

1 HB18
2 162643-1
3 By Representatives Greer, Hanes, Whorton (R), Martin,
4 Nordgren, Lee, Williams (D), South, Fincher, Beckman,
5 Hill (J), Ledbetter, Ball, Standridge, Polizos, Butler, Wood,
6 McCutcheon and Davis
7 RFD: Judiciary
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8 SYNOPSIS: Under existing law, a death sentence is
9 executed by lethal injection, unless a person
10 sentenced to death affirmatively elects to be
11 executed by electrocution.

12 This bill would require a person sentenced
13 to death after the effective date of the act to be
14 executed by electrocution if lethal injection is
15 deemed unconstitutional by the courts or if an
16 ingredient essential to carrying out a lethal
17 injection is unavailable to the Department of
18 Corrections.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

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24 To amend Section 15-18-82.1, Code of Alabama 1975,
25 to require a person sentenced to death to be executed by
26 electrocution under certain conditions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§15-18-82.1.

4 "(a) ~~A~~ Except as provided in subsections (c) and
5 (d), a death sentence shall be executed by lethal injection,
6 unless the person sentenced to death affirmatively elects to
7 be executed by electrocution pursuant to subsection (b). The
8 sentence shall be executed pursuant to Section 15-18-82.

9 "(b) A person convicted and sentenced to death for a
10 capital crime at any time shall have one opportunity to elect
11 that his or her death sentence be executed by electrocution.
12 The election for death by electrocution is waived unless it is
13 personally made by the person in writing and delivered to the
14 warden of the correctional facility within 30 days after the
15 certificate of judgment pursuant to a decision by the Alabama
16 Supreme Court affirming the sentence of death or, if a
17 certificate of judgment is issued before July 1, 2002, the
18 election must be made and delivered to the warden within 30
19 days after July 1, 2002. If a warrant of execution is pending
20 on July 1, 2002, or if a warrant is issued within 30 days
21 after July 1, 2002, the person sentenced to death who is the
22 subject of the warrant shall waive election of electrocution
23 as the method of execution unless a written election signed by
24 the person is submitted to the warden of the correctional
25 facility no later than 48 hours after a new date for execution
26 of the death sentence is set.

1 "(c) A person sentenced to death on or after the
2 effective date of the act adding this amendatory language
3 shall be executed by electrocution if either of the following
4 occur:

5 "1. Execution by lethal injection is held to be
6 unconstitutional by a court of competent jurisdiction.

7 "2. The Commissioner of the Department of
8 Corrections certifies to the Governor that one or more of the
9 ingredients essential to carrying out execution by lethal
10 injection is unavailable through no fault of the department.

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

22 "~~(d)~~ (e) The provisions of the opinion and all points
23 of law decided by the United States Supreme Court in *Malloy v.*
24 *South Carolina*, 237 U.S. 180 (1915), finding that the Ex Post
25 Facto Clause of the United States Constitution is not violated
26 by a legislatively enacted change in the method of execution
27 for a sentence of death validly imposed for previously

1 committed capital murders, are adopted by the Legislature as
2 the law of this state.

3 "~~(e)~~ (f) A change in the method of execution ~~shall~~
4 does not increase the punishment or modify the penalty of
5 death for capital murder. Any legislative change to the method
6 of execution for the crime of capital murder ~~shall~~ does not
7 violate Section 22 of Article I of the Constitution of Alabama
8 of 1901.

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

20 "~~(g)~~ (h) The policies and procedures of the
21 Department of Corrections for execution of persons sentenced
22 to death shall be exempt from the Alabama Administrative
23 Procedure Act, Chapter 22 of Title 41.

24 "~~(h)~~ (i) No sentence of death shall be reduced as a
25 result of a determination that a method of execution is
26 declared unconstitutional under the Constitution of Alabama of
27 1901, or the Constitution of the United States. In any case in

1 which an execution method is declared unconstitutional, the
2 death sentence shall remain in force until the sentence can be
3 lawfully executed by any valid method of execution.

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

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