Stricken language would be deleted from and underlined language would be added to present law. Act 810 of the Regular Session

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2	,	SENATE BILL 464
3	,	SENATE BILL 404
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8		ntitled
9	AN ACT TO ENSURE THE CONFIDENTIALITY OF CERTAIN	
10	PROCEDURES INVOLVED IN THE EXECUTION OF A PERSON FOR	
11	A CAPITAL OFFENSE; AND FOR OTHER P	URPOSES.
12		
13		
14	Subtitle	
15	TO ENSURE THE CONFIDENTIALITY	OF CERTAIN
16	PROCEDURES INVOLVED IN THE EX	ECUTION OF A
17	PERSON FOR A CAPITAL OFFENSE.	
18		
19		
20	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE S	TATE OF ARKANSAS:
21		
22	SECTION 1. DO NOT CODIFY. Legislative	findings.
23	The General Assembly finds that:	
24	(1) As United States Supreme Cour	t Justice Samuel Alito has
25	explained, there is a well-documented guerilla	war being waged against the
26	death penalty;	
27	(2) Anti-death-penalty advocates	have pressured pharmaceutical
28	companies to refuse to supply the drugs used b	y states to carry out death
29	sentences;	
30	(3) The Department of Correction	<u>is unable to acquire the</u>
31	necessary drugs used to carry out lethal injections due to the lack of	
32	effective confidentiality regarding the manufacturers, suppliers, and others	
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36	duties under law, is detrimental to the carryi	ng out of lawful sentences of

1	executions.	
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3	SECTION 2. DO NOT CODIFY. Legislative intent.	
4	It is the intent of the General Assembly:	
5	(1) To ensure absolute confidentiality of any documents,	
6	records, or information that could lead to the identification of a person or	
7	entity involved in any way in the Department of Correction's provisioning of	
8	drugs used for lethal injections; and	
9	(2) That the confidentiality provisions of this act be construed	
10	as broadly as possible to ensure that the Department of Correction is able to	
11	acquire the drugs necessary for lethal injections.	
12		
13	SECTION 3. Arkansas Code § 5-4-617(i)-(1), concerning the method of	
14	execution for the sentence of capital punishment, are amended to read as	
15	follows:	
16	(i)(1) The procedures under subdivision (g)(1) of this section, the	
17	implementation of the procedures under subdivision (g)(1) of this section,	
18	and the identities of the entities and persons who participate in the	
19	execution process or administer the lethal injection are not subject to	
20	disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.	
21	(2) The department shall keep confidential all information that	
22	may identify or lead to the identification of:	
23	(A) The entities and persons who participate in the	
24	execution process or administer the lethal injection; and	
25	(B) The entities and persons who compound, test, sell, or	
26	supply the drug or drugs described in subsection (c) of this section, medical	
27	supplies, or medical equipment for the execution process.	
28	(3) The department shall not disclose the information covered	
29	under this subsection in litigation without first applying to the court for a	
30	protective order regarding the information under this subsection.	
31	(i)(1) Except as provided for under subdivision (i)(2) of this	
32	section, a person shall not disclose in response to a request under the	
33	Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to	
34	discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of	
35	the following:	
36	(A) Documents, records, or information that may identify	

1	or reasonably lead to the identification of entities or persons who
2	participate in the execution process or administer lethal injections;
3	(B) Documents, records, or information that may identify
4	or reasonably lead directly or indirectly to the identification of an entity
5	or person who compounds, synthesizes, tests, sells, supplies, manufactures,
6	transports, procures, dispenses, or prescribes the drug or drugs described in
7	subsection (c) of this section, or that provides the medical supplies or
8	medical equipment for the execution process; or
9	(C) Documents, records, or information that concern the
10	procedures under subdivision (g)(1) of this section and the implementation of
11	the procedures under subdivision (g)(1) of this section.
12	(2) The following documents, records, and information may be
13	disclosed:
14	(A) The director may disclose or authorize disclosure of
15	documents, records, and information to his or her subordinates, contractors,
16	or vendors to the extent necessary to carry out his or her duties under this
17	section;
18	(B) The director may disclose or authorize disclosure of
19	documents, records, and information to the Governor or the Attorney General,
20	or both; and
21	(C) The Governor or the Attorney General, or both, may
22	disclose or authorize the disclosure of documents, records, and information
23	to their subordinates to the extent necessary to carry out their duties under
24	law.
25	(3)(A) If any part of this subsection is invalidated by a final
26	and unappealable court order, any unauthorized disclosure of information
27	under this section shall be permitted only after the entry and service of an
28	order prohibiting public disclosure or use of the documents, records, or
29	information and requiring that a public filing of the documents, records, or
30	information be done under seal.
31	(B) A person who recklessly discloses documents, records,
32	or information in violation of an order under this subdivision (i)(3) upon
33	conviction is guilty of a Class D felony.
34	(j)(l) The director shall certify under oath that the drug or drugs

described in subsection (c) of this section meet the requirements of

subsection (d) of this section.

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1	(2) After the certification required under this subsection, a	
2	challenge to the conformity of the drug or drugs described under subsection	
3	(c) of this section with the requirements of subsection (d) of this section	
4	shall be brought only as an original action in the Supreme Court.	
5	(j)(k) The department shall make available to the public any of the	
6	following information upon request, so long as the information that may be	
7	used to identify the compounding pharmacy, testing laboratory, seller, or	
8	supplier an entity or person listed in subsection (i) of this section is	
9	redacted and maintained as confidential:	
10	(1) Package inserts and labels, if the drug or drugs described	
11	in subsection (c) of this section have been made by a manufacturer approved	
12	by the United States Food and Drug Administration;	
13	(2) Reports obtained from an independent testing laboratory	
14	(1) The certification provided for under subsection (j) of this	
15	section; and	
16	(3) (2) The department's procedure for administering the drug or	
17	drugs described in subsection (c) of this section, including the contents of	
18	the lethal-injection drug box.	
19	$\frac{(k)(1)}{(k)}$ The department shall carry out the sentence of death by	
20	electrocution if execution by lethal injection under this section is	
21	invalidated by a final and unappealable court order.	
22	$\frac{(1)(m)}{(m)}$ Every person that procures, prepares, administers, monitors, or	
23	supervises the injection of a drug or drugs under this section has immunity	
24	under § 19-10-305.	
25	(n) A person who recklessly discloses documents, records, or	
26	information in violation of subdivision (i)(1) of this section upon	
27	conviction is guilty of a Class D felony.	
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30	APPROVED: 4/9/19	
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