

Abortion rights foes look to spread fetal pain law

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(AP) -- Abortion rights foes emboldened by a new Nebraska law that restricts late-term procedures based on the disputed notion that fetuses can feel pain after 20 weeks are pushing for similar legislation in other states, particularly those where Republicans won big in November.

National Right to Life held a strategy conference this week in Arlington, Va., to offer its state affiliates guidance for the 2011 legislative session. Indiana, Iowa and Kentucky lawmakers have already started drafting bills similar to Nebraska's law, and abortion opponents are pushing lawmakers in Kansas, Maryland and Oklahoma to do the same.

"What Nebraska did was fantastic," said Margie Montgomery, the executive director of Kentucky Right to Life. "That makes us more excited about it. Now we can point to it - it's already a law in Nebraska. That's really good for us."

Nebraska's law, which took effect Oct. 15, outlaws abortion after 20 weeks of pregnancy based on the disputed claim that [fetuses](#) can feel pain after that point. It is a departure from the standard of viability, established by the 1973 landmark ruling in *Roe v. Wade*, which allows states to limit abortions in cases where there's a viable chance the fetus could survive outside of the womb, generally considered to be between 22 and 24 weeks.

Dr. LeRoy Carhart, one of the nation's few late-term abortion providers who runs a clinic near Omaha, and his backer, the New York City-based

Center for Reproductive Rights, have threatened to challenge the Nebraska law in court. Dionne Scott, a spokeswoman for the center, said it would file a challenge "when the circumstances are appropriate." But losing such a challenge would risk having the court throw away the viability standard in favor of a pain standard, which could be further lowered should it be proven fetuses feel can feel pain earlier than 20 weeks.

While some doctors contend that fetuses can feel pain after 20 weeks, the American Congress of Obstetricians and Gynecologists says it knows of no legitimate evidence showing a fetus can ever experience pain. It says a fetus' brain begins its final stage of development between the 20th and 40th weeks of pregnancy, and that certain hormones that develop in the final trimester also must be present for it to feel pain. It's not known exactly when those hormones form.

Nevertheless, the passage of Nebraska's law and the Republican Party's newfound power have emboldened those who want to outlaw abortion.

Mary Spaulding Balch, the legislative director for National Right to Life, said those working to outlaw abortion will be able to "do more in states where we haven't been able to do much in the past." She declined to name the states being targeted.

In Kentucky, Montgomery said, Republican gains in the state House offer hope for passage of a fetal pain law. She said several lawmakers have shown interest in introducing a bill, which would have to pass through committee before getting a floor vote.

"Once it gets to the floor, we know it's going to pass," she said.

House Minority Whip David Floyd, R-Bardstown, said at least two lawmakers are preparing a bill and agreed that it has a better shot -

although not a definite one - at becoming law. He said he has no doubts it will pass in the Senate, which historically has been favorable toward abortion restrictions, but getting a floor vote in the House remains a challenge.

It "will depend, once again, on the Democratic majority, who are reluctant to let anything through pro-life on the floor," Floyd said.

Facing limitations in Nebraska, Carhart recently announced he was expanding his practice across the state line to Council Bluffs, Iowa, and in Germantown, Md., and Indianapolis - locations with less-restrictive state laws.

But lawmakers in Iowa and Indiana - wary of Carhart and hoping to play off strong Republican gains in their statehouses - are already drafting fetal pain legislation.

Rep. Matt Windschitl, a Missouri Valley Republican and a board member of Iowa Right to Life, said keeping Carhart out of Iowa will be among his highest priorities when the Legislature convenes next month. Republicans have gained control of the state House and governor's office and closed the gap in the state Senate. Windschitl said he's confident that a fetal pain bill will pass through the House and hopes it will gain traction in the Senate.

"This issue bridges party lines," he said. "Whether you're a pro-choice Republican or pro-choice Democrat, it doesn't matter. When you talk about killing a baby at 16-20 weeks, that's pretty far along and I think that's something everyone can get behind."

But with many states also facing budget problems, social issues such as abortion could fall to the wayside. Governors in Iowa, Indiana and elsewhere have pledged to make the budget a priority.

Indiana state Sen. Greg Walker, R-Columbus, said his colleagues have spoken at length about the priority that will be given to fiscal issues and he doesn't see the budget as a roadblock.

"We have the ability to entertain more than one idea at a time," said Walker, who is working with state Rep. Wes Culver, R-Goshen, on a fetal pain bill.

Republicans won control of the Indiana House in the November election, so the GOP now controls the House, Senate and governor's office. Walker said lawmakers in both parties have been receptive toward abortion restrictions but a change in House leadership makes the prospect of passing his bill much greater.

Carhart "has to leave Nebraska if he wants to practice as he has in the past . . . We're asking to him to find another home than Indiana," Walker said.

Jordan Goldberg, the legislative counsel for the Center for Reproductive Rights, said Nebraska's law and similar legislation "are about taking the decision about abortion away from a woman and her doctor - no matter what her circumstances might be - and giving the power to make that decision to legislators instead."

Goldberg said lawmakers have more serious issues than abortion - such as the economy - to worry about next session and shouldn't "waste state time" on fetal pain legislation that's not backed by medical science.

Hundreds of abortion opponents protested this week outside Carhart's new clinic in Maryland. Republican state Delegate Donald H. Dwyer, an anti-abortion leader in the Democrat-controlled Maryland General Assembly, said that amid heightened awareness prompted by Carhart's plans, he will organize like-minded legislators to propose bills next year

tightening abortion-clinic regulations.

While not mentioning fetal pain specifically, Dwyer said: "We're going to look at all options to address the issue of late-term abortions in this state. I think it's a travesty that we continue to allow that and that we've never addressed it legislatively."

[Abortion](#) opponents in Kansas and Oklahoma say they're making a similar push for fetal pain legislation, but no lawmakers have publically announced their support.

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