

1 SB31
2 125321-6
3 By Senator Scofield
4 RFD: Health
5 First Read: 07-FEB-12
6 PFD: 08/05/2011

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8 SYNOPSIS: Existing law makes it a crime to knowingly,
9 intentionally, or recklessly expose a child to a
10 controlled substance, chemical substance, or drug
11 paraphernalia.

12 This bill would clarify the term "child" to
13 include an unborn child in utero at any stage of
14 development regardless of viability. This bill
15 would establish venue for prosecution for exposure
16 in utero in the county where the child is born.
17 This bill would create a rebuttable presumption of
18 exposure in utero if both the mother and the child
19 test positive for the same controlled substance not
20 prescribed by a physician.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

26 To amend Section 26-15-3.2, Code of Alabama 1975, to
27 provide that the term "child" includes an unborn child; to

1 establish venue; and to create a rebuttable presumption of
2 exposing a child in utero to a controlled substance if both
3 the mother and the child test positive for the same controlled
4 substance not prescribed by a physician.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 26-15-3.2, Code of Alabama 1975,
7 is amended to read as follows:

8 "§26-15-3.2.

9 "(a) A responsible person commits the crime of
10 chemical endangerment of exposing a child to an environment in
11 which he or she does any of the following:

12 "(1) Knowingly, recklessly, or intentionally causes
13 or permits a child to be exposed to, to ingest or inhale, or
14 to have contact with a controlled substance, chemical
15 substance, or drug paraphernalia as defined in Section
16 13A-12-260. A violation under this subdivision is a Class C
17 felony.

18 "(2) Violates subdivision (1) and a child suffers
19 serious physical injury by exposure to, ingestion of,
20 inhalation of, or contact with a controlled substance,
21 chemical substance, or drug paraphernalia. A violation under
22 this subdivision is a Class B felony.

23 "(3) Violates subdivision (1) and the exposure,
24 ingestion, inhalation, or contact results in the death of the
25 child. A violation under this subdivision is a Class A felony.

26 "(b) The court shall impose punishment pursuant to
27 this section rather than imposing punishment authorized under

1 any other provision of law, unless another provision of law
2 provides for a greater penalty or a longer term of
3 imprisonment.

4 "(c) It is an affirmative defense to a violation of
5 this section that the controlled substance or chemical
6 substance was provided by lawful prescription for the child,
7 and that it was administered to the child in accordance with
8 the prescription instructions provided with the controlled
9 substance or chemical substance.

10 "(d) For purposes of this section, the term "child"
11 includes, but is not limited to, an unborn child in utero at
12 any stage of development regardless of viability.

13 "(e) Where exposure occurs in utero, venue shall lie
14 in the county where the child is born.

15 "(f) A rebuttable presumption of exposure in utero
16 in violation of this section exists if both the mother and the
17 child test positive for the same controlled substance at the
18 time of birth and the controlled substance was not prescribed
19 by a licensed physician.

20 "(g) Any licensed physician providing medical care
21 and treatment to a mother or child shall not be subject to any
22 criminal liability under this section. Medical care and
23 treatment includes, but is not limited to, prescribing,
24 ordering, or administering medications or medical procedures.

25 "(h) It is an affirmative defense to a violation of
26 this section that the controlled substance was provided by
27 lawful prescription for the mother, and that it was

1 administered to the mother in accordance with the prescription
2 instructions provided with the controlled substance."

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