

**AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.**

**To: Interested Persons**  
**Date: January 2024**  
**From: A. Eric Johnston**  
**RE: Stopping Abortion Drugs from Coming into Alabama**

---

The Alabama Human Life Protection Act (“AHLPA”) went into effect on June 24, 2022. It is the strongest law in the nation to prohibit abortion. One thing it does not do is punish the woman for having gotten an abortion. The position of the pro-life community, both nationally and locally, has been to consider the woman a victim who needs assistance, rather than punishment. There are those who propose to punish the woman by charging her with murder. That is not a solution to the problem. There is a great deal of misunderstanding, confusion and angst over the abortion issue. It is legal in some states, but not in others. The political debate in the recent elections, as well as we expect in the coming elections, is intense with democrats making the abortion issue primary.

Alabama has a constitutional amendment that protects unborn life and a statute that carries out the penalty for taking unborn life. With the uncertain and evolving abortion legal/political landscape across the county, we must deal with each new issue as it arises. The one that we face now is that women in Alabama can go on the internet and order and pay for abortion producing drugs (Mifepristone and Misoprostol) to be shipped from India and China, countries over which the state of Alabama has no criminal jurisdiction. We have drafted a legislative bill to address this problem. It will be introduced in the 2024 Regular Session of the Alabama legislature. In the legislative findings the bill states:

It is the intent of this act to prohibit and criminalize the actions of those who facilitate, produce, provide, or send abortion producing drugs into the state of Alabama, including those who transact payment for the drugs.

The bill is highly technical in its application. It provides extensive definitions of the many aspects of information technology. It applies Information Technology Capabilities and its many subparts related to platforms, software, internet protocols, host names, operations systems, cellphones, computers, *etcetera*. It provides:

No Internet Service Provider (ISP) serving persons in the state of Alabama shall accept or forward any HDTP Request to an IP Address at which is addressed an Application that permits any person to obtain abortion producing drugs for the delivery in the state of Alabama.

No Content Delivery Network (CDN) Provider shall accept or route any HTTP Request to an IP Address at which is addressed an application that permits any person to obtain abortion producing drugs in the state of Alabama.

It provides similar prohibitions directed at Information Technology Capabilities, Healthcare Providers, Software As a Service, Information As a Service, *etcetera*. It also states that “no Payment Provider shall facilitate payment for any abortion producing drugs to be delivered to any person in the state of Alabama. Known abortifacient websites are listed. The Alabama Attorney General is then tasked with monitoring the internet to identify Domain Names and IP Addresses that provide for delivery of abortion producing drugs to persons in the state of Alabama.

Notwithstanding these prohibitions, they do not prohibit “speech or conduct protected by the first amendment to the United States Constitution.... conduct engaged in by a pregnant woman who aborts or attempts to abort her unborn child... or provision of such drug [*e.g.* Misoprostol] if it has a medical purpose that does not include performing, inducing or attempting an abortion.”

Obviously, many internet providers will not be aware of this business being transacted. The Attorney General will bring such information to their attention. They will not be penalized if they take down the mechanism. However, if they do not, then the Attorney General may obtain an injunction against the activity, and there will be a fine of \$10,000 for each separate identifiable offense under the law. All funds collected in that matter will be divided between the Attorney General’s office and Alabama Pregnancy Resource Centers. We want to emphasize that interactive computer services will not be penalized if they block access to the forbidden websites. This bill does not intend to solicit disputes with internet services, but to stop illegal practices from taking place in the state of Alabama.

Finally, the criminal penalties of the AHLPA will apply to individuals who are engaged in bringing these drugs into the state. If they are within the jurisdiction of the United States, they will be charged with those crimes. Also, the law will permit an action for damages by the woman, her husband, child, parent or sibling for violation.

There are two cases involving the Biden order to the Food and Drug Administration to send abortifacients to all states. We believe these cases should follow *Dobbs* permitting states to prohibit this, as our bill will do. These cases are before SCOTUS and should be decided by next June. If properly presented, we should win.

We know this bill is a very technological approach to the issue. However, with abortion being legal in other states and with the availability of ordering virtually anything over the internet, it must be approached in this fashion. It is no different than prohibiting internet gambling, purchase of alcohol, pornography, or other prohibited substances or activities. The public policy of Alabama is to protect unborn life. This bill will resolve one more of the issues we face in stopping abortion.