

1 HB8
2 125321-3
3 By Representative Long
4 RFD: Health
5 First Read: 01-MAR-11
6 PFD: 02/22/2011

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Section 26-15-3.2, Code of Alabama 1975, to
9 provide that the term "child" includes an unborn child; to
10 establish venue; and to create a rebuttable presumption of
11 exposing a child in utero to a controlled substance if both
12 the mother and the child test positive for the same controlled
13 substance not prescribed by a physician.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§26-15-3.2.

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

21 "(1) Knowingly, recklessly, or intentionally causes
22 or permits a child to be exposed to, to ingest or inhale, or
23 to have contact with a controlled substance, chemical
24 substance, or drug paraphernalia as defined in Section
25 13A-12-260. A violation under this subdivision is a Class C
26 felony.

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

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

9 "(b) The court shall impose punishment pursuant to
10 this section rather than imposing punishment authorized under
11 any other provision of law, unless another provision of law
12 provides for a greater penalty or a longer term of
13 imprisonment.

14 "(c) It is an affirmative defense to a violation of
15 this section that the controlled substance or chemical
16 substance was provided by lawful prescription for the child,
17 and that it was administered to the child in accordance with
18 the prescription instructions provided with the controlled
19 substance or chemical substance.

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

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

25 "(f) A rebuttable presumption of exposure in utero
26 in violation of this section exists if both the mother and the
27 child test positive for the same controlled substance at the

1 time of birth and the controlled substance was not prescribed
2 by a licensed physician."

3 "(g) Any licensed physician providing medical care
4 and treatment to a mother or child shall not be subject to any
5 criminal liability under this section. Medical care and
6 treatment includes, but is not limited to, prescribing,
7 ordering, or administering medications or medical procedures."

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

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Health 01-MAR-11

Read for the second time and placed on the calendar 1 amendment 09-MAR-11

Read for the third time and passed as amended..... 31-MAR-11

Yeas 71, Nays 28, Abstains 0

Greg Pappas
Clerk