at the time when he enters into the active service in any of the Armed Forces of the United States, has any status whatsoever under this article in the classified service as defined by this article, shall not thereby lose his status by reason of his service in any of the Armed Forces of the United States.

(Acts 1939, No. 651, p. 1027, § 1; Code 1940, T. 55, § 316(1).)

### **§ 36-26-31. Granting of leave of absence for service in Armed Forces of United States.**

Upon the application in writing of any such person, which application shall be directed to and filed with the State Director of Personnel, the State Personnel Board shall enter upon its minutes an order or memorandum granting to such applicant an indefinite leave of absence for such length of time as such applicant shall honorably serve in any of the Armed Forces of the United States.

(Acts 1939, No. 651, p. 1027, § 2; Code 1940, T. 55, § 316(2).)

### **§ 36-26-32. Restoration of employee to former position after service in armed forces.**

At any time before the expiration of 12 months after the termination of the period of honorable service of such applicant in any of the Armed Forces of the United States, he may apply in writing, which application shall be directed to and filed with the State Director of Personnel, for the termination of his leave of absence. Within 30 days of the filing of such application, the State Personnel Board shall consider the same and, if the mental and physical condition of the applicant are such that he is not thereby disqualified to perform the duties of such position from which he had leave of absence, it shall thereupon order his restoration to said position, effective upon the date on which the said order is made and entered. Such restoration shall be made, as provided in this section, notwithstanding the fact that it results in the layoff of the incumbent who is serving in such position.

(Acts 1939, No. 651, p. 1027, § 3; Code 1940, T. 55, § 316(3).)

### **§ 36-26-32.1. Restoration to merit or civil service classification after acceptance of nonmerit appointment.**

(a) Any person who has held a classified position in any merit or civil service system within the State of Alabama or within any political subdivision thereof and relinquished that position to accept an appointment to an unclassified position shall be returned to permanent status in the same merit classification which that person held at the time of appointment, providing that person shall:

- (1) Choose to be returned to the merit or civil service classification.
- (2) Have accepted an appointment to an unclassified position within the same agency where employment was under the merit or civil service system.
- (3) Not have had a break in service exceeding one pay period.
- (4) Not have been the subject to any pending disciplinary action at time of appointment.
- (5) Have had at least 10 years service in the merit or civil service system at time of appointment.

(b) Any person who returns to a former merit or civil service classification under the provisions of subsection (a) shall revert to his or her former position in which he or she held status in the classified service. The reversion shall be without loss of salary or other benefits which would have accrued to the employee and to which the employee would have otherwise been entitled had he or she remained within the classified service. It is further provided, that when a person returns to a former classification no person serving in that classification shall be reduced in classification but reduction if necessary shall be accomplished by attrition.

(Acts 1980, No. 80-730, p. 1475, §§ 1, 2; Act 2015-478, § 1.)

### **§ 36-26-33. Rights and privileges upon entry, etc., into military service of employees not in classified service.**

Those employees who are not in the classified service, as defined by this article, upon being called into or entering the military service, shall have the same rights and privileges as to reemployment by the state or any department thereof as are granted to those employees in the classified service by Sections 36-26-30 through 36-26-32.

(Acts 1951, Ex. Sess., No. 5, p. 169, § 8.)

### **§ 36-26-34. Granting, etc., of time off to comply with religious obligations.**

Notwithstanding any other provision of law, the head of each department or independent establishment in the state government shall grant, under regulations prescribed by the State Personnel Board, to employees under their respective jurisdictions, to the extent compatible with the exigencies of the public business and the performance of essential services, time off from duty (without charge to any leave otherwise authorized by law and without loss of compensation and other employee benefits) to comply with religious obligations prescribed by religious denominations of which such employees are bona fide members. Any such time off so granted shall be made up by the employee concerned under appropriate regulations of the authority concerned. Any denial

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of such time off shall be predicated on a written answer of the authority concerned which shall state the reasons for such denial and shall be transmitted to the employee concerned.

(Acts 1967, No. 212, p. 576, § 1.)

### § 36-26-35. Annual leave.

(a) All persons who are regularly employed by the state and who are subject to the provisions of the state Merit System, and all legislative personnel, officers, and employees, including, but not limited to, Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to accumulate annual leave on the basis of biweekly pay periods through the payday on March 17, 2006, as follows:

Employee's total service with:	Accumulation of leave per pay period	Annual Accumulation
Fewer than five years' service	4 hours	13 days
5 but less than 10 years' service	5 hours	16 days 2 hours
10 but less than 15 years' service	6 hours	19 days 4 hours
15 but less than 20 years' service	7 hours	22 days 6 hours
20 but less than 25 years' service	8 hours	26 days
25 years of service or more	9 hours	29 days 2 hours

(b) Beginning with the payday on April 3, 2006, all persons who are regularly employed by the state and who are subject to the provisions of the state Merit System, and all legislative personnel, officers, and employees, including, but not limited to, Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to accumulate annual leave on the basis of semi-monthly pay periods as follows:

Employee's total service with:	Accumulation of leave per pay period	Annual Accumulation
Fewer than five years' service	4 hours 20 minutes	13 days
5 but less than 10 years' service	5 hours 25 minutes	16 days 2 hours
10 but less than 15 years' service	6 hours 30 minutes	19 days 4 hours
15 but less than 20 years' service	7 hours 35 minutes	22 days 6 hours
20 but less than 25 years' service	8 hours 40 minutes	26 days
25 years of service or more	9 hours 45 minutes	29 days 2 hours

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(c) Maximum accrued leave after 25 years of service shall be limited to 29 ¼ days per year, and the maximum number of days of annual leave which may be carried over at the end of each year shall be limited to 60 days.

(d) Any law enforcement officer in the Department of Public Safety shall be entitled to receive payment for any accrued and unused annual leave days in excess of 60 days, up to a maximum of 10 days per year. Payment shall be calculated using the officer's regular rate of pay.

(Acts 1973, No. 752, p. 1125, § 1; Acts 1980, No. 80-752, p. 1556, § 1; Acts 1997, No. 97-716, p. 1486, § 1; Act 2005-316, 1st Sp. Sess., p. 766, § 1.)

### **§ 36-26-35.1. Annual leave carry over limit increased for certain personnel.**

(a) Notwithstanding any other laws, the carry over limit on annual leave for personnel in state departments and agencies who are assigned to work on year 2000 (Y2K) problems and projects may be increased from 480 to not more than 714 hours of annual leave for the years beginning on January 1, 2000, January 1, 2001, and January 1, 2002, upon request by the appointing authority to the Director of Finance for his or her approval of an increase in the limit.

(b) When the Director of Finance approves an increased limit on annual leave for such an employee pursuant to subsection (a), the employee shall earn the additional annual leave in excess of 480 hours in accordance with the schedule for accumulation of annual leave prescribed in subsection (a) of Section 36-26-35.

(c) On December 31, 2002, the carry over limit of 480 hours of annual leave shall again be applicable to any state employee who was excepted from the limit for a certain time under the foregoing provisions of this section.

(d) No employee carrying over more than 480 hours of annual leave under this section shall be compensated for more than 480 hours of accumulated annual leave upon his or her retirement, resignation, or termination.

(Act 99-629, 2nd Sp. Sess., p. 39, § 1.)

### **§ 36-26-35.2. Donation of leave for catastrophic illness, etc.**

Notwithstanding any other laws to the contrary, a state employee employed in any branch of state government may donate his or her accrued and unused annual, sick, or compensatory leave to another state employee who has qualified for catastrophic sick leave or maternity leave. The donation shall be subject to the approval of the appointing authority of the employee making the donation and, if the donating employee is in a position with a lower pay grade than the position of the employee receiving the donation, the approval of the State Personnel Board. The appointing authority of the employee receiving the donation may limit the number of hours an employee may receive per catastrophic illness or maternity leave. No employee may receive more than 480 hours of donated leave throughout his or her career with the state without the approval of the State Personnel Board.

(Act 2001-352, p. 457, § 1; Act 2002-391, p. 984, § 1; Act 2007-293, p. 524, § 1; Act 2012-376, p. 938, § 1.)

### **§ 36-26-36. Partial payment of accrued sick leave at time of retirement or death; calculation, accumulation, and use of sick leave.**

(a) Upon retirement, each employee who acquires sick leave pursuant to the state Merit System shall receive payment of 50 percent of his or her accrued and unused sick leave, not to include escrowed sick leave as provided herein, at the time of his or her retirement, and payments for the sick leave shall be made at the same rate as his or her regular pay, not to exceed 600 hours.

(b) When a state employee in the classified service dies while in active service to the state, the estate of the deceased employee shall receive a monetary payment of 50 percent of the accrued and unused sick leave, not to exceed 600 hours, which the employee was credited with at the time of his or her death.

(c) The state shall calculate sick leave each pay period. Sick leave earned over 1200 hours shall be considered excess sick leave which shall be accrued and credited to the employee for use as sick leave in the year the excess sick leave is earned.

(d) Excess sick leave over 1200 hours shall be placed in escrow for the state employee who earned the sick leave to be used only as may be provided by State Personnel Board rules.

(e) This section does not preclude the accumulation of and payment for a greater number of hours of sick leave to an employee upon retirement pursuant to Section 16-1-18.1.

(Acts 1973, No. 752, p. 1125, § 2; Acts 1996, No. 96-652, p. 1050, § 1; Act 2000-328, p. 524, § 1; Act 2012-376, p. 938, § 1.)

### **§ 36-26-36.1. Conversion of unused sick leave into membership service for retirement purposes.**

(a) Any Tier I plan member of the Teachers' or Employees' Retirement System of Alabama not otherwise covered by a provision to convert unused sick leave into membership service for purposes of service retirement may, at their option and in lieu of receiving payment for 50 percent of their accrued and unused sick leave at the time of their retirement as provided in Section 36-26-36, or any other payment that may be provided for such unused sick leave, use their accrued sick leave, up to a maximum number of 180 accrued sick leave days or as otherwise allowed by law, whichever is greater, to be included as membership service in determining the total years of creditable service in the Employees' Retirement System of Alabama or the Teachers' Retirement System of Alabama; provided that no employee of an employer participating in the Employees' Retirement System pursuant to Section 36-27-6 shall be entitled to the benefits provided herein unless such employer shall elect to come under the provisions of this section and further elects to fund the benefits provided herein. Unused sick leave may be converted to membership service only for the purpose of applying for service retirement and may be considered in the determination of eligibility for retirement. The conversion shall not apply to eligibility for deferred retirement. It is further provided that if a Tier I plan member eligible for service retirement is also eligible for disability retirement the member may elect disability retirement and also receive credit for accumulated sick leave pursuant to this section. No Tier I plan member shall receive both service credit provided for by this section and payment or partial payment for accrued sick leave pursuant to any other provision of law.

(b) The conversion of accrued sick leave into creditable service provided in this section shall not apply to any Tier II plan member.

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(Acts 1986, No. 86-502, p. 983, § 1; Acts 1988, 1st Ex. Sess., No. 88-904, p. 472, § 1; Acts 1989, Ex. Sess., No. 89-990, p. 35, § 1; Acts 1991, No. 91-617, p. 1158, § 1; Act 2012-377, p. 944, § 1.)

### **§ 36-26-36.2. Donation of leave; implementation.**

(a) Annual leave, compensatory leave, and sick leave donation programs for catastrophic illnesses or maternity leave of qualified state employees shall provide for donations of leave to occur between all state employees employed in the Executive, Legislative, and Judicial Branches of state government.

(b) The personnel departments of all branches of state government shall coordinate efforts to promulgate and implement the administrative rules and procedures necessary to implement this section.

(Act 2001-352, p. 457, § 2; Act 2002-391, p. 984, § 1; Act 2012-376, p. 938, § 1.)

### **§ 36-26-36.3. Bereavement leave.**

(a) All persons who are regularly employed by the state, and who are subject to the provisions of the state Merit System, and all legislative personnel, officers, and employees, including, but not limited to, Legislative Reference Service personnel, whether subject to the state Merit System or not, may be granted bereavement leave with pay for the death of a person related by blood, adoption, or marriage, or as otherwise provided for by the Alabama State Personnel Board. Bereavement leave may be granted only to an employee who does not have accrued sick leave available for such use.

(b) For any one occurrence, the bereavement leave shall not exceed three days.

(c) Any bereavement leave granted to an employee must be reimbursed to the state in the form of leave days, including sick leave, annual leave, and personal leave, within one calendar year of the use of the bereavement leave.

(d) In the event an employee leaves state service before repaying any bereavement leave used, he or she shall have the leave deducted from his or her final pay check.

(Act 2001-478, p. 644, § 1.)

### **§ 36-26-37. Design, purchase and awarding of longevity service recognition pins, etc., for state departments and agencies.**

(a) The State Personnel Department, with the advice of the Alabama State Employees' Association and approval of the Governor, shall have designed a distinctive longevity service recognition pin for each of the various state departments and state agencies and shall promulgate rules and regulations concerning the award thereof.

(b) Each department and agency of state government is hereby authorized and empowered to expend state funds for the purchase and awarding of such pins, together with certificates of appreciation.

(Acts 1973, No. 1278, p. 2192, §§ 1, 2.)

### **§ 36-26-38. Political activities prohibited.**

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations. No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service or an increase in pay or other advantage in employment in any such position for the purpose of influencing the vote or political action of any person or for any consideration. No employee in the classified service and no member of the board shall, directly or indirectly, pay or promise to pay any assessment, subscription or contribution for any political organization or purpose or solicit or take any part in soliciting any such assessment, subscription or contribution under coercion; provided, however, it shall be unlawful for any officer or employee to solicit any type political campaign contributions from other employees who work for said officer or employee in a subordinate capacity. No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except on his personal time and to exercise his right as a citizen privately to express his opinion and to cast his vote; provided, however, that nothing in this section shall prohibit any person in the classified service from serving out the term of a party office which he had been elected at the time this chapter goes into effect. Any employee in the classified service may engage in political action or political activities on personal time before and after work, holidays and during approved leave.

(b) Any officer or employee in the classified service who violates any of the foregoing provisions of this section shall forfeit his office or position.

(Acts 1939, No. 58, p. 68, § 26; Code 1940, T. 55, § 317; Acts 1983, No. 83-497, p. 696, § 2.)

### **§ 36-26-39. Offenses as to testing, certification, appointment, etc., for positions in classified service, etc.**

No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provision of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules. No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to or any advantage in a position in the classified service. No employee of the department, examiner or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this chapter or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

(Acts 1939, No. 58, p. 68, § 31; Code 1940, T. 55, § 326.)



### **§ 36-26-40. Studies and reports by director; investigations and hearings as to compliance with provisions of article, etc., generally.**

The director shall make studies and report to the board upon all matters touching the enforcement and the effect of the provisions of this article and the rules and regulations prescribed thereunder. He may visit all places of employment and services affected by this article in order to ascertain and advise with the heads of the various departments concerning their methods of handling those matters affecting employees in the service, such as hours of work, attendance, training, working conditions and morale and in order to ascertain whether the provisions of this chapter and the rules promulgated thereunder are obeyed. The director, in the course of such inquiries, shall have the power to administer oaths, subpoenas and require the attendance of witnesses and the production of books, papers, documents and accounts pertaining to the subject under investigation. All hearings and inquiries made by the director shall be governed by this article and by rules of practice and procedure adopted by the board, and, in conducting such inquiries, he shall not be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony by the director shall invalidate any order, decision, rule or regulation made by him and approved or confirmed by the board. The director shall have authority to inquire concerning the number of employees in any department or office; and, if in his judgment there is an excessive number of employees in proportion to the amount of work required in such department or office, he shall, with the approval of the board, recommend in writing to the appointing authority that the excess number of employees be laid off or transferred. He shall also study the organization and procedure of the different departments and suggest such changes in procedure as may increase efficiency or enable the organization to carry on its work more economically and with a reduced staff.

(Acts 1939, No. 58, p. 68, § 30; Code 1940, T. 55, § 320.)

### **§ 36-26-41. Failure of witnesses to appear and testify, etc., at investigations or hearings; fees of witnesses; requirement of appearance, etc., of witnesses, etc., before board; giving of false testimony under oath.**

Any person who shall be served with a subpoena, issued in the course of an investigation or hearing conducted under any provision of this article, to appear and testify or to produce books and papers who shall, without good cause, disobey or neglect to obey any such subpoena shall be guilty of a misdemeanor. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the courts of record and shall be paid from the appropriation for the expenses of the board. Any judge of a court of record, either in term time or vacation, upon application of a member of the board or the director, shall compel the attendance of witnesses, the production of books and papers and the giving of testimony before the board or an agent thereof by attachment or contempt or otherwise in the same manner as the production of evidence shall be compelled before said court. Any person who, having taken an oath or made affirmation in the course of any investigation or hearing under the provisions of this article, shall willfully and knowingly testify or declare falsely shall be guilty of perjury and, upon conviction, shall be punished accordingly. The director or the board shall require the attendance of employees who are needed as witnesses without subpoena.

(Acts 1939, No. 58, p. 68, § 33; Code 1940, T. 55, § 321.)

### **§ 36-26-42. Representation of department in judicial proceedings.**

If this article or its enforcement by the director or the board shall be called into question in any judicial proceeding or if any person shall fail or refuse to comply with the lawful orders or directions of the board, such

board or the director may call upon the Attorney General or may, with the advice and consent of the Governor, employ independent counsel to represent it in sustaining this article and its enforcement thereof, and such independent counsel shall be paid as other employees of the department are paid.

(Acts 1939, No. 58, p. 68, § 35; Code 1940, T. 55, § 323.)

### **§ 36-26-43. Use of state, county, etc., buildings for examinations and investigations, etc.**

It shall be the duty of all officers of the state and of the several counties and municipalities of the state to allow the reasonable use of public buildings and rooms and to heat and light the same for the holding of any examinations or investigations provided for by this article and in all proper ways to facilitate the work of the department.

(Acts 1939, No. 58, p. 68, § 36; Code 1940, T. 55, § 324.)

### **§ 36-26-44. Inspection of records of department.**

The records of the department, except such records as the rules may require to be held confidential by reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the director.

(Acts 1939, No. 58, p. 68, § 37; Code 1940, T. 55, § 325.)

### **§ 36-26-45. Payment of expenses of department.**

The salaries and all other expenses of the department arising under the provisions of this article shall be paid from the appropriations provided. Vouchers shall be signed by the director or in the absence of the director by his deputy and submitted to the Comptroller who shall draw his warrant in payment thereof.

(Acts 1939, No. 58, p. 68, § 34; Code 1940, T. 55, § 322.)

### **§ 36-26-46. State Capitol guides classified as “Capitol Hostesses.”**

All persons employed as guides in the State Capitol complex shall be classified as “Capitol Hostesses” under the provisions of the state Merit System.

(Acts 1975, No. 514, p. 1160, § 1.)

### **§ 36-26-47. Penalties for violations of provisions of article.**

A willful violation of any provision of this article shall be deemed a misdemeanor. Any person who is convicted of a misdemeanor under this article shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service and, if he is an officer or employee of the state, shall forfeit his office or position.

(Acts 1939, No. 58, p. 68, § 32; Code 1940, T. 55, § 327.)

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### Article 3, County and District Health Departments

#### § 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.

(Acts 1975, 3rd Ex. Sess., No. 149, § 1.)

#### § 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.

(Acts 1975, 3rd Ex. Sess., No. 149, § 2.)

#### § 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.

(Acts 1975, 3rd Ex. Sess., No. 149, § 3.)

#### § 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.

(Acts 1975, 3rd Ex. Sess., No. 149, § 4.)

### Chapter 29A, State Employee Injury Compensation Program

#### **§ 36-29A-1. Compensation for personal injuries of state employees, etc.**

The Director of Finance shall have the authority to implement a program to provide compensation for employees of the state and its agencies, departments, boards, or commissions and members of the Alabama National Guard and Alabama State Defense Force while on active military service for the state who suffer personal injury as a result of accidents arising out of and in the course of their state employment or active military service, under such terms and conditions as the Director of Finance shall determine. The program will be administered by the Division of Risk Management of the Department of Finance, and will take effect on October 1, 1994.

(Acts 1994, No. 94-680, p. 1308, § 1; Act 2012-333, p. 789, § 1.)

#### **§ 36-29A-2. Costs.**

The costs of the program and its administration shall be paid from the funds appropriated for the operation of the several state departments, agencies, boards and commissions, to which the Director of Finance may apportion the costs. Medical costs may be managed by cooperative agreement with the State Employees' Insurance Board.

(Acts 1994, No. 94-680, p. 1308, § 2.)

#### **§ 36-29A-3. Employee Injury Compensation Trust Fund.**

There is hereby established a separate special trust fund in the State Treasury to be known as the Employee Injury Compensation Trust Fund. All receipts collected under the provisions of this chapter shall be deposited in this fund and used only to carry out the provisions of this chapter. Any funds unspent and unencumbered at the end of each fiscal year shall not revert to any other fund in the State Treasury but shall be carried forward to the succeeding fiscal year. All funds in the Employee Injury Compensation Trust Fund may be invested and reinvested by the Director of Finance, through the Division of Risk Management, under the same terms as apply to the State Insurance Fund. There is hereby appropriated from the Employee Injury Compensation Trust Fund such amounts as are necessary to pay claims, benefits, administrative costs, and all other costs of the program.

(Acts 1994, No. 94-680, p. 1308, § 3.)

#### **§ 36-29A-4. Workers' Compensation Law not applicable.**

Except as provided herein, the program implemented pursuant to this chapter is not governed by or subject to the provisions of Act 92-537, or its successor, otherwise known as the Alabama Workers' Compensation Law or any similar law. Payments made to physicians licensed to practice medicine for services to injured employees shall be in accordance with the schedule of maximum fees as established under Section 25-5-313, or as otherwise permitted under Section 25-5-314. All undisputed medical reimbursements or payments shall be made within twenty five (25) working days of receipt of claims in the form specified in Section 25-5-3. There shall be added to any undisputed medical invoice which is not paid within twenty five (25) working days an

amount equal to ten (10) percent of the unpaid balance. Any regulation, policy, or program directive for the conduct of utilization review, bill screenings, and medical necessity determinations related to services provided by physicians licensed to practice medicine shall comply with the regulations promulgated by the Workers' Compensation Medical Services Board under the provisions of subdivision (1) of Section 25-5-312. Any rules, regulations, or guidelines promulgated by the Director of Finance with respect to the establishment and operation of the program contemplated by this chapter shall be subject to the Administrative Procedure Act, and a final determination as to benefits payable under the said program shall be subject to review by the Circuit Court in Montgomery County in the manner prescribed by the Administrative Procedure Act.

(Acts 1994, No. 94-680, p. 1308, § 4.)

### **§ 36-29A-5. Preretirement death benefits not affected.**

This chapter does not affect or repeal preretirement death benefits provided by the retirement systems or benefits provided by Sections 36-30-1 through 36-30-23.

(Acts 1994, No. 94-680, p. 1308, § 8.)

### **§ 36-29A-6. State not waiving sovereign immunity.**

Neither this chapter nor any part thereof shall be construed as a waiver by the state of its sovereign immunity under the Constitution of Alabama 1901.

(Acts 1994, No. 94-680, p. 1308, § 9.)

### **§ 36-29A-7. Application limitation.**

The program established by the Director of Finance pursuant to the provisions of this chapter shall not apply to the Alabama Port Authority, nor to any educational institution, nor to any city or county board of education.

(Acts 1994, No. 94-680, p. 1308, § 10.)

### **§ 36-29A-8. Trust fund disputes.**

(a) As used in this section, the following terms shall have the following meanings:

- (1) ADMINISTRATIVE LAW JUDGE (ALJ). An independent third-party hearing officer appointed by the Chief Administrative Law Judge of the Administrative Law Judge Division (Central Panel) of the Office of the Attorney General.
- (2) AGENCY. A department, board, bureau, commission, agency, or office of the State of Alabama.
- (3) STATE EMPLOYEE. A permanent, non-probationary employee, whether in the classified or unclassified service of the State of Alabama, including, but not limited to, employees of the Department of Mental Health.

(b) Notwithstanding any other provision of law to the contrary, a state employee may specifically request that an Administrative Law Judge (ALJ) or the State Employee Injury Compensation Trust Fund Review Board hear and decide any employee dispute related to State Employee Injury Compensation Trust Fund entitlements. The request by the employee must be made in writing to the State Employee Injury Compensation Trust Fund Review Board. If the employee requests that an ALJ hear and decide the dispute, the State Employee Injury Compensation Trust Fund shall provide a copy of the employee's request to the Administrative Law Judge Division (Central Panel) of the Office of the Attorney General within 10 business days. The request of the employee regarding the hearing must be made within 60 days of the date of the original notification of the State Employee Injury Compensation Trust Fund decision related to the employee's claim for entitlements. The ALJ shall notify the employee and the State Employee Injury Compensation Trust Fund of the hearing in writing. Said hearing date shall be set within 10 business days of notification and shall be conducted within 90 calendar days unless the ALJ approves a request from the employee or the State Employee Injury Compensation Trust Fund to delay the hearing date. The presentations at the hearing shall follow accepted legal procedures insofar as is practical but shall not be restricted by formal legal rules of evidence and procedure. In all matters involving the employee's claim for entitlements, due process shall be strictly adhered to. Hearings involving the employee's claim for entitlements shall be held in accordance with the provisions of the Alabama Administrative Procedure Act. At no expense to the State Employee Injury Compensation Trust Fund or the employee's agency, the employee shall have the right to be represented at the hearing by an attorney or other employee representative. The ALJ shall hear and decide claims for entitlements as stated herein at a rate of not less than \$85.00 per hour which shall be paid by the relevant state agency. The rate shall not exceed the normal hourly rate authorized by the Governor for legal services contracts. The decision rendered by the ALJ or the State Employee Injury Compensation Trust Fund Review Board shall be within 60 days of the employee's written request for review unless the ALJ approves a request from the employee or the State Employee Injury Compensation Trust Fund to delay the hearing date. The decision may be appealed to the Circuit Court of Montgomery County.

(Act 2000-718, p. 1540, §§ 1, 2.)

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### Title 40, Revenue and Taxation Chapter 9, Exemption from Taxation and Licenses Article 1, General Provisions

#### § 40-9-9. Y.M.C.A.

All Young Men's Christian Associations and all real and personal property of all Young Men's Christian Associations, and of any branch or department of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such associations, their branches or departments, in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of such associations, their branches or departments, in any city or county of the State of Alabama, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. The receipt, assessment or collection of any fee, admission, service charge, rent, dues or any other item or charge by any such association, its branches or departments from any person, firm or corporation for any service rendered by any such association, its branches or departments, or for the use or occupancy of any real or personal property of any such association, its branches or departments, in or about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of any such association, its branches or departments shall not be held or construed by any court, agency, officer or commission of the State of Alabama or any county or municipality thereof to constitute pecuniary gain or individual profit by any such association, its branches or departments, or the doing of business in such a manner as to prejudice or defeat, in any manner, the right and privilege of any such association, its branches or departments to claim or rely upon or receive the exemption of such association, its branches or departments and of all real and personal property thereof from taxation, as herein provided.

(Acts 1919, No. 180, p. 176; Code 1923, § 7192; Code 1940, T. 51, § 12; Acts 1957, No. 753, p. 1188.)

#### § 40-9-10. Y.W.C.A.

All Young Women's Christian Associations, and all real and personal property of all Young Women's Christian Associations, and of any branch or department of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such associations, their branches or departments in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of such associations, their branches or departments, in any city or county of the State of Alabama, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. The receipt, assessment or collection of any fee, admission, service charge, rent, dues or any other item or charge by any such association, its branches or departments, from any person, firm or corporation for any service rendered by any such association, its branches or departments, or for the use or occupancy of any real or personal property of any such association, its branches or departments, in or about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of any such association, its branches or departments shall not be held or construed by any court, agency, officer or commission of the State of Alabama or any county or municipality thereof to constitute pecuniary gain or

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individual profit by any such association, its branches or departments, or the doing of business in such a manner as to prejudice or defeat, in any manner, the right and privilege of any such association, its branches or departments to claim or rely upon or receive the exemption of such association, its branches or departments and of all real and personal property thereof from taxation, as herein provided.

(Acts 1959, 1st Ex. Sess., No. 73, p. 125.)

### **§ 40-9-11. Y.W.C.O.**

All Young Women's Christian Organizations, and all real and personal property of all Young Women's Christian Organizations, and of any branch or department of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such organizations, their branches or departments in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of such organizations, their branches or departments, in any city or county of the State of Alabama, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. The receipt, assessment or collection of any fee, admission, service charge, rent, dues or any other item or charge by any such organization, its branches or departments from any person, firm or corporation for any service rendered by any such organization, its branches or departments, or for the use or occupancy of any real or personal property of any such organization, its branches or departments, in or about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives and policies of any such organization, its branches or departments shall not be held or construed by any court, agency, officer or commission of the State of Alabama, or any county or municipality thereof to constitute pecuniary gain or individual profit by any such organization, its branches or departments, or the doing of business in such a manner as to prejudice or defeat, in any manner, the right and privilege of any such organization, its branches or departments to claim or rely upon or receive the exemption of such organization, its branches or departments and of all real and personal property thereof from taxation, as herein provided.

(Acts 1962, Ex. Sess., No. 156, p. 199.)

### **§ 40-9-12. The National Foundation's Alabama Field Offices, Y.M.H.A. (J.C.C.), Seamen's Home of Mobile, Catholic Maritime Club of Mobile, Inc., Knights of Pythias Lodges, Salvation Army, Inc., etc.**

(a) The National Foundation's Alabama Field Offices, all Young Men's Hebrew Associations (Y.M.H.A.) also known as Jewish Community Centers (J.C.C.), and all real and personal property of all Young Men's Hebrew Associations (Y.M.H.A.) also known as Jewish Community Centers (J.C.C.), the Seamen's Home of Mobile, incorporated under Act No. 145, Acts of Alabama 1844-45, the Girl Scouts of America and the Boy Scouts of America, and any council, troop or other subdivision thereof now existing or hereafter created and all real and personal property of the Girl Scouts of America and the Boy Scouts of America, and any council, troop or other subdivision thereof now existing or hereafter created, the Catholic Maritime Club of Mobile, Inc., the Knights of Pythias Lodges, the Salvation Army, Inc., the Elks Memorial Center, and all real and personal property of the Salvation Army, Inc., and the Elks Memorial Center, all community chests and united appeal funds, and all charitable, civic and eleemosynary organizations and institutions for whom they solicit funds, and the real and personal property of all community chests and united appeal funds, and of all charitable, civic and eleemosynary institutions for whom they solicit funds, and the Alabama Masonic Home, the American Cancer Society, Ala-Division, Inc., and



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all real and personal property of American Cancer Society, Alabama Division, Inc., the New Hope Industries of Dothan, and all real and personal property of the New Hope Industries of Dothan, the Helping Hand Club of Anniston, and all real and personal property of the Helping Hand Club of Anniston, Childhaven, Inc., and all real and personal property of Childhaven, Inc., Presbyterian Home for Children and all real and personal property of Presbyterian Home for Children, Freewill Baptist Children's Home and all real and personal property of Freewill Baptist Children's Home, Methodist Homes for the Aging and all real and personal property of Methodist Homes for the Aging, and United Methodist Children's Home and all real and personal property of United Methodist Children's Home, Birmingham Building Trades Towers of Birmingham, Alabama, a nonprofit corporation, the Holy Comforter House, Inc., of Gadsden, Alabama, a nonprofit corporation, the University of Alabama Huntsville Foundation and all real and personal property of the University of Alabama Huntsville Foundation, the Birmingham Football Foundation, Inc., a nonprofit corporation, and all real and personal property of the Birmingham Football Foundation, Inc., and of any branch or department of any of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such associations or nonprofit corporations, their branches or departments in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of such associations or nonprofit corporations, their branches or departments, in any city or county of the State of Alabama, are exempt from the payment of any and all state, county, and municipal taxes, licenses, fees, and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. The receipt, assessment or collection of any fee, admission, service charge, rent, dues, or any other item or charge by any such association or nonprofit corporation, its branches or departments from any person, firm, or corporation for any services rendered by any such association or nonprofit corporation, its branches or departments or for the use or occupancy of any real or personal property of any such association or nonprofit corporation, its branches or departments in or about the conducting, maintaining, operating, and carrying out of the program, work, principles, objectives, and policies of any such association or nonprofit corporation, its branches, or departments shall not be held or construed by any court, agency, officer, or commission of the State of Alabama, or any county or municipality thereof, to constitute pecuniary gain or individual profit by any such association or nonprofit corporation, its branches or departments, or the doing of business in such a manner as to prejudice or defeat, in any manner, the right and privilege of any such association or nonprofit corporation, its branches or departments to claim or rely upon or receive the exemption of such association or nonprofit corporation, its branches or departments and of all real and personal property thereof from taxation, as herein provided.

(b) With respect to gasoline, tobacco, playing card tax or any other tax required by law to be prepaid by the retailer, the associations, nonprofit corporations, or organizations exempt under this section shall pay the appropriate tax at the time purchases are made, and the amount of such tax shall be refunded to such associations, nonprofit corporations, or organizations by the Department of Revenue pursuant to the procedures for refunds provided in Chapter 2A of this title.

(Acts 1961, Ex. Sess., No. 47, p. 1904; Acts 1963, No. 297, p. 768; Acts 1964, 1st Ex. Sess., No. 256, p. 352; Acts 1964, 1st Ex. Sess., No. 259, p. 358; Acts 1965, No. 864, p. 1611; Acts 1966, Ex. Sess., No. 261, p. 403, § 1; Acts 1967, No. 761, p. 1616, § 1; Acts 1969, No. 1102, p. 2038; Acts 1969, No. 1250, p. 2352, §§ 1, 2; Acts 1971, No. 1202, p. 2087; Acts 1971, No. 1591, p. 2722; Acts 1971, No. 1944, p. 3140; Acts 1971, No. 2080, p. 3350; Acts 1984, No. 84-664, p. 1331; Acts 1992, No. 92-186, p. 349, § 22.)

**§ 40-9-13. Volunteer fire departments, Alabama Society of D.A.R., Annual Shrine Circus, Episcopal Foundation of Jefferson County, Alabama Heart Association and Presbyterian Apartments, Inc.**

(a) All volunteer fire departments in this state, and all real and personal property of all volunteer fire departments in this state, the Alabama Society of the Daughters of the American Revolution, and all real and personal property of the Alabama Society of the Daughters of the American Revolution, the Annual Shrine Circus as well as all other charitable Shrine amusement and fund raising events, and all real and personal property of the Annual Shrine Circus, the Episcopal Foundation of Jefferson County, and all real and personal property of the Episcopal Foundation of Jefferson County, the Alabama Heart Association and all real and personal property of the Alabama Heart Association, and the Presbyterian Apartments, Incorporated, and all real and personal property of the Presbyterian Apartments, Incorporated, when such real and personal property shall be used as provided in Section 40-9-12, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof.

(b) All volunteer fire departments in this state, the Alabama Society of the Daughters of the American Revolution, the Annual Shrine Circus as well as all other charitable Shrine amusement and fund raising events, the Episcopal Foundation of Jefferson County, the Alabama Heart Association and the Presbyterian Apartments, Incorporated, shall be subject to all the provisions of Section 40-9-12, as are all other organizations named therein.

(Acts 1973, No. 1204, p. 2026; Acts 1984, 1st Ex. Sess., No. 84-739, p. 80.)

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### **Title 41, State Government Chapter 1, General Provisions Article 1, In General**

#### **§ 41-1-11. State agencies authorized to increase certain fees in accordance with the Consumer Price Index.**

(a) Any state agency that statutorily levies or assesses fees retained by the agency to fund its operations or programs may increase the fee by the percentage increase in the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics from the end of December in the tenth year preceding the year in which the fee increase is to be effective or from the end of December in the last year the fee was increased, whichever period is shorter, to the end of the month preceding the month in which the fee increase is to be effective, rounded down to the nearest dollar. Thereafter, every five years the agency may repeat this process using the Consumer Price Index for the previous five years forward to the date of the requested change. The change may not exceed an increase of two percent per year.

(b) Any change in a fee schedule pursuant to this section is a rule for purposes of the Alabama Administrative Procedure Act.

(c) If an increase is adopted, the assessed increase of the fee shall be retained by the agency to fund its operations or programs under the control of the agency.

(d) The provisions of this section shall not apply in any manner to the Alabama Public Service Commission, the State Parks Division of the Department of Conservation and Natural Resources, or the State Banking Department.

(Act 2015-441, § 1.)

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### Chapter 9, Boards and Commissions Article 4, Board of Adjustment

#### **§ 41-9-60. Purpose of division.**

The purpose of this division is to provide a method of payment by the State of Alabama or any of its agencies, commissions, boards, institutions or departments to persons for injuries to person or property or for death occasioned by the State of Alabama or any of its agencies, commissions, boards, institutions or departments where in law, justice or good morals the same should be paid.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 344.)

#### **§ 41-9-61. Creation; composition; officers; Attorney General to attend meetings of board, etc.; quarters, etc.; quorum; board may take views, conduct interviews, etc.; board to supervise, etc., preparation, etc., of records of cases.**

There shall be a Board of Adjustment to be composed of the Director of Finance, the State Treasurer, the Secretary of State and the State Auditor. The chairman of said board shall be selected by the board from its members. The Secretary of State shall also be the secretary of said board and shall perform all the duties, powers and functions required of the secretary by the board. The Attorney General shall attend the meetings of the board and represent the State of Alabama in all proceedings before the board.

The Board of Adjustment shall be furnished with necessary quarters, stationery and postage in the same manner as the same are furnished to other state officers, agencies, commissions, boards, institutions or departments. Any three of said board members shall constitute a quorum to transact business and discharge the functions of said board; provided, however, that in case there is an equal division of opinion on any decision or claim that the board is authorized to hear, the chairman of the board shall determine the decision in such instance.

The Board of Adjustment shall have the power, if, in its opinion the situation warrants it, to visit any scene of any injury or accident and make a view thereof and take said facts in consideration and personally interview such persons as may have knowledge or information as to the subject matter of the claim under consideration by said board and may take such views and information into consideration in reaching its conclusion and making awards on claims.

The Board of Adjustment shall supervise and direct the secretary of the board as to making a record as provided in Section 41-9-71 and shall aid and direct said secretary in making up a report of all cases heard and determined by said board, stating the substance of the claim and the disposition made of the case, and shall cause said cases to be classified under said board's direction in accordance with the types and kinds of cases coming before said board.

(Acts 1935, No. 546, p. 1164; Acts 1939, No. 449, p. 602; Code 1940, T. 55, § 333; Acts 1943, No. 421, p. 386.)

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### **§ 41-9-62. Claims within jurisdiction of board generally; employees of municipalities, counties, etc., not within jurisdiction of board, etc.**

- (a) The Board of Adjustment shall have the power and jurisdiction and it shall be its duty to hear and consider:
- (1) All claims for damages to the person or property growing out of any injury done to either the person or property by the State of Alabama or any of its agencies, commissions, boards, institutions or departments, with the exception of claims by employees of the state for personal injury or death arising out of the course of employment with the State of Alabama, where such employees are covered by an employee injury compensation program;
  - (2) All claims for personal injuries to or the death of any convict, and all claims for personal injuries to or the death of any employee of a city or county board of education, or college or university, arising out of the course of the employee's employment and where the employee is not covered by a worker's compensation program;
  - (3) All claims of members of the public at large or of officers of the law who are not employees of the state arising out of injuries sustained while attempting to recapture escaped convicts, which convicts have escaped after they have been placed in the actual custody of the Department of Corrections;
  - (4) All claims against the State of Alabama or any of its agencies, commissions, boards, institutions or departments arising out of any contract, express or implied, to which the State of Alabama or any of its agencies, commissions, boards, institutions or departments are parties, where there is claimed a legal or moral obligation resting on the state;
  - (5) All claims for money overpaid on obligations to the State of Alabama or any of its agencies, commissions, boards, institutions or departments;
  - (6) All claims for money voluntarily paid to the State of Alabama or any of its agencies, commissions, boards, institutions or departments, where no legal liability existed to make such payment;
  - (7) All claims for underpayment by the State of Alabama or any of its agencies, commissions, boards, institutions or departments to parties having dealings with the State of Alabama or any of its agencies, commissions, boards, institutions or departments;
  - (8) All claims for money or property alleged to have wrongfully escheated to the State of Alabama; and
  - (9) All claims for injury or death of any student duly enrolled in any of the public schools of this state resulting from an accident sustained while being transported to or from school or in connection with any school activity in any bus or any motor vehicle operated directly by any school board or agency of the state or through contract with another. Awards payable to any such student for injuries sustained in such accident shall be equal to the maximum benefits payable to employees as provided in Chapter 5 of Title 25 for injuries, loss of time or medical attendance; and, where death results from such injuries, the amount payable to the parent or parents of such student shall be equal to the maximum amount payable to a totally dependent parent or parents as provided by Chapter 5 of Title 25; provided, however, that no payment for death of such student shall be made to any parent or parents unless they

were actually supporting such student at the time of the accident causing the injuries and death. The fact that such student has no earning capacity or earns an average wage of less than the amount which would entitle him to maximum benefits under Chapter 5 of Title 25 shall in no way limit an award to him, his parent or parents. Awards for such injuries or death shall constitute a prior and preferred claim against moneys appropriated for the minimum program fund, and no part of any such award shall be charged against any funds allotted to the school board of the county or city or the district board of education of the independent school district where said accident occurred. If it should appear to the Board of Adjustment after investigation that the accident causing the injury or death of such student was caused under circumstances also creating a legal liability for damages on the part of any party and it should further appear to the Board of Adjustment that claim may be made against such party by such student, his parent or legal representative to recover damages, then, in that event, any payment otherwise due under this subdivision may be withheld by the Board of Adjustment pending final settlement of such claim and, if said student or his parent or legal representative recovers damages against said party, any sum so recovered and collected may be offset against payments due under this subdivision, and the balance due, if any, shall thereafter be promptly paid by the Board of Adjustment. The provisions of this subdivision shall apply to all claims relating to injuries to school children filed with said board within one year of the date of an accident. Minor students shall have, for the purpose of this subdivision, the same power to contract, make elections of remedy, make settlements and receive compensation as adults would have subject to the power of the Board of Adjustment in its discretion at any time to require the appointment of a guardian to receive moneys or awards and payments of awards made to such minor students or their guardian shall exclude any further compensation either to the minor students or to their parents for loss of service or otherwise.

(b) The jurisdiction of the Board of Adjustment is specifically limited to the consideration of the claims enumerated in subsection (a) of this section and no others; provided, that nothing contained in this division shall confer upon the Board of Adjustment any jurisdiction now conferred by law upon the State Board of Compromise provided for in Sections 41-1-3 and 41-1-4, and nothing contained in this division shall be construed to confer jurisdiction upon the Board of Adjustment to settle or adjust any matter or claim of which the courts of this state have or had jurisdiction; provided further, that the Board of Adjustment shall have no jurisdiction over claims growing out of forfeitures or of contracts with any state agency, commission, board, institution or department where, by law or contract, said state agency, commission, board, institution or department is made the final arbiter of any disagreement growing out of forfeitures or of contracts of said state agency, commission, board, institution or department, and, particularly, the Board of Adjustment shall have no jurisdiction of disagreements arising out of contracts entered into by the Department of Transportation.

(c) Employees of municipalities and counties are not to be considered employees of the State of Alabama or of any of its agencies, commissions, boards, institutions or departments within the jurisdiction of this board and within the meaning of the word "employee" as used in this section.

(Acts 1935, No. 546, p. 1164; Acts 1936-37, Ex. Sess., No. 173, p. 205; Code 1940, T. 55, § 334; Acts 1953, No. 540, p. 755; Acts 1994, No. 94-680, p. 1308, § 5.)

### **§ 41-9-63. Claimant may prosecute claim in person or by counsel or agent.**

A claimant shall have the right to file and prosecute his claim before the board in person or by counsel or agent of his own choice, whether such agent be licensed to practice law or not.

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(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 344; Acts 1963, No. 307, p. 786, § 2.)

### **§ 41-9-64. Claims for death to be made by personal representative; distribution of proceeds of claim.**

Claims for death shall be made by the personal representative, who shall distribute the proceeds of the claim in the same manner as is provided by law with respect to damages awarded for death by wrongful act.

(Acts 1935, No. 546, p. 1164; Acts 1936-37, Ex. Sess., No. 173, p. 205; Code 1940, T. 55, § 339.)

### **§ 41-9-65. Limitation periods for presentation of claims.**

(a) Unless otherwise provided in this section, all claims must be presented to the Board of Adjustment within one year after the cause of action accrues.

(b) Claims for injury to the person resulting in death must be presented to the Board of Adjustment within two years after the cause of action accrues, unless the same is first carried into the courts of the state, in which event the statute of limitations shall not begin to run until the date on which a final judgment in the same, holding the claimant not entitled to relief through the courts of the state, is entered.

(c) In the matter of escheats to the State of Alabama, any such claim must be filed with the Board of Adjustment within 10 years from the time of the escheat to the State of Alabama; except, that the claims of minors may be considered by the Board of Adjustment if the claims are filed within three years after the minor has reached the age of 19 years.

(d) The Board of Adjustment is prohibited from hearing or considering any claim not filed within the time specified and the limitations provided in this section shall apply both to claims which have already accrued and to those which accrue after July 10, 1943.

(e) If a claim filed by a county or a department, agency, board, commission, public corporation, or instrumentality of a county on or after October 1, 2009, is based upon a state agency's denial of a request for reimbursement of expenses required by law where the agency's denial is based solely on grounds of failure to comply with an agency deadline, the board shall not uphold the agency's denial on those grounds unless all of the following apply:

- (1) The agency has promulgated written procedures for claiming reimbursement, which include timelines, which procedures have been approved by the agency head.
- (2) A copy of the agency's current written procedures has been distributed to all counties prior to the time the county or a department, agency, board, commission, public corporation, or instrumentality of the county incurred the expenses for which reimbursement is sought.
- (3) The agency has properly applied its procedures in denying the claim for reimbursement of expenses submitted by the county or a department, agency, board, commission, public corporation, or instrumentality of the county.

(4) The agency provided written notice of the denial to the county or a department, agency, board, commission, public corporation, or instrumentality of the county within 14 days of its decision, which notice included instructions for appealing the decision to the Board of Adjustment.

(f) The Board of Adjustment's one-year statute of limitations, as set out in subsection (a), shall apply to claims filed therein pursuant to subsection (e) and, for statute of limitations purposes, the Board of Adjustment claim shall be deemed to have accrued on the date the claim for reimbursement was denied by the state agency. The Board of Adjustment shall uphold the agency's denial of reimbursement based solely on the failure to file timely if the reimbursement request is submitted to the agency more than 12 months after the November 30 following the close of the fiscal year in which the expense was incurred.

(Acts 1935, No. 546, p. 1164; Acts 1936-37, Ex. Sess., No. 173, p. 205; Code 1940, T. 55, § 335; Acts 1943, No. 583, p. 585; Act 2010-693, p. 1681, § 1.)

### **§ 41-9-66. Board may prescribe forms and adopt rules of evidence and procedure.**

The Board of Adjustment may prescribe such forms and adopt such rules of evidence and procedure as it may deem necessary or proper, not inconsistent with the provisions of this division.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 337.)

### **§ 41-9-67. Powers, etc., of board as to requirement of production of documents, etc., generally; employment of clerical, etc., help for investigation of claims, etc.**

(a) The Board of Adjustment shall have the power and it shall be its duty when any claim or claims for damages provided for in this division are presented to it to require any employee, agency, commission, board, institution or department of the State of Alabama to furnish any documents or information deemed necessary by the Board of Adjustment and to require the presence of any person or the production of any documents in the same manner as in circuit court trials with the same rights as the circuit courts to punish for contempt.

(b) With the approval of the Governor and subject to the provisions of the Merit System, the Board of Adjustment may employ such necessary clerical or other help in ascertaining the facts incident to or growing out of claims presented to it and to make such investigations and to interview such witnesses as in the opinion of the Board of Adjustment are essential to ascertain the true facts upon which to base their findings and awards.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 338.)

### **§ 41-9-68. Determination of amount of injury or damage and entry of award for payment of damages generally.**

(a) When claims are properly prepared and presented to the Board of Adjustment and, after ascertaining the facts in the case, it is directed to determine the amount of the injury, death or disability or other injury or damage arising from contract or business and to fix the damages, using as its guide, when applicable, the ordinary rules of negligence and worker's compensation laid down by the courts and the moral obligation of the State of Alabama, and to award and find the person entitled to payment and the amount, if any, which should be paid and any other facts necessary for a proper adjustment of claims. The ordinary rules of negligence as to



liability are to be followed in claims by parties not employees of the State of Alabama or any of its agencies, commissions, boards, institutions or departments. The rules of Chapter 5 of Title 25 as to liability are to be followed in claims for the injury or death of convicts, in claims for employment related injury or death of any employee of a city or county board of education, college or university, and in claims for injury or death of any employee of the State of Alabama arising out of employment with the state where the said employee is not covered by an employee injury compensation program.

(b) Whenever the provisions of this division authorize ascertainment of the amount of damages and provide for payment of the judgment, finding or award of the Board of Adjustment, they shall be construed to include also claims arising from contract or business dealings as well as for personal injury, property damage, death and disability.

(Acts 1935, No. 546, p. 1164; Acts 1936-37, Ex. Sess., No. 173, p. 205; Code 1940, T. 55, § 339; Acts 1994, No. 94-680, p. 1308, § 6.)

**§ 41-9-69. Determination of agency, commission, etc., of state inflicting injury or damage and entry of award for payment of damages out of funds appropriated thereto.**

The Board of Adjustment in its findings of facts and its findings and awards as to the amount of payment may also find the agency, commission, board, institution or department of the State of Alabama which inflicted the injury or damage complained of, if it finds there is injury or damage done to persons or property, and may adjudge and find that said damage shall be paid out of the appropriation made to the agency, commission, board, institution or department of the State of Alabama whose employees, servants, agents or instrumentalities inflicted the damages and injuries complained of; provided, that the Board of Adjustment may order the payment of any claim out of any fund or funds appropriated for the purposes of this division.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 340.)

**§ 41-9-70. Limitation on amount of award for personal injury or death.**

The Board of Adjustment shall not fix a greater amount to be paid on any claim for death or personal injuries than the limits fixed in Chapter 5 of Title 25 for injuries, loss of time, medical attendance or death; provided, that convicts shall be considered as receiving the minimum wages mentioned in Chapter 5 of Title 25.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 336.)

**§ 41-9-71. Secretary of board to prepare, etc., history of cases, etc., and deliver to certain agencies, etc., certified copy of findings and awards of board; Comptroller to draw warrant in favor of persons, etc., found entitled to damages, etc.**

The secretary of the Board of Adjustment shall make a record of and file in the office of the Secretary of State a history of the case, together with the findings and awards of the Board of Adjustment, and shall deliver to the agencies, commissions, boards, institutions or departments against whom the award is made and by whom payment must be made a certified copy of its findings and awards.

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Upon receipt of such a copy of the findings and awards of the Board of Adjustment, the agencies, commissions, boards, institutions or departments will voucher and certify same to the Comptroller of the State of Alabama who is authorized and directed to draw his warrant in favor of the person or persons, association or corporation found by the Board of Adjustment to be entitled to the damages in the amount of the damages so certified, and he shall charge the same to the appropriation as directed in said findings or awards.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 341; Acts 1984, 1st Ex. Sess., No. 84-758, p. 130.)

### **§ 41-9-72. Payment by Treasurer of warrants drawn pursuant to findings and awards of board.**

The Treasurer of the State of Alabama is authorized and directed to pay the warrants of the Comptroller, drawn pursuant to the findings and awards of the Board of Adjustment out of any money in the Treasury of the State of Alabama as directed by such findings and awards.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 342.)

### **§ 41-9-73. Appropriations for payment of awards, etc.**

There is hereby appropriated annually out of the General Fund of the State of Alabama, the State Insurance Fund, the fund of the Department of Corrections, the Education Trust Fund, the Special Mental Health Fund or any other fund of the state, to be determined by the Board of Adjustment, an amount, not exceeding \$1,000,000.00 for each fiscal year, as may be necessary to pay the claims ordered paid by the Board of Adjustment and its expenses. There is also hereby appropriated, for each fiscal year, an additional amount, not exceeding \$175,000.00, from funds of the State Department of Transportation to pay the claims chargeable against the State Department of Transportation which are ordered paid by the Board of Adjustment and its expenses. There is also appropriated, in addition to the foregoing appropriations, from the State General Fund to the State Board of Adjustment, the sum of \$400,000.00 for each fiscal year for the purpose of paying death benefits covered under the provisions of Article 1 of Chapter 30 of Title 36 of this Code.

(Acts 1935, No. 546, p. 1164; Code 1940, T. 55, § 343; Acts 1951, No. 943, p. 1609; Acts 1963, No. 307, p. 786, § 1; Acts 1965, 1st Ex. Sess., No. 218, p. 286; Acts 1977, No. 675, p. 1166; Acts 1982, No. 82-576, § 1; Acts 1989, No. 89-870, p. 1745.)

### **§ 41-9-74. Board to pay judgments against Board of Corrections officials; limitations, exceptions, etc.**

(a) As part of the consideration of the employment or appointment of the Commissioner of the Board of Corrections, deputy commissioners of the Board of Corrections, members of the Board of Corrections and other officers, employees and agents of the Board of Corrections, whether part-time or full-time, the Board of Adjustment shall pay all final judgments awarded in courts of competent jurisdiction against the aforesaid commissioner, deputy commissioners, members of the Board of Corrections, officers, employees and agents, for acts arising out of and performed in connection with their official duties in behalf of the State of Alabama, except to the extent that such coverage may be provided by an insurance carrier.

(b) Payment shall be limited to a maximum of \$100,000.00 for all claims arising out of the same act.

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(c) No part of this section shall be admissible evidence in any court of law wherein any of the officers or persons indemnified herein are parties. Nothing in this section shall be deemed to waive the sovereign immunity of the state with respect to a claim covered under this section or to authorize the payment by the state of any judgment or settlement against the aforesaid commissioner, deputy commissioners, members of the Board of Corrections, officers, employees and agents, to the extent that the same exceeds the sum of \$100,000.00.

(d) The provisions of this section shall not apply to the commissioner, any deputy commissioner, any member of the Board of Corrections and any other officer, employee and agent of the Board of Corrections who is found guilty of gross negligence or intentional or knowingly unlawful behavior.

(Acts 1979, No. 79-670, p. 1179.)

### Article 46, Alabama Commission on Tick Borne Illness

#### § 41-9-1090. Commission created.

The Alabama Commission on Tick Borne Illness is created in order to coordinate research on the prevention of tick borne illness in the state.

(Act 2016-356, § 1.)

#### § 41-9-1091. Composition.

The commission shall be composed of the following members who shall serve at the pleasure of the appointing authority:

- (1) One member with knowledge of the study and prevention of tick borne illness appointed by the Speaker of the House of Representatives.
- (2) One member with knowledge of the study and prevention of tick borne illness appointed by the President Pro Tempore of the Senate.
- (3) One member with knowledge of the study and prevention of tick borne illness appointed by the Governor.
- (4) One member with knowledge of the study and prevention of tick borne illness appointed by the State Health Officer.
- (5) One member appointed by the Chair of the House Education, Finance, and Appropriations Committee.
- (6) One member appointed by Chair of the Finance and Taxation-Education Committee.

(Act 2016-356, § 2.)

#### § 41-9-1092. Purpose; meetings; reports; compensation.

(a) The goal of the commission is to coordinate research and distribute funding for research on the study of tick borne illness in Alabama and to make suggestions for the treatment of and reduction and eradication of tick borne illness in the state. Research may include methods of prevention, treatment, surveillance, diagnosis, risk prediction, outreach, and intervention of tick borne illness. The commission may not issue any recommendation that would create or define standards for the practice of medicine.

(b) Upon adjournment of the 2016 Regular Legislative Session, the commission shall schedule an initial meeting to organize and discuss a plan of action and create criteria and an application process for awarding research funds appropriated to the commission for such purposes, and the commission shall meet as necessary thereafter to achieve its goals.

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(c) The commission shall report its findings and any proposed legislation to the Speaker of the House and President Pro Tempore of the Senate annually by the third day of the regular session of the Legislature.

(d) Upon request of the chair of the commission, the Secretary of the Senate and Clerk of the House of Representatives shall provide necessary clerical assistance for the work of the commission.

(e) Each legislative member of the commission shall be entitled to his or her regular legislative compensation, per diem, and travel expenses for each day he or she attends a meeting of the commission in accordance with Amendment 871 of the Constitution of Alabama of 1901. These payments shall be paid out of any funds appropriated to the use of the Legislature.

(Act 2016-356, § 3.)

### **§ 41-9-1093. Distribution of funds.**

(a) The commission shall allocate funds for research on tick borne illness in the state based on appropriations received by the commission from the Education Trust Fund.

(b) The commission shall award appropriated funds annually through a grant application process. Only research universities and research facilities may apply for grant moneys.

(c) In order to receive the funds before the first day of the fiscal year, the college or university requesting or receiving money shall provide information regarding the method, scope, and significance of its research as a prerequisite to receiving the funds. The commission may withdraw future funding from any university not performing adequate research in the opinion of the commission.

(Act 2016-356, § 4.)

### **§ 41-9-1094. Dissolution of commission.**

The commission shall dissolve on September 30, 2021, unless continued by act of the Legislature.

(Act 2016-356, § 5.)

### Chapter 16, Public Contracts Article 1, General Provisions

#### § 41-16-2. Limitation on prosecutions for violations of competitive bid laws.

A prosecution for any offense in violation of the competitive bid laws of Articles 2 and 3 of this chapter must be commenced within six years after the commission of the offense.

(Acts 1981, No. 81-350; Acts 1981, No. 81-851, p. 1529.)

#### § 41-16-3. Timely execution of state contracts required.

(a) Whenever the State of Alabama is a party to any contract, the contract shall be executed by all parties in a timely fashion. When a party to a contract, other than the state, has fully executed the responsibility under the contract and there remains only the payment of funds by the state, payment shall be made in a timely manner. If the amount due by the state is not in dispute, payment shall be made within 30 days after the other party has completed his or her portion of the contract and presented a proper invoice. If the amount payable is not paid within 30 days, interest on the amount shall be charged. A party who receives a payment from the state in connection with a contract shall pay each of its subcontractors or sub-subcontractors the portion of the state's payment to the extent of that subcontractor's or sub-subcontractor's interest in the state's payment in accordance with the payment terms agreed to by the contractor and the subcontractor, but if payment terms are not agreed to, then within seven days after receipt of payment from the state. The payment shall include interest, if any, that is attributable to work performed by the subcontractor or sub-subcontractor. The interest rate shall be the legal amount currently charged by the state. Interest shall be paid from the same fund or source from which the contract principal is paid. Nothing in this subsection shall prevent the state, contractor, or subcontractor from withholding payments if there is a bona fide dispute over one or more of the following:

- (1) Unsatisfactory job progress.
- (2) Defective construction not remedied.
- (3) Disputed work.
- (4) Third party claims filed or reasonable evidence that a claim will be filed.
- (5) Failure of the contractor, subcontractor, or sub-subcontractor to make timely payments for labor, equipment and materials.
- (6) Property damage to owner, contractor, or subcontractor.
- (7) Reasonable evidence that the contract, subcontract, or sub-subcontract cannot be completed for the unpaid balance of the contract or contract sum.

(b) In the event that there is a bona fide dispute over all or any portion of the amount due on a progress payment from the owner, contractor, or subcontractor then the owner, contractor, or subcontractor may withhold payment in an amount not to exceed two times the disputed amount.

(c) An owner is required to notify a contractor in writing within 15 days of receipt of any disputed request for payment. A contractor, subcontractor, and sub-subcontractor is required to provide written notification within five days of disputed request for payment or notice of disputed request for payment.

(d) The amount of retainage withheld by the contractor to the subcontractor or the subcontractor to the sub-subcontractor shall not exceed the retainage withheld by the state unless interest is applied to the withheld amount.

(Acts 1984, No. 84-407, p. 954; Acts 1996, No. 96-587, p. 927, § 1.)

### **§ 41-16-4. Limitation on use of reverse auction process.**

The reverse auction process shall not be used to procure professional services of architects, landscape architects, engineers, land surveyors, geoscience and other professions, as described in Section 41-16-51(a)(3), or contracts for construction, repairs, renovation, or maintenance of public works.

(Act 2006-107, p. 152, § 2.)

### **§ 41-16-5. Public contracts with entities engaging in certain boycotting activities.**

(a) For the purposes of this section, the following terms shall have the following meanings:

- (1) **BOYCOTT.** To blacklist, divest from, or otherwise refuse to deal with a person or business entity when the action is based on race, color, religion, gender, or national origin of the targeted person or entity or is based on the fact that the boycotted person or entity is doing business in a jurisdiction with which this state can enjoy open trade and with which the targeted person or entity is doing business.
- (2) **BUSINESS ENTITY.** A corporation, partnership, limited liability company, organization, or other legal entity conducting or operating any trade or business in Alabama or a corporation, organization, or other legal entity operating in Alabama that is exempt from taxation under Section 501(C)(3) or (4) of the Internal Revenue Code.
- (3) **GOVERNMENTAL ENTITY.** The state or any political subdivision thereof, or any department, agency, board, commission, or authority of the state, or any political subdivision, or any public corporation, authority, agency, board, commission, state college, or university, municipality, or other governmental entity controlled by the state or any political subdivision.
- (4) **JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE.** Includes World Trade Organization members and those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.

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(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, Code of Alabama 1975, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

(c) (1) This section does not apply if a business fails to meet the requirements of subsection (b) but offers to provide the goods or services for at least 20 percent less than the lowest certifying business entity.

(2) This section does not apply to contracts with a total potential value of less than fifteen thousand dollars (\$15,000).

(d) Nothing in this section requires a business entity or individual to do business with any other particular business entity or individual in order to enter into a contract with a governmental entity.

(Act 2016-312, § 1.)



### Article 2, Competitive Bidding on Public Contracts Generally

#### § 41-16-20. Contracts for which competitive bidding required; award to preferred vendor.

(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional services, involving fifteen thousand dollars (\$15,000) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

(b) A “preferred vendor” shall be a person, firm, or corporation which is granted preference priority according to the following:

- (1) PRIORITY #1. Produces or manufactures the product within the state.
- (2) PRIORITY #2. Has an assembly plant or distribution facility for the product within the state.
- (3) PRIORITY #3. Is organized for business under the applicable laws of the state as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the state for not less than one year prior to the deadline date for the competitive bid.

(c) In the event a bid is received for the product or service from a person, firm, or corporation deemed to be a responsible bidder and a preferred vendor where any state higher education institution, department, board, bureau, commission, committee, institution, corporation, authority, or office is the awarding authority and the bid is no more than five percent greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the preferred vendor.

(Acts 1957, No. 343, p. 452, § 1; Acts 1961, No. 870, p. 1365; Acts 1976, No. 751, p. 1032, § 1; Acts 1989, No. 89-687, p. 1351, § 1; Acts 1994, No. 94-207, p. 270, § 1; Acts 1997, No. 97-225, p. 348, § 1; Act 2000-721, p. 1544, § 1; Act 2009-763, p. 2310, § 1; Act 2012-462, p. 1281, § 1.)

#### § 41-16-21. Contracts for which competitive bidding not required generally.

(a) Competitive bids shall not be required for utility services where no competition exists or where rates are fixed by law or ordinance, and the competitive bidding requirements of this article shall not apply to: The purchase of insurance by the state; contracts for the securing of services of attorneys, physicians, architects, teachers, artists, appraisers, engineers, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part; contracts of employment in the regular civil service of the state; purchases of alcoholic beverages only by the Alcoholic Beverage Control Board; purchases and contracts for repair of equipment used in the construction and maintenance of highways by the State Department of Transportation; purchases of products made or manufactured by the blind or visually handicapped under the direction or supervision of the Alabama Institute for Deaf and Blind in accordance with Sections 21-2-1 through 21-2-4; purchases of maps or photographs purchased from any federal agency; contractual services and

purchases of personal property, which by their very nature are impossible of award by competitive bidding; barter transactions by the Department of Corrections; and purchases, contracts, or repairs by the Alabama State Port Authority when it is deemed by the Director of the Alabama State Port Authority and the Secretary-Treasurer of the Alabama State Port Authority that the purchases, contracts, or repairs are impractical of award by competitive bidding due to the exigencies of time or interference with the flow of commerce. The Director of the Alabama State Port Authority and the Secretary-Treasurer of the Alabama State Port Authority shall place a sworn statement in writing in the permanent file or records setting out the emergency or exigency relied upon and the necessity for negotiation instead of proceeding by competitive bidding in that particular instance, and the sworn statement shall be open to public inspection. A copy of the sworn statement shall be furnished forthwith to the Governor and Attorney General.

(b) All educational and eleemosynary institutions governed by a board of trustees or other similar governing body and the Alabama State Port Authority shall be exempt from this article which relate to the powers, duties, authority, restrictions, and limitations conferred or imposed upon the Department of Finance, Division of Purchasing. The educational and eleemosynary institutions, the Alabama State Port Authority, and the other state agencies exempted from this article shall let by free and open competitive bidding on sealed bids to the lowest responsible bidder all contracts of whatever nature for labor, services or work or for the purchase or lease of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000) or more. The institutions, departments, and agencies shall establish and maintain purchasing facilities as may be necessary to carry out the intent and purpose of this article by complying with the requirements for competitive bidding in the operation and management of each institution, department, or agency.

(c) Contracts entered into in violation of this article shall be void.

(d) Nothing in this section shall be construed as repealing Sections 9-2-106 and 9-2-107.

(Acts 1957, No. 343, p. 452, § 2; Acts 1961, No. 870, p. 1365; Acts 1969, No. 1053, p. 1973, §§ 1, 2; Acts 1976, No. 751, p. 1032, § 2; Acts 1985, No. 85-689, p. 1106; Acts 1990, No. 90-631, p. 1156, § 1; Acts 1994, No. 94-207, p. 270, § 1; Act 2001-956, p. 817, § 3; Act 2014-175, p. 506, § 1.)

### **§ 41-16-21.1. Joint purchasing agreements.**

(a) In the event that utility services are no longer exempt from competitive bidding under this article, non-adjointing counties may not purchase utility services by joint agreement under authority granted by this section.

(b) The Division of Purchasing, Department of Finance, is hereby authorized to enter into joint purchasing agreements to purchase, lease, or lease-purchase child support services, materials, equipment, supplies, or other personal property which have been let by competitive bid or competitive solicitation process by any group or consortium of governmental entities within or without the State of Alabama upon a finding by the Purchasing Agent that such joint purchasing agreements are in the best interests of the State of Alabama. Joint purchasing agreements entered into by the Division of Purchasing may be utilized by any governmental entity subject to the requirements of Title 41, Chapter 16, Articles 2 or 3A. This subsection shall not apply to the purchase, lease, or lease-purchase of materials, equipment, supplies, or other personal property which can only be utilized in conjunction with a service or service contract, whether subject to competitive bidding under this article or not,

for the materials, equipment, supplies, or other personal property that must remain in effect to utilize the materials, equipment, supplies, or other personal property.

Nothing in this subsection prohibits or limits public four-year institutions from entering into joint purchasing agreements to purchase, lease, or lease-purchase materials, equipment, supplies, other personal property and services which have been let by competitive bid or competitive solicitation process by any group or consortium of governmental entities or through a group purchasing organization within or without the State of Alabama upon a finding by the institution that such purchasing agreements are in the best interests of the institution; provided, however, this sentence shall not permit agreements to purchase, lease, or lease-purchase wireless communications equipment or services through any group or consortium of governmental entities or through any group purchasing organization.

(Acts 1976, No. 751, p. 1032, § 3; Act 2000-153, p. 216, § 1; Act 2009-763, p. 2310, § 1.)

**§ 41-16-21.2. Exemption of certain departments or agencies whose principal business is honorariums from competitive bid laws.**

All laws to the contrary notwithstanding, any state department or agency whose principal business is honorariums is hereby exempted from the provisions of the state competitive bid laws on purchases and contracts for services made by such department or agency.

(Acts 1982, No. 82-565; Acts 1989, No. 89-963, p. 1930.)

**§ 41-16-22. Competitive bidding not required on purchases from federal government.**

The state may without advertisement or receiving competitive bids purchase materials, equipment, supplies or other personal property from the United States government or any agency, division or instrumentality thereof when such purchase is deemed by the state Purchasing Agent to be in the best interest of the State of Alabama.

(Acts 1973, No. 1288, p. 2200.)

**§ 41-16-23. Letting of contracts without public advertisement authorized in case of emergencies affecting public health, safety, etc.**

In case of emergency affecting public health, safety or convenience, so declared in writing by the head of the institution or state agency involved, setting forth the nature of the danger to public health, safety or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority.

(Acts 1957, No. 343, p. 452, § 7.)

**§ 41-16-24. Advertisement for and solicitation of bids; opening of bids; public inspection; reverse auction procedures; certain partial contracts void.**

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- (a) (1) The Purchasing Agent shall advertise for sealed bids on all purchases in excess of the competitive bid limit as established in Section 41-16-20 by posting notice thereof on a bulletin board maintained outside the office door or by publication of notice thereof, one time, in a newspaper published in Montgomery County, Alabama, or in any other manner, for such lengths of time as the Purchasing Agent may determine. The Purchasing Agent shall also solicit sealed bids or bids to be submitted by reverse auction procedure by notifying all Alabama persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for the particular items set forth in the request and the other persons, firms, or corporations the Purchasing Agent deems necessary to insure competition. If any person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of three solicitations, the listing may be cancelled by the Purchasing Agent.
- (2) A Purchasing Agent may enter into a contract for purchases if a newspaper to which an advertisement for purchases did not publish the advertisement if the Purchasing Agent can provide proof that it in good faith submitted the advertisement to the newspaper with instructions to publish the notice in accordance with this section.
- (b) All bids, except as provided in subsection (d), shall be sealed when received, shall be opened in public at the hour stated in the notice, and all original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period established by the State Records Commission and shall be open to public inspection.
- (c) If the purchase or contract will involve an amount of the competitive bid limit as established in Section 41-16-20 or less, the Purchasing Agent may make the purchases or contracts either upon the basis of sealed bids, reverse auction procedure, or in the open market.
- (d) For purposes of this article, a reverse auction procedure includes either of the following:
- (1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.
  - (2) A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.
- (e) No purchase or contract involving an amount in excess of the competitive bid limit as established in Section 41-16-20 shall be divided into parts involving amounts of the competitive bid limit as established in Section 41-16-20 or less for the purpose of avoiding the requirements of this article. All such partial contracts involving the competitive bid limit as established in Section 41-16-20 or less shall be void.

(Acts 1957, No. 343, p. 452, § 6; Acts 1961, No. 870, p. 1365; Acts 1976, No. 751, p. 1032, § 4; Acts 1983, No. 83-773, p. 1414, § 1; Acts 1989, No. 89-687, p. 1351, § 2; Acts 1994, No. 94-207, p. 270, § 1; Act 2006-107, p. 152, § 1; Act 2009-763, p. 2310, § 1; Act 2014-373, p. 1333, § 1.)

### **§ 41-16-25. Effect of agreements or collusion among bidders in restraint of competition; sworn statements as to agreements to accompany bids.**

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding or otherwise shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement that he has not been a party to such an agreement.

(Acts 1957, No. 343, p. 452, § 4.)

### **§ 41-16-26. Effect of advance disclosure of terms of bid.**

Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew.

(Acts 1957, No. 343, p. 452, § 5.)

### **§ 41-16-27. Manner of awarding contracts; records; exemptions.**

(a) When purchases are required to be made through competitive bidding, award shall, except as provided in subsection (f), be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery provided, that the awarding authority may at any time within 30 days after the bids are opened negotiate and award the contract to anyone, provided he secures a price at least five percent under the low acceptable bid. The award of such a negotiated contract shall be subject to approval by the Director of Finance and the Governor, except in cases where the awarding authority is a two-year or four-year college or university governed by a board. The awarding authority or requisitioning agency shall have the right to reject any bid if the price is deemed excessive or quality of product inferior. Awards are final only after approval of the Purchasing Agent.

(b) The awarding authority may award multiple purchase contracts resulting from a single invitation-to-bid where the specifications of the items of personal property intended to be purchased by a requisitioning agency or agencies are determined, in whole or in part, by technical compatibility and operational requirements. In order to make multiple awards under this provision, the awarding authority must include in the invitation-to-bid a notice that multiple awards may be made and the specific technical compatibility or operational requirements necessitating multiple awards. Multiple awards of purchase contracts with unique technical compatibility or operational specifications shall be made to the lowest responsible bidder complying with the unique technical compatibility or operational specifications. The requisitioning agency shall provide the awarding authority with the information necessary for it to determine the necessity for the award of multiple purchase contracts under this provision.

This subsection (b) shall not apply to contracts for the purchase or use of push to talk services, which shall be purchased through a separate competitive bid process.

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- (c) Each bid, with the name of the bidder, shall be entered on a record. Each record, with the successful bid indicated thereon and with the reasons for the award if not awarded to the lowest bidder shall, after award of the order or contract, be open to public inspection.
- (d) The Purchasing Agent in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations.
- (e) (1) Contracts for the purchase of personal property or contractual services other than personal services shall be let by competitive bid for periods not greater than five years and current contracts existing on February 28, 2006, may be extended or renewed for an additional two years with a 90-day notice of such extension or renewal given to the Legislative Council, however, any contract that generates funds or will reduce annual costs by awarding the contract for a longer term than a period of three years which is let by or on behalf of a state two-year or four-year college or university may be let for periods not greater than 10 years. Any contract awarded pursuant to this section for terms of less than 10 years may be extended for a period not to exceed 10 years from the initial awarding of the contract provided that the terms of the contract shall not be altered or renegotiated during the period for which the contract is extended.
- (2) For purchases of personal property made on or after January 1, 2010, in instances in which the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs, and including specifically life cycle costs, can be reasonably ascertained from industry recognized and accepted sources, the lowest responsible bid may be determined to be the bid offering the lowest life cycle costs and otherwise meeting all of the conditions and specifications contained in the invitation to bid. To utilize this provision to determine the lowest responsible bidder, the awarding authority must include a notice in the invitation to bid that the lowest responsible bid may be determined by using life cycle costs and identify the industry recognized and accepted sources that will be applicable to such an evaluation.
- (3) Industry recognized and accepted sources may be provided by rules adopted pursuant to the Alabama Administrative Procedure Act by the Green Fleets Review Committee if the review committee is established and enacted at the 2009 Regular Session. If the Green Fleets Review Committee is not enacted at the 2009 Regular Session, the Permanent Joint Legislative Committee on Energy Policy may adopt rules providing industry recognized and accepted sources, pursuant to the Alabama Administrative Procedure Act.
- (f) Contracts for the purchase of services for receiving, processing, and paying claims for services rendered recipients of the Alabama Medicaid program authorized under Section 22-6-7 which are required to be competitively bid may be awarded to the bidder whose proposal is most advantageous to the state, taking into consideration cost factors, program suitability factors (technical factors) including understanding of program requirements, management plan, excellence of program design, key personnel, corporate or company resources and designated location, and other factors including financial condition and capability of the bidder, corporate experience and past performance and priority of the business to insure the contract awarded is the best for the purposes required. Each of these criteria shall be given relative weight value as designated in the invitation to bid, with price retaining the most significant weight. Responsiveness to the bid shall be scored for each designated criteria. If, for reasons cited above, the bid selected is not from the lowest bidding contractor, the

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Alabama Medicaid Agency shall present its reasons for not recommending award to the low bidder to the Medicaid Interim Committee. The committee shall evaluate the findings of the Alabama Medicaid Agency and must, by resolution, approve the action of the awarding authority before final awarding of any such contract. The committee shall also hear any valid appeals against the recommendation of the Alabama Medicaid Agency from the low bid contractor(s) whose bid was not selected.

(g) Notwithstanding the requirements under Sections 41-16-20, 41-16-21, and this section, contractual services and purchases of personal property regarding the athletic department, food services, and transit services negotiated on behalf of two-year and four-year colleges and universities may be awarded without competitive bidding provided that no state revenues, appropriations, or other state funds are expended or committed and when it is deemed by the respective board that financial benefits will accrue to the institution, except that in the cases where an Alabama business entity as defined by this section is available to supply the product or service they will have preference unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity. However, the terms and conditions of any of the services or purchases which are contracted through negotiation without being competitively bid and the name and address of the recipient of such a contract shall be advertised in a newspaper of general circulation in the municipality in which the college or university is located once a week for two consecutive weeks commencing no later than 10 days after the date of the contract. For the purposes of this section, the term Alabama business entity shall mean any sole proprietorship, partnership, or corporation organized in the State of Alabama.

(h) (1) For purchases of motor vehicles by the state made on or after January 1, 2010, the lowest responsible bid may be determined to be a bid offering the lowest life cycle costs, if it is determined that the total cost of ownership over the expected life of a motor vehicle, including acquisition costs plus maintenance costs, including specifically life cycle costs, can be reasonably ascertained from industry recognized and accepted sources. The lowest responsible bid shall otherwise meet all of the conditions and specifications contained in the invitation to bid. To utilize this provision to determine the lowest responsible bidder, the state must include a notice in the invitation to bid that the lowest responsible bid may be determined by using life cycle costs and identify the industry recognized and accepted sources that will be applicable to such an evaluation.

(2) Industry recognized and accepted sources may be provided by rules adopted pursuant to the Alabama Administrative Procedure Act by the Green Fleets Review Committee if the review committee is established and enacted at the 2009 Regular Session. If the Green Fleets Review Committee is not enacted at the 2009 Regular Session, the Permanent Joint Legislative Committee on Energy Policy may adopt rules providing industry recognized and accepted sources pursuant to the Alabama Administrative Procedure Act.

(i) When a single invitation-to-bid specifies a set of deliverables that would be capable of division into separate, independent contracts, the awarding authority, at its discretion, may award a secondary contract for any subset of such deliverables, not to exceed 20 percent of the original contract value, to any Alabama business certified under the Federal HUBZone program whose properly submitted responsible bid does not exceed five percent of the lowest responsible bid. In order to make a secondary award under this provision, the awarding authority shall include in the invitation-to-bid a notice that a secondary award may be made.

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(Acts 1957, No. 343, p. 452, § 9; Acts 1961, No. 870, p. 1365; Acts 1976, No. 751, p. 1032, § 5; Acts 1982, No. 82-353; Acts 1990, No. 90-300, p. 408, § 1; Act 2000-721, p. 1544, § 1; Act 2006-107, p. 152, § 1; Act 2009-652, p. 2006, § 1; Act 2009-653, p. 2009, § 1; Act 2009-763, p. 2310, § 1; Act 2011-684, p. 2062, § 2; Act 2014-343, p. 1280, § 1.)

### **§ 41-16-28. Bond for faithful performance of contract to be required.**

Bond in a responsible sum for faithful performance of the contract, with adequate surety, shall be required in an amount specified in the advertisement for bids.

(Acts 1957, No. 343, p. 452, § 8.)

### **§ 41-16-29. Assignment of contracts.**

No contract awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority and requisitioning agency, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he was not a responsible bidder.

(Acts 1957, No. 343, p. 452, § 11.)

### **§ 41-16-30. Conflicts of interest of purchasing agents, assistants, etc., generally; making of purchases or awarding of contracts in violation of article.**

Neither the Purchasing Agent nor any assistant or employee of his shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor in any firm, partnership, association or corporation furnishing any such personal property or contractual services to the state government or to any of its departments, agencies or institutions. Neither the Purchasing Agent nor any assistant or employee of his shall accept or receive, directly or indirectly, from any person, firm, association or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or thing of value whatsoever or any promise, obligation or contract for future reward or compensation, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this article.

Any violation of this section shall be deemed a misdemeanor, and any person who violates this section shall, upon conviction, be imprisoned for not more than 12 months or fined not more than \$500.00 or both. Upon conviction thereof, any such Purchasing Agent, assistant or employee of his or any person who willfully makes any purchase or awards any contract in violation of the provisions of this article shall be removed from office.

(Acts 1957, No. 343, p. 452, § 3.)

### **§ 41-16-31. Institution of actions to enjoin execution of contracts entered into in violation of article.**

Any taxpayer of the area within the jurisdiction of the awarding authority and any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this article.



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(Acts 1957, No. 343, p. 452, § 10.)

**§ 41-16-32. Provisions of article cumulative; repeal of other provisions of law.**

This article shall be cumulative in its nature.

All conflicting provisions of law are hereby expressly repealed; however, this article shall in no manner repeal any of the provisions of Chapter 36 of Title 16 of this code or Chapters 2 and 5 of Title 39 of this code or Article 5 of Chapter 4 of this title.

(Acts 1957, No. 343, p. 452, § 12.)

### Article 3a, Competitive Bidding on Contracts for Goods and Services

#### § 41-16-70. Legislative findings.

The Legislature finds and declares that the best interests of the taxpayers of Alabama are served when competition exists in the procurement of goods and services by state departments, boards, commissions, authorities, and instrumentalities of state government. Competitive bid requirements ensure that all citizens have the opportunity to compete for government procurements and it is imperative that officials charged with expending public funds conduct competitive processes which are open to all interested and qualified persons and businesses. In order to ensure fair and open competition in the procurement of goods and services, this article shall be liberally construed.

(Act 2001-956, p. 817, § 1.)

#### § 41-16-71. Definitions.

The following terms as used in this article shall have the following meanings:

- (1) **GSA CONTRACT.** A contract for goods or services established by the General Services Administration of the United States Government or its successor agency.
- (2) **PROFESSIONAL SERVICES.** The services of physicians, architects, engineers, attorneys, and other individuals, or business entities offering the services of such individuals, who possess a high degree of scientific or specialized skill and knowledge where the experience and professional qualifications of the service provider are particularly relevant to the provision of the required service. Questions of whether a required service is a professional service under this article or a service subject to the requirements of Section 41-16-20 shall be determined by the Director of Finance with the advice of the Attorney General.
- (3) **SOLE SOURCE.** The provision of goods or a service where only one person or business entity can provide the required goods or service.

(Act 2001-956, p. 817, § 2.)

#### § 41-16-72. Procurement of professional services.

Any other provision of law notwithstanding, the procurement of professional services by any agency, department, board, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama shall be conducted through the following selection process:

- (1) a. Except as otherwise provided herein, attorneys retained to represent the state in litigation shall be appointed by the Attorney General in consultation with the Governor from a listing of attorneys maintained by the Attorney General. All attorneys interested in representing the State of Alabama may apply and shall be included on the listing. The selection of the attorney or law firm shall be based upon the level of skill, experience, and expertise required in the litigation and the fees charged by the

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attorney or law firm shall be taken into consideration so that the State of Alabama receives the best representation for the funds paid. Fees shall be negotiated and approved by the Governor in consultation with the Attorney General. Maximum fees paid for legal representation that does not involve a contingency fee contract as defined in subparagraph f.1. of subdivision (1), may be established by executive order of the Governor.

Nothing in this article and nothing in Chapter 15 of Title 36 modifies or repeals the exclusive authority of the governing boards of the public institutions of higher education or public pension funds to direct and control litigation involving their respective universities or public pension fund and to employ and retain legal counsel of their own choice, consistent with their broad powers of management and control set forth in Chapters 47-56 of Title 16 and in the constitution, Chapter 25 of Title 16, and Chapter 27 of Title 36, respectively. Provided further, nothing in this article modifies or repeals the authority of the Attorney General to direct and control litigation involving the state or any agency, department, or instrumentality of the state, or the authority of the Governor to appear in civil cases in which the state is interested.

b. Attorneys retained by any state purchasing entity to render nonlitigation legal services shall be selected by such entity from a listing of attorneys maintained by the Legal Advisor to the Governor. All attorneys interested in representing any purchasing state entity may apply and shall be included on the listing. The selection of the attorney or law firm shall be based upon the level of skill, experience, and expertise required for the services, but the fees charged by the attorney or law firm shall be taken into consideration so that such state entity shall receive the best representation for the funds paid. Fees for such services shall be negotiated by the state entity requiring the services and shall be subject to the review and approval of the Governor or the Director of Finance when so designated by the Governor.

c. This article shall not apply to the appointment by a court of attorneys or experts.

d. This article shall not apply to the retention of experts by the state for the purposes of litigation, or avoidance of litigation.

e. Nothing in this article shall be construed as altering or amending the Governor's authority to retain attorneys pursuant to Section 36-13-2, however, the Governor shall select such attorneys from three proposals received from attorneys included on the listing maintained by the Attorney General.

f. 1. For the purposes of this paragraph, the following terms shall have the following meanings:

(i) Contingency Fee Contract. An agreement, express or implied, for litigation legal services of an attorney or attorneys, including any associated counsel, under which compensation is contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement. The payment may be in an amount which either is fixed or is to be determined under a formula.

(ii) Contracting Agency. The Governor, Attorney General, or director of a state agency, department, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama that seeks to enter a contingency fee contract.

2. The state may not enter into a contingency fee contract with any attorney or law firm unless the contracting agency makes a written determination prior to entering into a contingency fee contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(i) Whether there exists sufficient and appropriate legal and financial resources within the state to handle the matter without a contingency contract.

(ii) The expected time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(iii) The geographic area where the attorney services are to be provided.

(iv) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

3. The state may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee calculated from the gross recovery resulting from a judgement or settlement in each action, exclusive of expenses, in excess of:

(i) Twenty-two percent of any recovery of up to ten million dollars (\$10,000,000); plus

(ii) Twenty percent of any portion of such recovery between ten million dollars (\$10,000,000) and twenty-five million dollars (\$25,000,000); plus

(iii) Sixteen percent of any portion of such recovery between twenty-five million dollars (\$25,000,000) and fifty million dollars (\$50,000,000); plus

(iv) Twelve percent of any portion of such recovery between fifty million dollars (\$50,000,000) and seventy-five million dollars (\$75,000,000); plus

(v) Eight percent of any portion of such recovery between seventy-five million dollars (\$75,000,000) and one hundred million dollars (\$100,000,000); plus

(vi) Seven and one-tenth (7.1) percent of any portion of such recovery exceeding one hundred million dollars (\$100,000,000).

(vii) The aggregate fee paid to contingency fee counsel shall not exceed seventy-five million dollars (\$75,000,000) per action.

4. All litigation expenses incurred by the private attorney shall be paid or reimbursed upon approval on a monthly basis upon presentation of documentation of the expenses to the contracting agency.

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5. The Attorney General may certify in writing to the Governor that, in the opinion of the Attorney General, an issue affecting the public health, safety, convenience, or economic welfare of the State of Alabama exists that justifies that the contingency fee limitations set forth in subparagraph 3 be suspended in the case of a particular contingency fee contract. Upon receipt of the written certification, the Governor, by the issuance of an Executive Order, may waive the limitations with respect to the specified contingency fee contract.
6. The state may not enter into a contract for contingency fee attorney services unless all of the following requirements are met throughout the contract period and any extensions thereof:
- (i) A government attorney or attorneys retains complete control over the course and conduct of the case.
  - (ii) A government attorney with supervisory authority is personally involved in overseeing the litigation.
  - (iii) A government attorney or attorneys retains veto power over any decisions made by a private attorney.
  - (iv) After giving reasonable notice to the contingency fee counsel, any defendant that is the subject of the litigation may contact the lead government attorney or attorneys directly unless directed to do otherwise by the lead government attorney for the litigation matter. Contingency fee counsel shall have the right to participate in such discussions with the lead government attorney or attorneys unless, after consultation with contingency fee counsel, the lead government attorney agrees to such discussions without contingency fee counsel being present.
  - (v) A government attorney with supervisory authority for the case shall attend all settlement conferences.
  - (vi) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorney or attorneys and the state.
7. The Attorney General shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the state, including, without limitation, the requirements listed in subparagraph 6.
8. Copies of any executed contingency fee contract and the contracting agency's written determination to enter into a contingency fee contract with the private attorney and any payment of any contingency fees shall be posted online pursuant to Section 41-4-65(b).
9. Any private attorney under contract to provide services to the state on a contingency fee basis, from the inception of the contract until at least four years after the contract expires or is terminated, shall maintain detailed current records, including documentation of all time records, expenses, disbursements, charges, credits, underlying receipts and invoices, and other

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financial transactions that concern the provision of the attorney services. The private attorney shall make all the records available for inspection and copying upon request by the Governor, Attorney General, or contracting agency. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the contract in increments not greater than 1/10 of an hour and shall promptly provide these records to the Governor, Attorney General, or contracting agency, upon request.

10. Any contingency fee paid to a private attorney or law firm shall be paid from the State Treasury from the funds recovered as a result of the contingent fee contract within thirty days of receipt thereof unless ordered to do otherwise by a court with jurisdiction over the litigation subject to the contingency contract.

(2) Physicians retained to provide medical services to the state shall be selected by the purchasing state entity from a list of qualified physicians maintained by the Alabama Medical Licensure Commission. All physicians interested in providing medical services to the State of Alabama may apply and shall be included on the listing.

(3) Professional services of architects, landscape architects, engineers, land surveyors, geoscience, and other similar professionals shall be procured in accordance with competitive, qualification-based selection policies and procedures. Selection shall be based on factors to be developed by the procuring state entity which may include, among others, the following:

- a. Specialized expertise, capabilities, and technical competence, as demonstrated by the proposed approach and methodology to meet project requirements.
- b. Resources available to perform the work, including any specialized services within the specified time limits for the project.
- c. Record of past performance, quality of work, ability to meet schedules, cost control, and contract administration.
- d. Availability to and familiarity with the project locale.
- e. Proposed project management techniques.
- f. Ability and proven history in handling special project contracts. Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals that respond to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional. Where the Alabama Building Commission has set a fee schedule for the professional services sought, fees shall not exceed the schedule without approval of the Director of the Alabama Building Commission and the Governor.

(4) The Director of Finance, through the Division of Purchasing of the Department of Finance, shall establish and maintain lists of professional service providers, other than those specifically named in this section, which may be

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required from time to time by any state agency, department, board, bureau, commission, authority, public corporation, or instrumentality. When such professional services are needed, the purchasing state entity shall solicit proposals from the professional service providers desiring to receive requests for proposals. The purchasing state entity shall select the professional service provider that best meets the needs of the purchasing entity as expressed in the request for proposals. Price shall be taken into consideration. In the event the fees paid to the selected professional service provider exceed by 10 percent the professional service fee offered by the lowest qualified proposal, the reasons for selecting a professional service provider must be stated in writing, signed by the director of the purchasing state entity, and made a part of the selection record.

(5) Contracts for professional services shall be limited only to that portion of a contract relating to the professional service provided. Goods purchased by the state in conjunction with the contract for professional services shall be purchased pursuant to Section 41-16-20.

(6) Should an emergency affecting the public health, safety, convenience, or the economic welfare of the State of Alabama so declared in writing under oath to the Governor and the Attorney General by the state entity requiring the professional services arise, the professional services required to alleviate the emergency situation may be procured from any qualified professional service provider without following the process or procedure required by this article.

(7) The process set forth herein for the selection of professional service providers shall not apply to the Legislature, the Alabama State Port Authority, or to colleges and universities governed by a board of trustees or by the Department of Postsecondary Education. The State Department of Education shall not be subject to the provisions of this article, requiring the process set forth herein for the selection of professional service providers, except for the future acquisition of professional services in support of computer technology on a statewide basis which exceeds the amount of expenditures set forth within this chapter. However, if a state agency or department is able to provide the necessary computer networking services, then the services shall be provided by the agency or department without being contracted to an outside provider. In the event the State Department of Education has intervened into the financial operations of a local board of education, the State Department of Education shall follow the provisions of law applicable to local boards of education for services related to the local board of education subject to intervention. The Alabama Medicaid Agency shall not be subject to the provisions of this article requiring the process set forth herein for the selection of professional service providers for contracts with physicians, pharmacists, dentists, optometrists, opticians, nurses, and other health professionals which involve only service on agency task forces, boards, or committees.

(8) Under any contract letting process in this section, all requests for proposals from any state entity purchasing professional services shall be sent to all professional service providers regardless of race that have notified the state of their interest in receiving state business.

(9) Under any contract letting process in this section, all lists containing professional service providers and contractors for contracts under the provisions of this article shall seek the racial and ethnic diversity of the state.

(Act 2001-956, p. 817, § 4; Act 2011-577, p. 1247, § 1; Act 2013-399, p. 1528, § 2.)

### **§ 41-16-73. Purchase of insurance.**

The purchase of insurance shall be pursuant to a competitive qualification based process developed by the Department of Finance. The Alabama State Port Authority shall be exempt from this section.

(Act 2001-956, p. 817, § 5.)

### **§ 41-16-74. Purchase from vendors with GSA contracts; purchase of utilities.**

All goods and services purchased under the provisions of this article must be competitively bid or procured as provided for in this article. However, goods and services may be purchased from vendors that have been awarded a current and valid GSA contract. Prices paid for such goods and services may not exceed the lowest competitively bid price for these goods or services. In contracting for the purchase of utilities, the Director of Finance may not purchase services if the price exceeds the price in an existing state contract. The Director of Finance may require any additional terms and conditions determined to be necessary.

(Act 2001-956, p. 817, § 6.)

### **§ 41-16-75. Sole source purchases.**

State entities seeking to purchase goods or services from a sole source vendor may do so only upon the approval of the Department of Finance, through the Division of Purchasing, unless the purchasing state entity is authorized by law to conduct its own purchasing activities. Approval for sole source purchases shall be given only if the purchasing state entity establishes that no other goods or service can meet its needs and that no other vendor offers substantially equivalent goods or service that can accomplish the purpose for which the goods or service is required. The Director of Finance may require information from either the purchasing entity or the vendor seeking to be declared a sole source that is deemed necessary to meet the requirements of this provision.

(Act 2001-956, p. 817, § 7.)

### **§ 41-16-76. Promulgation of rules and regulations.**

The Director of Finance, through the Division of Purchasing, may promulgate rules or regulations necessary for the implementation of this article. The rules and regulations shall be issued in accordance with the Alabama Administrative Procedure Act. Nothing in this article shall be construed as giving purchasing authority to any state agency, department, board, bureau, commission, authority, public corporation, or instrumentality that does not otherwise have the purchasing authority.

(Act 2001-956, p. 817, § 8.)

### **§ 41-16-77. Violations; void contracts; opportunity to compete; relation to other laws.**

(a) Any person who willfully or intentionally violates this article shall be subject to a civil penalty of not less than five hundred dollars (\$500) and not to exceed five thousand dollars (\$5,000) to be deposited into the State General Fund.



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(b) Any contract entered into in violation of the provisions of this article shall be void. All persons or business entities doing business with the State of Alabama are presumed to understand all laws and regulations governing the purchase of goods and services by the State of Alabama.

(c) All state entities shall implement policies and procedures to ensure that the opportunity to compete for state contracts and business is open to qualified individuals and firms representing the racial, ethnic, and cultural diversity of the state.

(d) Nothing in this article shall be construed to repeal or supersede the enabling laws of professional licensing boards or commissions listed in Title 34, and any contracts lawfully entered into by such boards or commissions shall not be construed to violate any of the provisions of this article.

(Act 2001-956, p. 817, §§ 9, 10, 15.)

### **§ 41-16-78. Exceptions.**

(a) This article shall not apply to any entity that does not receive state funds.

(b) This article shall also not apply to direct health care services provided by the Alabama Department of Public Health.

(c) This article shall not apply to any county or municipality, or any board, public corporation, authority, public utility district, or other entity created by any county or municipality, or to the Alabama Municipal Electric Authority created pursuant to the provisions of Section 11-50A-1, et seq., nor shall it apply to any local school board, the State Department of Education, or other entity covered under Section 41-16-50, et seq., except as herein provided for future support of computer technology or any educational and eleemosynary institutions governed by a board of trustees or other similar governing body, nor shall it apply to any statewide non-profit water and wastewater utility association.

(d) This article shall not apply to any state authority, board, or other entity with respect to contracts related to the issuance of debt which is to be repaid from sources other than state funds.

(Act 2001-956, p. 817, §§ 11, 12, 14.)

### **§ 41-16-79. Contracts under review by Contract Review Permanent Legislative Oversight Committee.**

All contracts which are subject to the requirements of Section 29-2-41 shall remain subject to that section and shall first be reviewed by the Contract Review Permanent Legislative Oversight Committee.

(Act 2001-956, p. 817, § 13.)

### Article 3b, Submissions for Public Contracts and Grants, Disclosure Requirements

#### § 41-16-80. Legislative findings.

The Legislature of Alabama finds and declares that information currently available to the public does not include the disclosure of all persons who for the purpose of financial gain submit a proposal, bid, contract, or grant proposal to the State of Alabama.

(Act 2001-955, p. 815, § 1.)

#### § 41-16-81. Definitions.

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

- (1) FAMILY MEMBER OF A PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.
- (2) FAMILY MEMBER OF A PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, or a sibling and his or her spouse, of the public official.
- (3) FAMILY RELATIONSHIP. A person has a family relationship with a public official or public employee if the person is a family member of the public official or public employee.
- (4) PERSON. An individual, firm, partnership, association, joint venture, cooperative, or corporation, or any other group or combination acting in concert.
- (5) PUBLIC OFFICIAL and PUBLIC EMPLOYEE. These terms shall have the same meanings ascribed to them in Sections 36-25-1(25) and 36-25-1(26), except for purposes of the disclosure requirements of this article, the terms shall only include persons in a position to influence the awarding of a grant or contract who are affiliated with the awarding entity. Notwithstanding the foregoing, these terms shall also include the Governor, Lieutenant Governor, members of the cabinet of the Governor, and members of the Legislature.

(Act 2001-955, p. 815, § 2.)

#### § 41-16-82. Disclosure statement required.

(a) This article shall only apply in cases where the proposed grant or proposed contract at issue exceeds five thousand dollars (\$5,000).

(b) All persons who, for the purpose of direct financial gain, submit a proposal, bid, contract, or grant proposal to the State of Alabama, shall include a disclosure statement developed by the Attorney General and approved by the Legislative Council. The disclosure statement shall not be required for contracts for gas, water, and electric services where no competition exists, or where rates are fixed by law or ordinance. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within 10 days of the award.

(Act 2001-955, p. 815, § 3.)

### **§ 41-16-83. Required information.**

(a) The information required on the disclosure statement shall be made under oath and penalty as prescribed herein and shall include, but not be limited to, the following:

- (1) A list of the names and addresses of any public official and public employee, and family members of the public official and public employee, who have a family relationship with the person or his or her immediate family members, or his or her employees, who may directly personally benefit financially from the contract, proposal, request for proposal, invitation to bid, or grant proposal.
- (2) A description of any financial benefit that may be knowingly gained by any public official, public employee, and family members of the public official and public employee that may result either directly or indirectly from the person or his or her immediate family members, or his or her employees.
- (3) The names and addresses of any paid consultant or lobbyist for the contract, proposal, request for proposal, invitation to bid, or grant proposal.

(b) The State of Alabama shall not enter into any contract or appropriate any public funds with any person who refuses to provide information required by this section.

(Act 2001-955, p. 815, § 4.)

### **§ 41-16-84. Furnishing of disclosure statement; affirmative defense.**

Each state agency, department, or division receiving a proposal, bid, contract, or grant proposal from all persons shall inform each person of this article and shall give each person a disclosure statement to complete. It shall be an affirmative defense under this article if any awarding agency fails to furnish and require the return of the disclosure statement.

(Act 2001-955, p. 815, § 5.)

### **§ 41-16-85. Filing of disclosure statement; public records.**

A copy of the disclosure statement shall be filed with the awarding entity and the Department of Examiners of Public Accounts and if it pertains to a state contract, a copy shall be submitted to the Contract Review Permanent Legislative Oversight Committee. Any disclosure statement filed pursuant to this article shall be a public record.

(Act 2001-955, p. 815, § 6.)

### **§ 41-16-86. Violations.**

(a) A person who knowingly violates this article shall be subject to civil penalty in an amount of ten thousand dollars (\$10,000), or 10 percent of the amount of the contract, whichever is less, to be deposited in the State

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General Fund. The statute of limitations for the acts covered in this article shall be one year. Any action brought to enforce the provisions of this article shall be initiated by the Attorney General in the circuit or district court in the county in which the awarding entity is located.

(b) If there is a finding of a knowing violation of this article, the contract or grant shall be voidable by the awarding entity.

(Act 2001-955, p. 815, § 7.)

### **§ 41-16-87. Applicability.**

This article shall not apply to any entity which does not receive state funds.

(Act 2001-955, p. 815, § 8.)

### **§ 41-16-88. Relation to ethics law.**

Nothing in this article shall be construed to alter, amend, or repeal any disclosure required under the ethics law.

(Act 2001-955, p. 815, § 9.)

### Chapter 22, Administrative Procedure

#### § 41-22-1. Short title.

This chapter shall be known as and may be cited as the “Alabama Administrative Procedure Act.”

(Acts 1981, No. 81-855, p. 1534, § 1.)

#### § 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

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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.

(Acts 1981, No. 81-855, p. 1534, § 2.)

### **§ 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, boards of plans administered by public pension systems, 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.

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- (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.

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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.

(Acts 1981, No. 81-855, p. 1534, § 3; Acts 1986, No. 86-472, p. 880, § 1; Act 98-508, p. 1186, § 1; Act 2014-457, p. 1757, § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 4.)

### **§ 41-22-5. Notice of intent to adopt, amend, or repeal rules; adoption of emergency rules; procedural requirements; proceedings to contest rules.**

(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:



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- (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 to the committee, 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. An emergency rule shall be strictly construed and shall not be valid except to the extent necessary to prevent, mitigate, or resolve immediate danger to the public health, safety, or welfare.

(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.

(Acts 1981, No. 81-855, p. 1534, § 5; Acts 1993, No. 93-627, p. 1051, § 1; Act 2015-291, § 1.)

**§ 41-22-5.1. Public notification of proposed rules; business economic impact statement; applicability.**

(a) This section and Section 41-22-5.2 shall be known and may be cited as “The Red Tape Reduction Act.”

(b) When an agency files a notice of intent to adopt, amend, or repeal any rule, the agency shall make its best efforts to notify the public of the proposed rule. At a minimum, when the agency files the notice of intent, the agency shall post the text of the rule the agency proposes to adopt, amend, or repeal on its website or, if the agency has no website, on a website operated or maintained by the executive branch. Additionally, when the agency files a notice of intent to adopt, amend, or repeal a rule, the agency shall electronically notify any person who has registered with the agency his or her desire to receive notification of any proposal by the agency to adopt, amend, or repeal a rule.

(c) If, prior to the end of the notice period, a business notifies an agency that it will be negatively impacted by an action proposed under subsection (b), the agency shall prepare and submit to the committee or its successor committee, agency, or service the information provided by the affected business as well as a Business Economic Impact Statement. The statement shall estimate the number of businesses subject to the agency's proposal as well as the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposal. An agency shall prepare the business economic impact statement using information available to the agency in the normal course of business and utilizing the expertise and experience of existing agency employees.

(d) After receiving a business economic impact statement from an agency, the committee or its successor committee, agency, or service may require the agency to analyze and report to the committee or its successor committee, agency, or service the feasibility of some or all of the following methods of reducing the impact of the rule on businesses:

- (1) The establishment of less stringent compliance or reporting requirements for businesses.
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for businesses.
- (3) The consolidation or simplification of compliance or reporting requirements for businesses.
- (4) The establishment of performance standards for businesses to replace design or operational standards required in the rule.

(e) An agency shall include information on any business economic impact statement whether the proposed rule is proposed as a result of a requirement issued by a federal agency.

(f) A business economic impact statement required to be filed pursuant to this section shall be filed with the Legislative Reference Service at the same time as the proposed rule is certified to the Legislative Reference Service and shall be available for public inspection.

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(g) Each agency that files a business economic impact statement, at the time it is filed, shall place that statement on its website in a location that is easily accessible by the general public, or, if the agency does not have a website, on a website operated or maintained by the executive branch.

(h) If the committee or its successor committee, agency, or service determines that an agency or a division of an agency exists primarily to perform certification or licensing-related functions, the agency is not required to comply with the provisions of this section unless the committee or its successor committee, agency, or service determines in writing that an agency's proposal has such a negative impact on businesses that the filing of a business economic impact statement is warranted. Notwithstanding the provisions of subsection (c) of Section 41-22-6 providing that a rule is effective 45 days after filing with Legislative Reference Service, in any case in which the committee or its successor committee, agency, or service determines that the filing of a business economic impact statement is warranted as provided herein, the effective date of the rule shall be 45 additional days after the effective date specified in subsection (c) of Section 41-22-6. In all other respects, the remainder of this chapter shall continue to apply to the proposed rule.

(i) An agency or department shall fulfill any request for license or permit within 28 calendar days after receiving the application or notify the applicant of the reason for failure to issue the license or permit.

(j) An agency is not required to comply with this section if the proposed rule is being adopted in order for the agency to comply with membership requirements in a multi-state or national membership organization.

(k) This section shall not apply to the promulgation of an emergency rule adopted pursuant to subsection (b) of Section 41-22-5.

(Act 2013-88, p. 188, §§ 1, 2; Act 2015-291, § 1.)

### **§ 41-22-5.2. Review of existing rules.**

(a) Within five years of July 1, 2013, each agency shall review all agency rules existing on that date to determine whether the rules should be continued without change, or should be amended or rescinded. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination.

(b) A rule adopted after July 1, 2013, shall be reviewed every five years in a manner consistent with subsection (a).

(Act 2013-88, p. 188, § 2.)

### **§ 41-22-6. Designation and duties of agency secretaries; 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.

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(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 45 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.
- (5) A rule that takes effect upon adjournment of the next legislative session following the completion of the appeal process as set forth in Section 41-22-23, if the Legislature fails to take action to disapprove the rule after approval by the Lieutenant Governor.

(Acts 1981, No. 81-855, p. 1534, § 6; Acts 1986, No. 86-472, p. 880, § 1; Acts 1993, No. 93-627, p. 1051, § 1; Act 2015-291, § 1.)

### **§ 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.

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(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.

(Acts 1981, No. 81-855, p. 1534, § 7; Act 2003-192, 1st Sp. Sess., p. 510, § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 8; Acts 1986, No. 86-472, p. 880, § 1.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 9.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 10.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 11; Acts 1986, No. 86-472, p. 880, § 1.)

**§ 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;

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- (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.

(Acts 1981, No. 81-855, p. 1534, § 12; Acts 1986, No. 86-472, p. 880, § 1; Acts 1993, No. 93-627, p. 1051, § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 13; Acts 1986, No. 86-472, p. 880, § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 14.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 15.)

**§ 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 enjoined 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.

(Acts 1981, No. 81-855, p. 1534, § 16; Acts 1986, No. 86-472, p. 880, § 1.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 17.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 18.)

**§ 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.

(Acts 1981, No. 81-855, p. 1534, § 19.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 20; Acts 1986, No. 86-472, p. 880, § 1; Acts 1993, No. 93-627, p. 1051, § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 21; Acts 1986, No. 86-472, p. 880, § 1.)

### **§ 41-22-22. Joint Committee on Administrative Regulation Review.**

The committee shall review all agency rules prior to their adoption. The committee shall have full access to all resources of the legislative department and all agencies thereof when conducting its review.

(Acts 1981, No. 81-855, p. 1534, § 22; Acts 1993, No. 93-627, p. 1051, § 1; Act 2001-306, p. 376, § 1; Act 2001-309, p. 385, § 1; Act 2015-291, § 1.)

#### **§ 41-22-22.1. Review of board and commission rules and actions by Legislative Reference Service and Joint Committee on Administrative Regulation Review; fees.**

(a) The Legislative Reference Service shall review each rule certified to it by a state board or commission that regulates a profession, a controlling number of the members of which are active market participants in the profession, to determine whether the rule may significantly lessen competition and, if so, whether the rule was made pursuant to a clearly articulated state policy to displace competition.

(b) If the Legislative Reference Service determines that a rule subject to subsection (a) may significantly lessen competition, it shall determine whether the rule was made pursuant to a clearly articulated state policy to displace competition, and shall certify those determinations to the committee. The board or commission shall submit a position paper, a transcript of any public hearings regarding the rule, and any other material collected during the consideration of the rule by the board or commission to accompany the rule as it is submitted to the committee. Upon receipt of a certification under this subsection, the chair of the committee shall call a meeting of the committee to review the substance of the rule, determine whether the rule may significantly lessen competition, and if so, whether it was made pursuant to a clearly articulated state policy to displace competition. The committee shall approve, disapprove, disapprove with a suggested amendment, or allow the agency to withdraw the rule for revision. The committee may conduct public hearings and solicit public comment during its consideration of the rule. If the committee approves the rule, it shall issue a written statement explaining its rationale for approving the rule. If the committee fails to act on a rule certified to it



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pursuant to this subsection, the rule shall not become effective and shall be placed on the agenda of the committee at each subsequent meeting until the committee disposes of the rule.

(c) A state board or commission that regulates a profession, a controlling number of the members of which are active market participants in the profession, may submit a previously adopted rule, along with a position paper, a transcript of any public hearings regarding the rule, and any other material collected during the consideration of the rule, to the Legislative Reference Service for a determination of whether the previously adopted rule may significantly lessen competition and whether the rule was made pursuant to a clearly articulated state policy to displace competition. If the Legislative Reference Service makes those determinations, it shall notify the board or commission and certify the determinations to the committee. Upon receipt of a certification under this subsection, the chair of the committee shall call a meeting of the committee to review the substance of the rule and either approve the rule or notify the board or commission that it agrees with the determination of the Legislative Reference Service. If the committee approves the rule, it shall issue a written statement explaining its rationale for approving the rule. The committee shall take action on a rule submitted under this subsection within 45 days of receipt of certification from the Legislative Reference Service.

(d) The Legislative Reference Service shall review each proposed action submitted to it by a state board or commission that regulates a profession, a controlling number of the members of which are active market participants in the profession, to determine whether the action proposed may significantly lessen competition and, if so, whether the action was proposed pursuant to a clearly articulated state policy to displace competition.

(e) If the Legislative Reference Service determines that an action subject to subsection (d) may significantly lessen competition, it shall determine whether the action was proposed pursuant to a clearly articulated state policy to displace competition, and shall certify those determinations to the committee. The board or commission shall submit a position paper, a transcript of any public hearings regarding the action, and any other material collected during the consideration of the action by the board or commission to accompany the action as it is submitted to the committee. Upon receipt of a certification under this subsection, the chair of the committee shall call a meeting of the committee to review the substance of the action, determine whether the action may lessen or has significantly lessened competition and, if so, whether it was proposed pursuant to a clearly articulated state policy to displace competition. The committee shall approve, disapprove, or propose a modification of a proposed action. The committee may conduct public hearings and solicit public comment during its consideration of the action. When the committee approves, disapproves, or proposes a modification of the action, it shall issue a written statement explaining its rationale. If the committee fails to act on an action certified to it pursuant to subsection (d), the action shall be placed on the agenda of the committee at each subsequent meeting until the committee acts on the certified action. Due to the timely nature of actions, the certified actions shall be given priority in the work of the committee.

(f) In addition to the fee levied under Section 41-22-7(j), the Legislative Reference Service shall charge a board or commission that is subject to subsection (a), which submits a previously adopted rule to the Legislative Reference Service under subsection (c), or which submits a proposed action under subsection (d), a fee in the amount necessary to recover the costs of the Legislative Reference Service in complying with this section.

(Act 2016-256, § 1.)

### **§ 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 each member of the committee and such other persons in the legislative department as the committee requires. 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) Within the 45-day period between the time a rule is certified and the date it becomes effective, and subject to subsection (h) of Section 41-22-5.1, the committee shall study all proposed rules and may hold public hearings thereon. The committee may adopt a policy providing when a public hearing will be held on a rule meeting specified criteria. In the event the committee fails to give notice to the agency of either its approval or disapproval of the proposed rule within 45 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 rule 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. The disapproval of any rule may be appealed to the Lieutenant Governor in writing by the agency that submitted the rule within 15 days of disapproval. The Office of the Lieutenant Governor shall stamp the written appeal to denote the date the appeal was received. If the disapproval of a rule is appealed to the Lieutenant Governor, the Lieutenant Governor, within the 15 days after the notice of appeal of the disapproval of the rule is filed, may review the rule and hold public hearings he or she determines necessary.

If the Lieutenant Governor sustains the disapproval of the rule, he or she shall notify the committee and return the rule to the agency and the disapproval shall be final.

If the Lieutenant Governor approves the rule, he or she shall notify the chair of the committee. The rule shall become effective upon adjournment of the next regular session of the Legislature that commences after the approval unless, prior to that time, the Legislature adopts a joint resolution that overrules the approval by the Lieutenant Governor and sustains the action of the committee.

If the Lieutenant Governor fails to either approve or disapprove the rule within the 15 days after the notice of appeal of the disapproval of the committee, the rule shall be deemed approved and the rule shall become effective upon adjournment of the next regular session of the Legislature that commences after the deemed approval unless, prior to that time, the Legislature adopts a joint resolution that overrides the deemed approval of the Lieutenant Governor and sustains the action of the committee. In the event the Office of the Lieutenant Governor is vacant, a rule disapproved by the committee shall be suspended until the adjournment of the next regular session of the Legislature following the disapproval. The rule shall be reinstated on adjournment of that regular session unless the Legislature, by joint resolution, sustains the disapproval.

(c) The committee may propose an amendment to any 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 and the rule shall become effective on the date specified in the rule, or on the date the amended rule is submitted, whichever is later. In the event the agency does not accept the amendment, the proposed amended rule shall be deemed disapproved, as provided in subsection (b).

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(d) An agency may withdraw a proposed or certified rule. 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) Is there a statutory authority for the proposed rule?

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- (2) Would the absence of the rule or rules significantly harm or endanger the public health, safety, or welfare?
- (3) Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?
- (4) Is there another, less restrictive method of regulation available that could adequately protect the public?
- (5) 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?
- (6) 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?
- (7) 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?
- (8) Any other criteria the committee may deem appropriate.

(Acts 1981, No. 81-855, p. 1534, § 23; Acts 1986, No. 86-472, p. 880, § 1; Acts 1993, No. 93-627, p. 1051, § 1; Act 2001-306, p. 376, § 1; Act 2001-309, p. 385, § 1; Act 2014-457, p. 1757, § 1; Act 2015-291, § 2; Act 2015-527, 1st Sp. Sess., § 1.)

### **§ 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.

(Acts 1981, No. 81-855, p. 1534, § 25; Acts 1986, No. 86-472, p. 880, § 1.)

### **§ 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,

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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.

(Acts 1981, No. 81-855, p. 1534, § 26.)

**§ 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

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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.

(Acts 1981, No. 81-855, p. 1534, § 27; Acts 1986, No. 86-472, p. 880, § 1.)