

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 10, 2014

1:09 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Charisse Millett  
Representative Lance Pruitt

**COMMITTEE CALENDAR**

HOUSE BILL NO. 258

"An Act establishing a right of action for the death of an unborn child in certain circumstances."

- MOVED CSHB 258(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 258

SHORT TITLE: WRONGFUL DEATH OF AN UNBORN CHILD

SPONSOR(S): REPRESENTATIVE(S) LEDOUX, HUGHES

01/21/14	(H)	PREFILE RELEASED 1/17/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	JUD
03/10/14	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CARL E. BRENT

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

SHELIA WALLACE

Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

SUZANNE HANCOCK

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

MARY HARNED, Staff Council

Americans United for Life

Washington D.C.

**POSITION STATEMENT:** Testified in support of HB 258.

LELA RAYMOND

Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

APRIL DISHNEAU

Palmer, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

KIMBERLY WALLACE-GOODWIN

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

JON GOODWIN

Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

GREG WALLACE

Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of HB 258.

#### **ACTION NARRATIVE**

[1:09:26 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Foster, LeDoux, Lynn, and Keller were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

#### **HB 258-WRONGFUL DEATH OF AN UNBORN CHILD**

[1:10:07 PM](#)

CHAIR KELLER announced that the only order of business would be HOUSE BILL NO. 258, "An Act establishing a right of action for the death of an unborn child in certain circumstances."

[28-LS1118\A]

1:10:45 PM

REPRESENTATIVE LEDOUX, speaking as one of the joint prime sponsors of HB 258, provided the following testimony:

Mr. Chairman, and members of the committee, thank you for hearing HB 258. HB 258 is going to ensure that parents who lose their unborn child through the unlawful or improper actions of another person have a path to justice. HB 258 would make Alaska civil law consistent with the criminal law passed in 2005 in regards to the criminal liability for the death of an unborn child. That law established that the unborn can be victims of murder, manslaughter and criminally negligent homicide in a criminal court. This law would mirror that and establish that a person could be held liable in civil court for the wrongful death of a child. HB 258 would extend the current statutes so that someone who causes the death of the unborn can be held accountable. Simply put, the same actions that can lead to criminal charges could now also lead to civil charges. HB 258 protects parents and provides a path for them towards healing. On behalf of the parents who never got to meet their children, I urge you to support HB 258.

1:12:12 PM

CARL E. BRENT remarked that after his family suffered a terrible loss, he was shocked Alaska was one of only 10 states that does not recognize deceased children in civil court. By passing HB 258 and SB 200 these children will be recognized in civil court and, also, in the future young couples will have somewhere to turn if a tragedy occurs.

1:14:32 PM

SHELIA WALLACE advised she is Jackson's grandmother and urged the committee to vote in favor of HB 258.

1:15:15 PM

SUZANNE HANCOCK stated that this legislation should be passed to keep Alaska in line with all but 10 other states, and in order that families would have available both criminal and civil penalties.

[1:16:30 PM](#)

MARY HARNED, Staff Council, Americans United for Life, presented the following testimony on behalf of Jackson's Law:

Alaska currently bars a cause of action, as you know, for the death of an unborn child unless the child is born alive and dies thereafter. This limitation starkly contrasts with Alaska's criminal law which recognizes that an unborn child at any stage of development may be considered a victim of murder, manslaughter, and criminally negligent homicide. The wrongful death cause of action is intended to correct a flaw in the common law where no cause of action survives the victim's death. Thus, a wrongdoer could escape liability by inflicting injury so severe that [it] resulted in the death of its victim. It is a terrible irony that was in the law before wrongful death statutes began to be enacted. Forty states recognize that a parent should be permitted to bring a wrongful death action when his or her unborn child dies in the womb as a result of a third party's criminal action, negligent malpractice, or production or distribution of an unsafe product. Tragically, Alaskan parents of unborn children who lose their lives because of the wrongful actions of others cannot receive this justice. These parents unquestionably have interests in the life, health, and wellbeing of their children. Wrongful behavior which results in the death of an unborn child carries the same social and emotional costs, including bereavement, a loss to society, and the lawlessness and disregard for life which characterizes negligence, harmful and wrongful behavior. Jackson's Law will extend this protection provided by the state's wrongful death statutes of all unborn children in Alaska. We thank you for your leadership in considering this important legislation. Thank you.

[1:18:35 PM](#)

LELA RAYMOND advised she was calling on behalf of her nephew, Tanner Eugene Richards, who was lost about 16 months ago; and his mother described how her niece, at full term, went to the emergency room of the hospital knowing something was seriously wrong. Several times her niece asked the nurse to call the doctor, which [the nurse] did not do for five hours. The baby

had a heart beat when they arrived, but by the time they left the hospital it did not and her niece had to wait to give birth to her dead baby. Ms. Raymond expressed the desire to have HB 258 passed in order to obtain justice on his behalf. Although the nurse admitted to the wrongful doing, the hospital had received new equipment and the nurse had not been properly [trained] on the equipment. Therefore, the fault belonged to more than one person, she opined. She further opined that in order for people to learn from mistakes there should be repercussions.

[1:21:04 PM](#)

APRIL DISHNEAU stated support for HB 258. She then related that tomorrow her son would have been 3 years old. Ms. Dishneau explained that she had a "super high risk" pregnancy. When she was full term, she was at the hospital but was sent home two days in a row even though she was dilated and knew something was wrong; and while at home her placenta ruptured. Her family lives with this loss every day, she stated.

[1:23:07 PM](#)

KIMBERLY WALLACE-GOODWIN related that she lost her son, Jackson Wallace-Goodwin on December 6, 2012. When a child passes it impacts the entire family, including the grandparents, aunts and uncles, friends and their families. There is joy and hope surrounding a pregnancy and when the unborn child does not have a life in this world it is devastating for all of those impacted. She urged the committee support HB 258 and give a voice to those who do not have a voice.

[1:24:28 PM](#)

JON GOODWIN advised that Kimberly [Wallace-Goodwin] is his wife and he is in support of Jackson's Law. Shortly after Jackson passed he was shocked that the State of Alaska does not recognize unborn children in civil court. These full-term babies are not fetuses but fully developed babies [that died] due to poor health care, health care providers, or mistakes. Therefore, there must be a provision within the law that will allow for retribution. Mr. Goodwin advised he has been to Iraq and Afghanistan six times, lost four good friends in a ball of fire, and he was shot down in 2005. He said he knows what Post-Traumatic Stress Disorder (PTSD) looks like and has had to relive it due to the trauma experienced with Jackson. There is no pain worse than the loss of a child whether the child is

still born or not, he opined. He expressed hope that the passage of Jackson's Law will create a change in the attitudes people bring forth to these unborn children. Once someone is found accountable for their actions, maybe they will choose to be more diligent at their job. Mr. Goodwin stressed his belief that Jackson's Law is right for Alaska as it is similar to laws in 40 other states, yet is crafted to harmonize with Alaska law. Drawing from an ethics law class, he related that the community that feels no moral indignation over the crime being committed against one of its members, and fails to stand up for that member, fails to show the respect that victims deserve.

[1:30:46 PM](#)

REPRESENTATIVE LYNN thanked Mr. Goodwin for his service overseas.

[1:31:00 PM](#)

GREG WALLACE, a 30-year resident of Alaska, advised that Jackson [Wallace-Goodwin] was his grandson. He emphasized that the travesty of death is an issue everyone has to deal with as it takes place in different ways, whether it is our military warriors, children, or grandchildren. Mr. Wallace urged the passage of HB 258.

[1:35:12 PM](#)

REPRESENTATIVE GRUENBERG moved the committee adopt Amendment 1, labelled 28-LS1118\A.1, Wallace, 3/10/14, which read:

Page 2, following line 9:

Insert a new bill section to read:

"\* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. This Act shall apply to actions arising from a wrongful act or omission that takes place on or after the effective date of this Act."

REPRESENTATIVE GRUENBERG, stating support for HB 258, explained Amendment 1 amends the wrongful death statute, not the survivor statute. He related his belief it goes with the [Federal Unborn Victims of Violence Act] and expressed the desire to be sure there was no question on the applicability.

CHAIR KELLER objected for discussion.

[1:35:54 PM](#)

REPRESENTATIVE LEDOUX, characterizing Amendment 1 as a friendly amendment, stated she agrees with Amendment 1.

[1:36:02 PM](#)

CHAIR KELLER removed his objection. There being no further objection, Amendment 1 was adopted.

[1:36:13 PM](#)

REPRESENTATIVE LYNN moved to report HB 258 out of committee, as amended, with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 258(JUD) was reported from the House Judiciary Standing Committee.

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[1:37:20 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:37 p.m.