

1 HB316
2 116229-2
3 By Representative Collier
4 RFD: Judiciary
5 First Read: 19-JAN-10

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8 SYNOPSIS: Currently, civil causes of actions exist
9 for injury to a minor child and death of a minor
10 child.

11 This bill would expand the definition of a
12 minor child to include an unborn child in utero at
13 any state of development, regardless of viability.

14 Amendment 621 of the Constitution of Alabama
15 of 1901, now appearing as Section 111.05 of the
16 Official Recompilation of the Constitution of
17 Alabama of 1901, as amended, prohibits a general
18 law whose purpose or effect would be to require a
19 new or increased expenditure of local funds from
20 becoming effective with regard to a local
21 governmental entity without enactment by a 2/3 vote
22 unless: it comes within one of a number of
23 specified exceptions; it is approved by the
24 affected entity; or the Legislature appropriates
25 funds, or provides a local source of revenue, to
26 the entity for the purpose.

1 The purpose or effect of this bill would be
2 to require a new or increased expenditure of local
3 funds within the meaning of the amendment. However,
4 the bill does not require approval of a local
5 governmental entity or enactment by a 2/3 vote to
6 become effective because it comes within one of the
7 specified exceptions contained in the amendment.
8

9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 To amend Sections 6-5-390 and 6-5-391 relating to
14 civil causes of action for injury to a minor child and
15 wrongful deaths of a minor child, to further define the term
16 minor child to include an unborn child in utero at any stage
17 of development, regardless of viability; and in connection
18 therewith would have as its purpose or effect the requirement
19 of a new or increased expenditure of local funds within the
20 meaning of Amendment 621 of the Constitution of Alabama of
21 1901, now appearing as Section 111.05 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 6-5-390 and 6-5-391, Code of
26 Alabama 1975, are hereby amended to read as follows:

27 "§6-5-390.

1 "(a) A father or a mother, provided they are
2 lawfully living together as husband and wife, shall have an
3 equal right to commence an action for an injury to their minor
4 child, a member of the family; provided, however, that in the
5 event such mother and father are not lawfully living together
6 as husband and wife, or in the event legal custody of such
7 minor child has been lawfully vested in either of the parties
8 or some third party, then and in either event the party having
9 legal custody of such minor child shall have the exclusive
10 right to commence such action

11 "(b) For purposes of this section, the term "minor
12 child" includes an unborn child in utero at any stage of
13 development, regardless of viability.

14 "(c) Nothing in this section shall make it a crime
15 to perform or obtain an abortion that is otherwise legal.
16 Nothing in this section shall be construed to make an abortion
17 legal which is not otherwise authorized by law.

18 "§6-5-391.

19 "(a) When the death of a minor child is caused by
20 the wrongful act, omission, or negligence of any person,
21 persons, or corporation, or the servants or agents of either,
22 the father, or the mother as specified in Section 6-5-390, or,
23 if the father and mother are both dead or if they decline to
24 commence the action, or fail to do so, within six months from
25 the death of the minor, the personal representative of the
26 minor may commence an action.

1 "(b) An action under subsection (a) for the wrongful
2 death of the minor shall be a bar to another action either
3 under this section or under Section 6-5-410.

4 "(c) Any damages recovered in an action under this
5 section shall be distributed according to the laws of
6 intestate succession, Article 3 (commencing with Section
7 43-8-40) of Chapter 8 of Title 43.

8 "(d) For purposes of this section, the term "minor
9 child" includes an unborn child in utero at any stage of
10 development, regardless of viability.

11 "(e) Nothing in this section shall make it a crime
12 to perform or obtain an abortion that is otherwise legal.
13 Nothing in this section shall be construed to make an abortion
14 legal which is not otherwise authorized by law."

15 Section 2. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended, because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

23 Section 3. This act shall become effective six
24 months following its passage and approval by the Governor, or
25 its otherwise becoming law.