

1 SB325
2 157515-2
3 By Senator Holtzclaw
4 RFD: Judiciary
5 First Read: 06-FEB-14

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8 SYNOPSIS: Under existing law execution in this state
9 is by lethal injection unless the person elects to
10 be executed by electrocution.

11 Existing law does not prohibit the release
12 of certain identification concerning any person or
13 entity who participates in an execution or performs
14 any ancillary function related to this execution.

15 This bill would require that certain
16 identification of any person or entity that
17 manufactures, compounds, prescribes, dispenses,
18 supplies, or administers the drugs or supplies
19 utilized in an execution shall be confidential
20 including persons who participate in an execution
21 or performs any ancillary function related to this
22 execution.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Section 15-18-82.1 of the Code of Alabama
2 1975, to require that certain identification of any person or
3 entity that manufactures, compounds, prescribes, dispenses,
4 supplies, or administers the drugs or supplies utilized in an
5 execution shall be confidential including persons who
6 participate in an execution or perform any ancillary function
7 related to this execution.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 15-18-82.1 of the Code of Alabama
10 1975, is amended to read as follows:

11 "§15-18-82.1.

12 "(a) A death sentence shall be executed by lethal
13 injection, unless the person sentenced to death affirmatively
14 elects to be executed by electrocution. The sentence shall be
15 executed pursuant to Section 15-18-82.

16 "(b) A person convicted and sentenced to death for a
17 capital crime at any time shall have one opportunity to elect
18 that his or her death sentence be executed by electrocution.
19 The election for death by electrocution is waived unless it is
20 personally made by the person in writing and delivered to the
21 warden of the correctional facility within 30 days after the
22 certificate of judgment pursuant to a decision by the Alabama
23 Supreme Court affirming the sentence of death or, if a
24 certificate of judgment is issued before July 1, 2002, the
25 election must be made and delivered to the warden within 30
26 days after July 1, 2002. If a warrant of execution is pending
27 on July 1, 2002, or if a warrant is issued within 30 days

1 after July 1, 2002, the person sentenced to death who is the
2 subject of the warrant shall waive election of electrocution
3 as the method of execution unless a written election signed by
4 the person is submitted to the warden of the correctional
5 facility no later than 48 hours after a new date for execution
6 of the death sentence is set.

7 "(c) If electrocution or lethal injection is held to
8 be unconstitutional by the Alabama Supreme Court under the
9 Constitution of Alabama of 1901, or held to be
10 unconstitutional by the United States Supreme Court under the
11 United States Constitution, or if the United States Supreme
12 Court declines to review any judgment holding a method of
13 execution to be unconstitutional under the United States
14 Constitution made by the Alabama Supreme Court or the United
15 States Court of Appeals that has jurisdiction over Alabama,
16 all persons sentenced to death for a capital crime shall be
17 executed by any constitutional method of execution.

18 "(d) The provisions of the opinion and all points of
19 law decided by the United States Supreme Court in *Malloy v.*
20 *South Carolina*, 237 U.S. 180 (1915), finding that the Ex Post
21 Facto Clause of the United States Constitution is not violated
22 by a legislatively enacted change in the method of execution
23 for a sentence of death validly imposed for previously
24 committed capital murders, are adopted by the Legislature as
25 the law of this state.

26 "(e) A change in the method of execution shall not
27 increase the punishment or modify the penalty of death for

1 capital murder. Any legislative change to the method of
2 execution for the crime of capital murder shall not violate
3 Section 22 of Article I of the Constitution of Alabama of
4 1901.

5 "(f) Notwithstanding any law to the contrary, a
6 person authorized by state law to prescribe medication and
7 designated by the Department of Corrections may prescribe the
8 drug or drugs necessary to compound a lethal injection.
9 Notwithstanding any law to the contrary, a person authorized
10 by state law to prepare, compound, or dispense medication and
11 designated by the Department of Corrections may prepare,
12 compound, or dispense a lethal injection. For purposes of this
13 section, prescription, preparation, compounding, dispensing,
14 and administration of a lethal injection shall not constitute
15 the practice of medicine, nursing, or pharmacy.

16 "(g) The policies and procedures of the Department
17 of Corrections ~~for~~ related to the execution of persons
18 sentenced to death shall be exempt from the Alabama
19 Administrative Procedure Act, Chapter 22 of Title 41.

20 "(h) No sentence of death shall be reduced as a
21 result of a determination that a method of execution is
22 declared unconstitutional under the Constitution of Alabama of
23 1901, or the Constitution of the United States. In any case in
24 which an execution method is declared unconstitutional, the
25 death sentence shall remain in force until the sentence can be
26 lawfully executed by any valid method of execution.

1 "(i) Nothing contained in this section is intended
2 to require any physician, nurse, pharmacist, or employee of
3 the Department of Corrections or any other person to assist in
4 any aspect of an execution which is contrary to the person's
5 moral or ethical beliefs.

6 "(j) The name, address, qualifications, and other
7 identifying information of any person or entity that
8 manufactures, compounds, prescribes, dispenses, supplies, or
9 administers the drugs or supplies utilized in an execution
10 shall be confidential, shall not be subject to disclosure, and
11 shall not be admissible as evidence or discoverable in any
12 action of any kind in any court or before any tribunal, board,
13 agency, or person. The same confidentiality and protections
14 shall also apply to any person who participates in an
15 execution or performs any ancillary function related to an
16 execution and shall include information contained in any
17 departmental records, including electronic records, that would
18 identify the person."

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.