

1 SB262
2 108754-1
3 By Senator Smith
4 RFD: Judiciary
5 First Read: 14-JAN-10

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8 SYNOPSIS: Under existing law, the party having legal
9 custody of a minor child shall have the exclusive
10 right to commence a personal injury action for the
11 minor child or an action involving the wrongful
12 death of the minor child.

13 This bill would provide that the party
14 having actual physical custody of a child pursuant
15 to an order of a court shall have the exclusive
16 right to commence a personal injury action for the
17 minor child or an action involving the wrongful
18 death of the minor child.

19 This bill would provide that a parent may be
20 deemed to have waived his or her share of damages
21 recovered in a wrongful death action of his or her
22 child if it is shown that the parent has withheld
23 from the child, without good cause or excuse, his
24 or her presence, care, love, protection,
25 maintenance, the opportunity for the display of
26 filial affection, failed to claim the rights of a

1 parent, or failed to perform the duties of a
2 parent.

3 This bill would provide that the same share
4 of damages recovered in a wrongful death of his or
5 her child due a parent shall be reduced by the
6 amount of past due child support owed by the
7 parent.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 To amend Sections 6-5-390, 6-5-391, and 43-8-42,
14 Code of Alabama 1975, relating to inheritance from a child; to
15 provide that the party having actual physical custody of a
16 child pursuant to an order of a court shall have the exclusive
17 right to commence a personal injury action for the minor child
18 or an action involving the wrongful death of the minor child;
19 to provide that a parent may be deemed to have waived his or
20 her share of damages recovered in a wrongful death action of
21 his or her child if it is shown that the parent has withheld
22 from the child, without good cause or excuse, his or her
23 presence, care, love, protection, maintenance, the opportunity
24 for the display of filial affection, failed to claim the
25 rights of a parent, or failed to perform the duties of a
26 parent; and to provide that the share of damages recovered in
27 a wrongful death of his or her child due a parent shall be

1 reduced by the amount of past due child support owed by the
2 parent.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 6-5-390, 6-5-391, and 43-8-42,
5 Code of Alabama 1975, are amended to read as follows:

6 "§6-5-390.

7 "A father or a mother, ~~provided they~~ who are
8 lawfully living together as husband and wife, shall have an
9 equal right to commence an action for an injury to their minor
10 child, a member of the family; ~~provided, however, that in the~~
11 ~~event such~~ if the mother and father are not lawfully living
12 together as husband and wife, or ~~in the event~~ if legal custody
13 of ~~such~~ the minor child has been lawfully vested in either of
14 the parties or some third party, then and in either event the
15 party having ~~legal custody of such minor child~~ actual physical
16 custody of the minor child pursuant to an order of a court
17 shall have the exclusive right to commence ~~such~~ the action.

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, except that:-

8 "(1) A parent shall be deemed to have waived his or
9 her share of damages recovered in an action under this section
10 if it is shown that the parent has withheld from the child,
11 without good cause or excuse, his or her presence, care, love,
12 protection, maintenance, the opportunity for the display of
13 filial affection, failed to claim the rights of a parent, or
14 failed to perform the duties of a parent.

15 "(2) The share of damages recovered in an action
16 under this section due a parent shall be reduced by the amount
17 of past due child support owed by the parent.

18 "§43-8-42.

19 "The part of the intestate estate not passing to the
20 surviving spouse under ~~section~~ Section 43-8-41, or the entire
21 intestate estate if there is no surviving spouse, passes as
22 follows:

23 "(1) To the issue of the decedent; if they are all
24 of the same degree of kinship to the decedent they take
25 equally, but if of unequal degree, then those of more remote
26 degree take by representation7.

1 "(2) If there is no surviving issue, to his or her
2 parent or parents equally~~7~~, except as provided in subsection
3 (c) of Section 6-5-391.

4 "(3) If there is no surviving issue or parent, to
5 the issue of the parents or either of them by representation~~7~~.

6 "(4) If there is no surviving issue, parent~~7~~, or
7 issue of a parent, but the decedent is survived by one or more
8 grandparents or issue of grandparents, half of the estate
9 passes to the paternal grandparents if both survive, or to the
10 surviving paternal grandparent, or to the issue of the
11 paternal grandparents if both are deceased, the issue taking
12 equally if they are all of the same degree of kinship to the
13 decedent, but if of unequal degree those of more remote degree
14 take by representation; and the other half passes to the
15 maternal relatives in the same manner; but if there be no
16 surviving grandparent or issue of grandparent on either the
17 paternal or the maternal side, the entire estate passes to the
18 relatives on the other side in the same manner as the other
19 half."

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