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3 WARD SUBSTITUTE FOR HB494
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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the Parental Consent Law; to amend
14 Sections 26-21-1 to 26-21-4, inclusive, and Section 26-21-7,
15 Code of Alabama 1975, and to add Section 26-21-6.1 to the Code
16 of Alabama 1975, to require the signature of a parent, legal
17 guardian, or adoptive parent of a minor to a consent form to
18 be signed in the presence of the abortion provider or agents
19 and to be accompanied with specific identification and
20 evidence, and to provide for certain alternative
21 identification and evidence requirements; to require certain
22 documents proving that a minor is emancipated to be certified
23 by the appropriate issuing authority; to prohibit a parent,
24 legal guardian, custodian, or any other person from coercing a
25 minor to have an abortion performed; to provide that the
26 Department of Public Health develop appropriate forms for the
27 consent and emancipation; to provide for certain civil actions

1 including professional disciplinary actions and license
2 suspension; to provide for the right of intervention; to
3 provide for the appointment of a guardian ad litem to
4 represent the interests of the unborn child during certain
5 proceedings; to provide for certain civil actions based on a
6 violation of Title 26, Chapter 21, Code of Alabama 1975; and
7 to provide for certain exemptions from liability for
8 physicians.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 26-21-1 to 26-21-4, inclusive,
11 and Sections 26-21-6 and 26-21-7, Code of Alabama 1975, are
12 amended to read as follows:

13 "§26-21-1.

14 "(a) It is the intent of the Legislature in enacting
15 this parental consent provision to further the important and
16 compelling state interests of: (1) protecting minors against
17 their own immaturity, (2) fostering the family structure and
18 preserving it as a viable social unit, and (3) protecting the
19 rights of parents to rear children who are members of their
20 household.

21 "(b) The Legislature finds as fact that: (1)
22 immature minors often lack the ability to make fully informed
23 choices that take account of both immediate and long-range
24 consequences, (2) the medical, emotional, and psychological
25 consequences of abortion are serious and can be lasting,
26 particularly when the patient is immature, (3) the capacity to
27 become pregnant and the capacity for mature judgment

1 concerning the wisdom of an abortion are not necessarily
2 related, (4) parents ordinarily possess information essential
3 to a physician's exercise of his or her best medical judgment
4 concerning the child, and (5) parents who are aware that their
5 minor daughter has had an abortion may better insure that she
6 receives adequate medical attention after her abortion. The
7 Legislature further finds that parental consultation is
8 usually desirable and in the best interests of the minor.

9 "(c) The Legislature further finds that the United
10 States Supreme Court has held under certain circumstances a
11 minor may seek permission to have an abortion without her
12 parent's consent by petitioning a court. The Legislature
13 enacts a judicial by-pass procedure for the purposes of
14 meeting the Constitutional standard and finds that in order to
15 do substantial justice it is necessary that the Alabama courts
16 be provided guidance in determining appropriate procedure and
17 evidence.

18 "(d) The Legislature further finds the public policy
19 of the State of Alabama is to respect life and provide
20 safeguards to protect life in the criminal, health, and other
21 laws of the State of Alabama; that in respecting and
22 protecting life, there is included the unborn life of a child
23 whose life may be subject to termination before birth by
24 abortion and that when the mother of said unborn life is a
25 minor who seeks an abortion through the judicial by-pass
26 procedure, it is the interest of the State of Alabama to not
27 only establish and protect the rights of the minor mother, but

1 also to protect the state's public policy to protect unborn
2 life; the protection of these interests is done, in part, by
3 requiring judges to make determinations pursuant to the
4 judicial by-pass procedure and to require said judges be
5 provided with sufficient evidence and information upon which
6 they may make informed and proper decisions.

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

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

22 "§26-21-2.

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

25 "(1) MINOR. Any person under the age of 18 years;

1 "(2) EMANCIPATED MINOR. Any minor who is or has been
2 married or has by court order otherwise been legally freed
3 from the care, custody, and control of her parents;

4 "(3) ABORTION. The use or prescription of any
5 instrument, medicine, drug, or any other substance or device
6 with the intent to terminate the pregnancy of a woman known to
7 be pregnant, ~~with intent other than to increase the~~
8 ~~probability of a live birth, to preserve the life or health of~~
9 ~~the child after live birth, or to remove a dead or dying~~
10 ~~unborn child~~ knowledge that the termination by those means
11 will with reasonable likelihood cause the death of the unborn
12 child. Such use or prescription is not an abortion if done
13 with the intent to save the life or preserve the health of an
14 unborn child, remove a dead unborn child, or to deliver the
15 unborn child prematurely in order to preserve the health of
16 both the mother (pregnant woman) and her unborn child. The
17 term "abortion" as used herein does not include a procedure or
18 act to terminate the pregnancy of a woman with an ectopic
19 pregnancy, nor does it include the procedure or act to
20 terminate the pregnancy of a woman where the unborn child has
21 a lethal anomaly. For the purposes of this act a "lethal
22 anomaly" means the child would die at birth, or be stillborn.
23 For purposes of this act, the term "ectopic pregnancy" means
24 any pregnancy resulting from a fertilized egg that was
25 implanted or attached outside the uterus. The term "ectopic
26 pregnancy" also includes a pregnancy resulting from a
27 fertilized egg implanted inside the cornu of the uterus.

1 "(4) MEDICAL EMERGENCY. A condition that, absent an
2 abortion performed before the requirements of this act are
3 met, and based on the applicable standard of care, is likely
4 to result in the death of the pregnant woman or is likely to
5 result in substantial irreversible impairment of a major
6 bodily function.

7 "§26-21-3.

8 "(a) Except as otherwise provided in subsections (b)
9 and ~~(e)~~ (d) of this section and Sections 26-21-4 and 26-21-5
10 hereof, no ~~person~~ physician shall perform an abortion upon an
11 unemancipated minor unless ~~he or she~~ the physician or his or
12 her ~~agent~~ agents first ~~obtains~~ obtain the written consent of
13 either parent or the legal guardian of the minor.

14 "~~(b) If the minor's pregnancy was caused by sexual~~
15 ~~intercourse with the minor's natural father, adoptive father,~~
16 ~~or stepfather or legal guardian, then written notice to the~~
17 ~~minor's mother by certified mail shall be sufficient.~~

18 "~~(c)~~ (b) The ~~person~~ physician who shall perform the
19 abortion or his or her ~~agent~~ agents shall obtain or be
20 provided with the written consent from either parent or legal
21 guardian stating the names of the minor, parent, or legal
22 guardian, that he or she is informed that the minor desires an
23 abortion and does consent to the abortion, the date, and the
24 consent shall be signed by either parent or legal guardian.
25 ~~The unemancipated minor shall verify on the same form, by her~~
26 ~~signature and in the presence of such person who shall perform~~
27 ~~the abortion or his or her agent, that the signature of the~~

1 ~~parents, parent, or legal guardian is authentic. The consent~~
2 ~~shall be kept as a part of the minor's patient file for four~~
3 ~~years. The signatures of the parents, parent, or legal~~
4 ~~guardian shall be affixed and the information required in this~~
5 ~~subsection shall be on a form to be provided by, and shall be~~
6 ~~written in the presence of, the physician who shall perform~~
7 ~~the abortion or his or her agents. The parents, parent, or~~
8 ~~legal guardian shall provide to the physician who shall~~
9 ~~perform the abortion, or his or her agents, evidence of~~
10 ~~parentage or legal guardianship. For parents or a parent,~~
11 ~~there shall also be required a certified birth certificate of~~
12 ~~the minor identifying the minor and the parents or parent. For~~
13 ~~a legal guardian or adoptive parent, there shall be required a~~
14 ~~duly certified court order or other official document naming~~
15 ~~the legal guardian or adoptive parent as such for the minor.~~
16 ~~If official photographic personal identification has not been~~
17 ~~issued to any parents, parent, or legal guardian, other~~
18 ~~official identification shall be acceptable, provided the~~
19 ~~parents, parent, or legal guardian affirms in writing on the~~
20 ~~form herein required under oath, with recognition of criminal~~
21 ~~penalties, that he or she does not possess any photographic~~
22 ~~identification and that the alternative personal~~
23 ~~identification provided is his or her identification. The~~
24 ~~parent, parents or legal guardian signing the consent shall~~
25 ~~attest with recognition of criminal penalties that he or she~~
26 ~~is the parent or legal guardian, has not been deprived of~~
27 ~~primary custody or joint physical custody of the minor by any~~

1 court of law, and has not given the child up for adoption or
2 otherwise waived parental rights. If the minor does not have a
3 certified birth certificate, an abortion may be performed only
4 if the physician who shall perform the abortion certifies in
5 writing in the minor's medical record that a medical emergency
6 exists or that there is insufficient time to obtain a
7 certified birth certificate, and provided the minor can
8 provide other government issued identification. The parents,
9 parent, or minor shall obtain a certified birth certificate as
10 soon thereafter as possible and provide a certified copy to
11 the physician who performed the abortion or his or her agents,
12 and if it is not received within 90 days, he or she shall
13 report the failure to the State of Alabama Department of
14 Public Health on a form provided by the department. Any
15 certified document, a photocopy of the personal
16 identification, and any other documentation required by this
17 subsection shall be attached to the completed consent form and
18 shall be kept as a part of the minor's patient file for four
19 years. All signatures required by this amendatory act by the
20 minor, a parent or parents, a legal guardian, physician, or
21 another person shall be attested either by two witnesses, or
22 by a notary public.

23 "(d)(c) If the minor is emancipated, the ~~person~~
24 physician who shall perform the abortion or his or her ~~agent~~
25 agents shall obtain a written ~~statement form~~ stating the name
26 of the emancipated minor, that the minor is emancipated, the
27 type of emancipation, and the date, and the form shall be

1 signed by the emancipated minor. The written ~~statement form~~
2 shall be signed in the presence of the ~~person~~ physician who
3 shall perform the abortion or his or her ~~agent~~ agents and
4 witnessed by ~~him or her~~ the physician or the ~~agent~~ agents. The
5 emancipated minor shall also provide a license or certificate
6 of marriage, judgment, or decree of divorce, order of
7 emancipation or relieving her of the disabilities of nonage,
8 or other court document evidencing her marriage, divorce, or
9 emancipation. Any such document shall be a copy of the
10 original, duly certified by the appropriate court. ~~A copy of~~
11 ~~any such~~ Such certified document shall be attached to the
12 written ~~statement form~~ and kept as a part of the minor's
13 patient file for four years.

14 ~~"(e)~~ (d) A minor, including a ward of the state, who
15 elects not to seek or does not or cannot for any reason,
16 including unavailability or refusal by either or both parents
17 or legal guardian, obtain consent from either of her parents
18 or legal guardian under this section, may petition, on her own
19 behalf, the juvenile court, or court of equal standing, in the
20 county in which the minor resides or in the county in which
21 the abortion is to be performed for a waiver of the consent
22 requirement of this section pursuant to the procedure of
23 Section 26-21-4.

24 "(e) A parent, legal guardian, custodian, or any
25 other person, shall not coerce a minor to have an abortion
26 performed.

1 "(f) The Department of Public Health shall propose
2 within 90 days of the effective date of this act, the forms
3 required in subsections (b) and (c).

4 "§26-21-4.

5 "(a) A minor who elects not to seek or does not or
6 cannot for any reason, obtain consent from either of her
7 parents or legal guardian, may petition, on her own behalf,
8 the juvenile court, or the court of equal standing, in the
9 county in which the minor resides or in the county in which
10 the abortion is to be performed for a waiver of the consent
11 requirement of this chapter. Notice by the court to the
12 minor's parents, parent, or legal guardian shall not be
13 required or permitted. The requirements and procedures under
14 this chapter shall apply and are available only to minors
15 ~~whether or not they~~ who are residents of this state.

16 "(b) The minor may participate in proceedings in the
17 court on her own behalf. The court shall advise her that she
18 has a right to be represented by an attorney and that if she
19 is unable to pay for the services of an attorney one will be
20 appointed for her. If the court appoints an attorney to
21 represent her, such attorney shall be compensated as provided
22 in Section 15-12-21. If the minor petitioner chooses to
23 represent herself, such pleadings, documents, or evidence that
24 she may file with the court shall be liberally construed by
25 the court so as to do substantial justice. ~~Hearsay evidence~~
26 ~~shall be admissible.~~

1 "(c) The court shall insure that the minor is given
2 assistance in preparing and filing the petition ~~and shall~~
3 ~~insure that the minor's identity is kept confidential~~. Such
4 assistance may be provided by court personnel including intake
5 personnel of juvenile probation services. The minor's identity
6 shall be kept confidential, but her identity may be made known
7 to the judge, any guardian ad litem, the district attorney or
8 any representative of the district attorney's office of the
9 county where the minor is a resident or the county where the
10 abortion is to be performed, any appropriate court personnel,
11 any witness who has a need to know the minor's identity, or
12 any other person determined by the court who needs to know.
13 Any person who is given the identity of the minor shall keep
14 her name confidential and shall not give it to any other
15 person, unless otherwise ordered by the court.

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

19 "(1) A statement that the petitioner is pregnant;

20 "(2) A statement that the petitioner is unmarried,
21 under 18 years of age, and unemancipated;

22 "(3) A statement that the petitioner wishes to have
23 an abortion without the consent of either parent or legal
24 guardian.

25 "(4) An allegation of either or both of the
26 following:

1 "a. That the petitioner is sufficiently mature and
2 well enough informed to intelligently decide whether to have
3 an abortion without the consent of either of her parents or
4 legal guardian.

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

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

12 "(e) Court proceedings shall be given such
13 precedence over other pending matters as is necessary to
14 insure that the court may reach a decision promptly, but in no
15 case, except as provided herein, shall the court fail to rule
16 within ~~72~~ 48 hours of the time the petition is filed,
17 Saturdays, Sundays, and legal holidays excluded. Provided,
18 however, this time requirement may be extended on the request
19 of the minor or any other participant in the proceeding, or by
20 order of the court for the purpose of obtaining further
21 testimony or evidence necessary for it to make an informed
22 decision and to do substantial justice. If a juvenile court
23 judge is not available for the hearing provided herein, the
24 clerk of the court in which the petition was filed shall
25 forthwith notify the presiding circuit court judge and the
26 presiding circuit court judge of the circuit shall immediately

1 appoint a district or circuit court ~~level~~ judge to hear the
2 petition.

3 "(f) Except as otherwise required by the section,
4 this court shall adhere to the Rules of Juvenile Procedure,
5 the Rules of Civil Procedure and Rules of Evidence required of
6 Alabama courts. The court shall assure that it is presented
7 sufficient probative evidence upon which to make its findings,
8 either granting or denying the minor's petition. If the court
9 determines at the initial hearing on the petition that
10 additional evidence or testimony is necessary, the court may
11 adjourn the hearing and issue instanter subpoenas or otherwise
12 permit any party or participant in the hearing to bring before
13 the court admissible evidence or testimony either in support
14 of or against the petition.

15 "~~(f)~~(g) The required consent shall be waived if the
16 court finds either:

17 "(1) That the minor is mature and well-informed
18 enough to make the abortion decision on her own; or

19 "(2) That performance of the abortion would be in
20 the best interest of the minor.

21 "(h) In determining if either of the requirements in
22 subsection (g) are met, the court shall require that the minor
23 provide probative and admissible evidence, which may include
24 hearsay evidence, that she has been informed and understands
25 the medical procedure of abortion and its consequences and
26 that she has been informed and counseled by a qualified person
27 as to the alternatives to abortion. She shall explain each of

1 the foregoing to the court and the court shall be satisfied
2 that she is making an informed judgment and shall document its
3 finding in its order. The minor shall present such additional
4 probative evidence to the court of her maturity that
5 demonstrates to the court that she has sufficient experience
6 with and understanding of life which enables her to make
7 mature and informed decisions. Further, the minor may provide
8 to the court a substantive explanation of why she cannot
9 consult with her parent, parents, or legal guardian to assist
10 her in making the decision. It shall not be sufficient that
11 the court find the minor mature because she has requested
12 relief from the court, but rather the totality of the evidence
13 must be probative and of such weight to prove that the minor
14 is mature and well-informed enough to make the abortion
15 decision on her own, or that the performance of the abortion
16 will be in her best interest. Uncorroborated legal conclusions
17 by the minor shall not be sufficient to support a
18 determination by the court to grant her petition. In the event
19 of a denial of the petition by the court, the minor may
20 re-file the petition once for a de novo hearing with the
21 court.

22 "(i) The court shall immediately notify the district
23 attorney's office of the county in which the minor is a
24 resident, or the county where the petition was filed of the
25 filing of the petition on the day of such filing and the
26 district attorney or his or her representative shall
27 participate as an advocate for the state to examine the

1 petitioner and any witnesses, and to present evidence for the
2 purpose of providing the court with a sufficient record upon
3 which to make an informed decision and to do substantial
4 justice.

5 "(j) In the court's discretion, it may appoint a
6 guardian ad litem for the interests of the unborn child of the
7 petitioner who shall also have the same rights and obligations
8 of participation in the proceeding as given to the district
9 attorney's office. The guardian ad litem shall further have
10 the responsibility of assisting and advising the court so the
11 court may make an informed decision and do substantial
12 justice. The guardian ad litem shall be compensated as
13 provided in Section 15-12-21.

14 "(k) Either the district attorney or his or her
15 representative, or any other party in the proceeding may
16 request the court for additional time either before the
17 hearing has begun or during the hearing, if justice requires,
18 to obtain evidence, subpoena witnesses, or to obtain and
19 present any evidence or information which will be necessary
20 and appropriate for the court to make an informed decision. In
21 any event, any such delay shall not be more than one business
22 day for which the applicable court is open to the public,
23 unless justice requires an extension thereof. The length of
24 time for any such delay and the information, evidence, or
25 subpoena sought shall be within the sound discretion of the
26 trial court subject to the time constraints of the petitioner
27 related to her medical condition.

1 "(l) Although the court shall not be required or
2 permitted to contact the minor's parent, parents, or legal
3 guardian, in the event that the minor's parent, parents, or
4 legal guardian are otherwise aware of the by-pass proceeding,
5 they, he, or she shall be given notice of and be permitted to
6 participate in the proceeding and be represented by counsel
7 with all of the rights and obligations of any party to the
8 proceeding.

9 "~~(g)~~ (m) A court that conducts proceedings under this
10 section shall issue written and specific factual findings and
11 legal conclusions supporting its decision and shall order that
12 a confidential record of the evidence be maintained for at
13 least four years. A transcript of the proceedings shall be
14 recorded and if there is an appeal as provided in subsection
15 ~~(h)~~ (n), a transcript of the proceedings shall be prepared
16 forthwith.

17 "~~(h)~~ (n) An expedited confidential and anonymous
18 appeal shall be available to any minor to whom the court
19 denies a waiver of consent, the district attorney's office,
20 and any guardian ad litem, or the parent, parents, or legal
21 guardian of the minor. If notice of appeal is given, the
22 record of appeal shall be completed and the appeal shall be
23 perfected within five days from the filing of the notice of
24 appeal. Briefs shall not be required but may be permitted.
25 Because time may be of the essence regarding the performance
26 of the abortion, the Alabama Supreme Court shall issue
27 promptly such additional rules as it deems are necessary to

1 insure that appeals under this section are handled in an
2 expeditious, confidential and anonymous manner.

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

6 ~~"(j)(p)~~ No fees or costs shall be required of any
7 minor who avails herself of the procedures provided by this
8 section.

9 "(q) proceedings under this section and with the
10 consent of the minor for whom such proceedings are conducted,
11 the court may refer for prosecution any criminal charge that
12 may be known to said court, including, but not limited to,
13 statutory rape.

14 "§26-21-6.

15 (a) (1) Any person who intentionally performs or
16 causes to be performed an abortion in violation of the
17 provisions of this chapter or intentionally fails to conform
18 to any requirement of this chapter, shall be guilty of a Class
19 A misdemeanor. Any person found guilty under this section
20 shall immediately forfeit any professional license they may
21 hold.

22 (2) Any conviction of any person for any failure to
23 comply with the requirements of this chapter may result in the
24 suspension of the person's professional license for a period
25 of at least one year and shall be reinstated after that time
26 only on such conditions as the appropriate regulatory or

1 licensing body may require to insure compliance with this
2 chapter.

3 (b) In addition to whatever remedies are available
4 under the common or statutory law of this state, failure to
5 comply with the requirements of this chapter shall provide a
6 basis for professional disciplinary action under any
7 applicable statutory or regulatory procedure for the
8 suspension or revocation of any license for physicians,
9 psychologists, licensed social workers, licensed professional
10 counselors, registered nurses, or other licensed or regulated
11 persons.

12 "§26-21-7.

13 "(a) No physician who complies with the parental
14 consent ~~requirement(s)~~ requirements of this chapter shall be
15 liable in any manner to the minor upon whom the abortion was
16 performed for any claim whatsoever arising out of or based on
17 the disclosure of any information concerning the medical
18 condition of such minor to her ~~parent(s) or legal guardian(s);~~
19 ~~provided that~~ parent, parents, or legal guardian.

20 Notwithstanding the foregoing, a physician who performs an
21 abortion pursuant to a court order obtained under ~~the~~
22 ~~provisions of~~ this chapter, shall not disclose any information
23 regarding same to the ~~parent(s) or legal guardian(s)~~ parent,
24 parents, or legal guardian of the minor unless such disclosure
25 is made pursuant to a court order. In no event shall the
26 physician be under any duty to initiate proceedings in any
27 court to secure a waiver of the parental consent requirement

1 on behalf of any minor who has requested that an abortion be
2 performed.

3 "(b) Any physician who complies with this chapter
4 may not be held civilly liable to his or her patient for
5 failure to obtain consent to the abortion required by this
6 chapter.

7 "(c) A physician or his or her agents who
8 demonstrates compliance with the requirements of this chapter
9 shall not bear criminal or civil liability for the deliberate,
10 intentional, or willful action by the minor or any other
11 person acting in concert with or on behalf of the minor to
12 present fabricated, altered, forged, or counterfeit
13 identification, certificates, or other documentation to
14 satisfy the parental consent requirements of this chapter."

15 Section 2. Section 26-21-6.1 is added to Chapter 21,
16 Title 26, Code of Alabama 1975, as follows:

17 §26-21-6.1.

18 In addition to whatever remedies are available under
19 the common or statutory law of this state, failure to comply
20 with the requirements of this chapter shall provide a basis
21 for a civil action for compensatory and/or punitive damages.
22 Any criminal conviction under this chapter shall be admissible
23 in a civil suit as prima facie evidence of a failure to obtain
24 an informed consent or parental or judicial consent. The civil
25 action may be based on a claim that the action was a result of
26 simple negligence, gross negligence, wantonness, willfulness,
27 intention, or breach of other legal standard of care. The

1 Medical Liability Act of 1987 shall not apply to any civil
2 causes of action brought pursuant to this act.

3 Section 3. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not effect the part
6 which remains.

7 Section 4. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.