HB

258

<TARGET><BILL>HB 258</BILL><SUBJECT>HB 258</SUBJECT><COMM>HJUD28</COMM></TARGET>

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: January 21, 2014 **FURTHER REFERRALS:**

Date of Committee Action: 3/10/14

The JUDICIARY Committee considered: **HB 258**

HOUSE BILL NO. 258
"An Act establishing a right of action for the death of an unborn child in certain circumstances."
HB 258-WRONGFUL DEATH OF AN UNBORN CHILD

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB 258 (JUD)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ [✓] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
FED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*FN# is assigned by Chief Clerk's Office

*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	LAW			✓

***PREVIOUS* FISCAL NOTES**

FN#	List by Dept(s):	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[illegible]	LeDoux	X			
[illegible]	Foster			X	
[illegible]	Greenberg	✓			
[illegible]	LYNN	X			
Chair: [illegible]	Keller	X			
Chair:					

CS FOR HOUSE BILL NO. 258(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LEDOUX AND HUGHES, Lynn, Peggy Wilson, Isaacson, Gattis, Reinbold, Keller

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as Jackson's Law.

*** Sec. 2.** AS 09.15 is amended by adding a new section to read:

Sec. 09.15.018. Action for wrongful death of an unborn child; applicability. (a) A parent of an unborn child may maintain an action as plaintiff for the death of an unborn child that was caused by the wrongful act or omission of another.

(b) This section does not apply to acts or omissions that

(1) cause the death of an unborn child if those acts or omissions are committed during a legal abortion to which the pregnant woman or a person

1 authorized by law to act on her behalf consents or for which consent is implied by law;
2 (2) are committed under usual and customary standards of medical
3 practice during diagnostic testing, during therapeutic treatment, or while assisting a
4 pregnancy; or
5 (3) are committed by a pregnant woman against herself and her unborn
6 child.
7 (c) In this section,
8 (1) "abortion" has the meaning given in AS 18.16.090;
9 (2) "unborn child" has the meaning given in AS 11.81.900.
10 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:
12 TRANSITION. This Act shall apply to actions arising from a wrongful act or
13 omission that takes place on or after the effective date of this Act.

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501
Phone: (907) 269-0216
Fax (907) 269-0218
Rep.Gabrielle.LeDoux@akleg.gov

Session:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-4998
Fax: (907) 465-4419
Toll Free: (800) 698-4998

REPRESENTATIVE GABRIELLE LEDOUX
WWW.GABRIELLELEDOUX.COM

Memorandum

TO: Representative Wes Keller Judiciary Committee, chair

FROM: Representative Gabrielle LeDoux

SUBJECT: Hearing Request for HB 258

I respectfully request a committee hearing for HB 258 **"An Act establishing a right of action for the death of an unborn child in certain circumstances."** House Bill 258, also known as Jackson's Law, 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.

Thank you for considering my request.

Gabrielle LeDoux

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SPONSOR STATEMENT

HB 258

House Bill 258, also known as Jackson's Law, 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.

Right now there is no legal recourse for Alaskan parents to pursue when their unborn baby dies due to negligent or malevolent conduct. It is a perverse oversight that a child can die in the womb with no consequences for the responsible party; they can get off scot-free simply because the child they injured died as a result of those injuries. Jackson's Law would rectify this.

Specifically, Jackson's Law would make Alaskan civil law consistent with the criminal law passed by this body in 2006 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. Jackson's Law would extend the current statutes so that someone who causes the death of the unborn can be held to account. Simply put, the same actions that can lead to criminal charges could now also lead to civil charges.

Alaska is one of only ten states that do not allow the parents of an unborn victim to seek accountability or damages from the guilty party. This has to change. Expanding Alaska's wrongful death statutes to cover the state's unborn children is a moral imperative, an easy fix, and just common sense. Jackson's Law protects parents and provides a path toward healing.

On the behalf of the parents who never got to meet their children, I urge you to support HB 258.

28-LS1118\A.1
Wallace
3/10/14

#1 adopted unanimously

AMENDMENT

By Gruenberg

OFFERED IN THE HOUSE

TO: HB 258

1 Page 2, following line 9:

2 Insert a new bill section to read:

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

4 read:

5 TRANSITION. This Act shall apply to actions arising from a wrongful act or

6 omission that takes place on or after the effective date of this Act."

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Sectional Analysis

HB 258 "An Act establishing a right of action for the death of an unborn child in certain circumstances."

Section 1. Provides a short title, "Jackson's Law".

Section 2. Authorizes a wrongful death action by a parent of an unborn child for the death of an unborn child.

Section 3. Provides that the section does not apply to specified circumstances.

Section 4. Gives the definition for abortion and unborn child.

FISCAL NOTE

STATE OF ALASKA
2014 LEGISLATIVE SESSION

Bill Version: **HB 258**
Fiscal Note Number:
() Publish Date:

Identifier (file name): HB258-LAW-CIV-03-07-14
Title: WRONGFUL DEATH OF AN UNBORN CHILD
Sponsor: REPRESENTATIVE(S) LEDOUX, HUGHES, LYNN,
Requester: (H) JUDICIARY

Dept. Affected: LAW
Appropriation: Civil Division
Allocation: Torts and Workers' Compensation
OMB Component Number: 2719

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY15 Appropriation Requested	Included in Governor's FY15 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY15**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)							
1156	Rcpt Svcs (DGF)							
		0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY14) operating costs _____ *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY15) costs _____ *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version, not applicable.

Prepared by: Loretta Withington, Division Operations Manager
Division: Department of Law
Phone: 465-5427
Date/Time: 3/7/14 3:15 PM

Approved by: Michael C. Geraghty, Attorney General
Division: Department of Law
Date: 3/7/2014

(Revised 8/16/2013 OMB)

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HB 258

Analysis

The bill establishes a new civil right of action for the death of an unborn child in certain circumstances. The bill allows the parent of an unborn child whose death is caused by the wrongful act or omission of another to sue for damages – such as when a pregnant woman's child is killed as a result of domestic violence or in a drunk driving accident. The bill does not apply to acts or omissions that cause the death of the unborn child due to a lawful abortion or specified medical practice or are caused by the pregnant woman herself, such as in an attempted suicide.

The Department of Law does not foresee a fiscal impact as a result of the bill passage.

We are parents who never got to meet our children and we urge you to support House Bill 258.

Currently Alaska has no protections in place for parents like us who have lost their unborn children through someone else's careless or injurious actions. Jackson's Law, HB 258, is named after one of those children who never got to experience life. HB 258 will guarantee that the parents of babies like Jackson have the ability to steer their feeling of grief towards one of closure.

We are not seeking financial gains. This is not about money. But as of now we have no way to hold those who killed our babies to account. It is unconscionable that someone could cause our children to die in the womb with no fear of consequences or even an acknowledgment of their culpability for our grief. We can fix this by passing Jackson's Law.

It was decided in 2006 to recognize unborn victims of injury or homicide as the victims of a crime. Jackson's Law merely takes this a step further and allows grieving parents like us to take legal action against the people responsible. It allows us to move on. Expanding the law so that we have the option of justice, so that parents robbed of their children have some avenue of justice to pursue is a moral imperative. Jackson's Law could do that for us simply by expanding the current laws so that someone whose actions cause the death of an unborn child can be tried in a civil court.

On behalf of all parents and children, please pass HB 258

Carl E Brent grandson Nace 9/4/13

Travis Richards Minna Sawyer ~Son Tanner 11/11/12

AMERICANS UNITED FOR LIFE

February 10, 2014

Representative Gabrielle LeDoux
State Capitol, Room 416
Juneau, AK 99801-1182

Dear Representative LeDoux:

On behalf of Americans United for Life, the legal architects of the prolife movement, I write in support of Alaska House Bill 258, "Jackson's Law." Jackson's Law will establish that "a parent of an unborn child may maintain an action as plaintiff for the death of an unborn child that was caused by the wrongful act or omission of another."

Alaskan law currently bars a cause of action 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: At common law, no cause of action survived a victim's death. Thus, a wrongdoer could escape liability merely because he inflicted injuries so severe that they resulted in the death of his victim.

Wrongful death statutes corrected this injustice for many by providing for damages to be paid by the wrongdoer to his victim's survivors. Further, 40 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 the result of a third party's criminal action, negligence, malpractice, or production or distribution of an unsafe product.

Tragically, Alaskan parents of unborn children who lose their lives because of the wrongful acts or omissions of others cannot receive this justice. Parents of unborn children 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 cost as that which results in the death of a born human being including bereavement, a loss to society, and the lawlessness and disregard for life which characterizes negligent, harmful, and wrongful behavior.

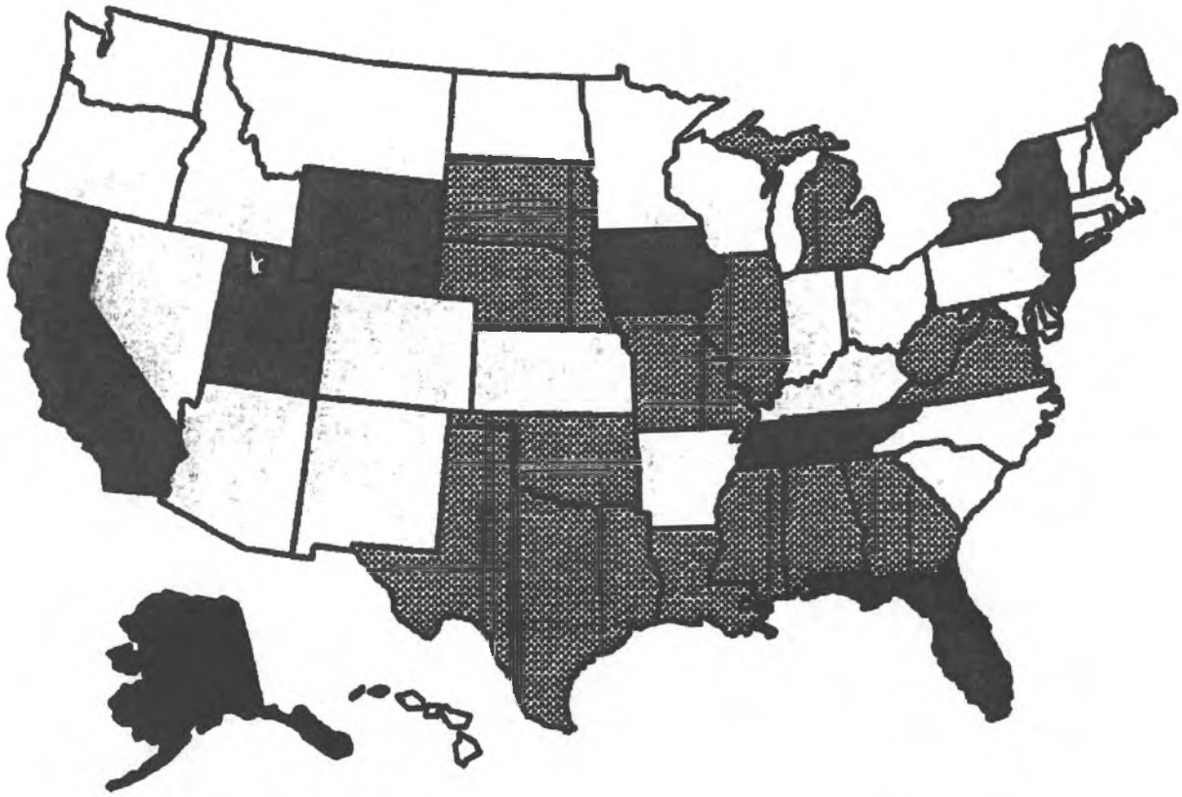
Jackson's Law will extend the protections provided by the state's wrongful death statute to all unborn children in Alaska. We thank you for your leadership in introducing this important legislation.

Sincerely,

/s/ Mary E. Harned
Staff Counsel
Americans United for Life

cc: Members of the Alaska State House of Representatives

STATE OF THE STATES:
WHERE ARE WE NOW?
WRONGFUL DEATH (CIVIL ACTION)



Twenty-seven states and the District of Columbia permit a wrongful death action if an unborn child was viable at the time of his/her death: AZ, AR, CO, CT, DE, DC, HI, ID, IN, KS, KY, MD, MA, MN, MT, NV, NH, NM, NC, ND, OH, OR, PA, RI, SC, VT, WA, and WI.

Thirteen states allow suits for a pre-viable unborn child: AL, GA (limited to quickening), IL, LA, MI, MS (limited to quickening), MO, NE, OK, SD, TX, VA, and WV.

Ten states still require live birth (and bar a cause of action for the death of the unborn child unless the child is born alive and dies thereafter): AK, CA, FL, IA, ME, NJ, NY, TN, UT, and WY.