

# Pro-Life Wisconsin

Defending them all...

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## **Exception in Pain Capable Unborn Child Protection Act Denies Equal Protection, Undermines Fetal Pain Argument**

MADISON - State Republican legislators on Thursday circulated legislation for co-sponsorship that prohibits abortion at or beyond 20 weeks based on the preborn child's capacity to feel pain at that gestational age. The *Pain Capable Unborn Child Protection Act* (LRB 0401/1) includes an exception to the prohibition for a "medical emergency," as broadly defined in Wisconsin Statutes.

"Pro-Life Wisconsin supports banning abortion based on the preborn child's ability to feel pain, but it is utter hypocrisy for proponents of the bill to decry the horror of dismembering a child through a dilation and evacuation abortion and then carve out an exception for babies whose mother's lives may be endangered, as if those babies somehow don't feel pain," said Matt Sande, Pro-Life Wisconsin Legislative Director. "We urge legislators to refrain from co-sponsoring this bill until the medical emergency exception is fully removed."

There are no situations where abortion, defined as the direct and intentional killing of an unborn child, is medically necessary to save the life of the mother. Over 900 pro-life doctors and medical researchers have signed the [Dublin Declaration](#), a document stating that abortion is never medically necessary to save a mother's life. Even abortionists agree that abortion is not necessary to save a woman's life. Former abortionist Dr. Bernard Nathanson, who himself performed over 30,000 abortions, said "if women with heart and liver transplants can be carried successfully through pregnancy, we can no longer conceive of any medical condition which would legitimize abortion. In short, we have slowly evolved to an unshakable posture of no exceptions...[W]orkable, morally acceptable legislation proscribing abortion can have no exceptions written into it – not even medical ones." (Bernadell Technical Bulletin, April 1991)

"One should never attempt to codify in law the importance of one innocent human life over and above another," said Sande. "Not only is the medical emergency exception a patent denial of equal protection under the law, it undermines the legal premise of the bill by removing the focus on the baby's pain and shifting it to the mother's health. Certainly the courts will see right through

this and recognize the legislation as an attempt to ban late term abortion, rather than shielding the baby from pain. The argument is lost before it is made.”

LRB 0401/1 requires the abortionist to make a statement “whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive,…”

“This clause in the legislation is nonsensical, given the definition of direct abortion used in the bill” said Sande. “What method of abortion would ensure a baby’s likely survival? Such language has no place in a pro-life bill. To be sure, there is a moral and effective way to address the mother’s life in pro-life legislation. 2006 South Dakota House Bill 1215 provides a good example of requiring equal protection for mother and child and granting the physician immunity if he or she follows the requirement.”

The language reads:

*No licensed physician who performs a medical procedure designed or intended to prevent the death of a pregnant mother is guilty of violating section 2 of this Act. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with conventional medical practice. Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of this statute. (Section 4, 2006 South Dakota HB 1215)*

“The abortion industry never capitulates, never gives an inch on its abortion on demand position,” concluded Dan Miller, Pro-Life Wisconsin State Director. “Why should we? All 89 babies that we are fighting for here are worth the effort, and Pro-Life Wisconsin will not throw any of them under the bus. We pray that together, all pro-life legislators and organizations can unite behind a fetal pain bill that is both moral and effective. Let’s do the right thing.”