

## **BILL ANALYSIS**

H.B. 2  
By: Laubenberg  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties, in addressing matters related to the regulation of abortion procedures, providers, and facilities, contend that certain scientific evidence suggests that a preborn child is capable of feeling pain at 20 weeks post-fertilization because all the neuroreceptors for pain are in place and functioning. The parties also point to a recent study by the University of Arkansas for Medical Sciences that notes that fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that are illustrative of pain signaling. These parties contend that this medical and scientific evidence shows that there is a need to enact the Preborn Pain Act and to establish a separate and independent compelling state interest in protecting the life of an unborn child from the stage at which this reported evidence indicates the unborn child is capable of feeling pain. In addition, the parties note that other states have adopted preborn pain laws similar to provisions contemplated by H.B. 2.

Furthermore, the parties emphasize that certain standards of care also need legislative action, including standards of care relating to the active admitting privileges of a physician performing or inducing an abortion, relating to abortion-inducing drugs, and relating to abortion facilities.

H.B. 2 seeks to address issues relating to the regulation of abortion procedures, providers, and facilities.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2 amends the Health and Safety Code to require a physician performing or inducing an abortion to, on the date the abortion is performed or induced, have active admitting privileges at a hospital that is located not further than 30 miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services. The bill requires the physician to provide the pregnant woman with certain contact information for potential medical assistance needed after the abortion and makes it a Class A misdemeanor offense punishable by a fine not to exceed \$4,000 for a physician to violate these requirements.

H.B. 2 establishes the Preborn Pain Act to prohibit a physician from performing or inducing or attempting to perform or induce an abortion without, prior to the procedure, making a determination of the probable post-fertilization age of the unborn child or possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician. The bill defines "post-fertilization age" as the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum. The bill prohibits a person from performing or inducing or attempting to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the

abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

H.B. 2 requires a physician performing an abortion under certain excepted circumstances specified by the bill in which the probable post-fertilization age of the unborn child is 20 or more weeks or the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive. The bill exempts from the prohibitions and requirements of the Preborn Pain Act an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable, the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child, the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks, or the use of a method of abortion other than the method that provides the best opportunity for the unborn child to survive. The bill prohibits a physician from taking such an authorized action if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function. The bill exempts from the prohibitions and requirements of the Preborn Pain Act an abortion performed on an unborn child who has a severe fetal abnormality, defined as a life-threatening physical condition that, in reasonable medical judgment, is incompatible with life outside the womb regardless of the provision of lifesaving medical treatment.

H.B. 2 establishes that in a civil or criminal proceeding or action involving an act prohibited under the Preborn Pain Act the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure. The bill requires the court, in such a proceeding or action, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure. The bill authorizes a court to order the disclosure of such confidential information if a motion is filed with the court requesting release of the information and a hearing on that request, if notice of the hearing is served on each interested party, and if the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

H.B. 2 requires the provisions of the Preborn Pain Act to be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save those provisions from judicial invalidation and establishes that judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

H.B. 2 requires any court that determines that a provision of the Preborn Pain Act is unconstitutionally vague to interpret the provision, as a matter of state law, to avoid the vagueness problem and to enforce the provision to the maximum possible extent. The bill requires the Supreme Court of Texas, if a federal court finds any such provision or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by the bill, to provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent and to agree to answer any question certified from a federal appellate court regarding the statute.

H.B. 2 prohibits a state executive or administrative official from declining to enforce the

provisions of the Preborn Pain Act or from adopting a construction of the provisions in a way that narrows the act's applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing those provisions. The bill prohibits the provisions of the Preborn Pain Act from being construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of the act.

H.B. 2 prohibits a person from knowingly giving, selling, dispensing, administering, providing, or prescribing an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician and the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug, except that a person may provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013. The bill requires a physician, before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, to examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

H.B. 2 requires a physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to provide the pregnant woman with a copy of the final printed label of that drug and certain contact information for potential medical assistance needed after the administration or use of the drug. The bill requires the physician, or the physician's agent, to schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug, at which the physician is required to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The bill requires the physician or the physician's agent to make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit and requires the physician or the physician's agent to document a brief description of any effort made to comply with this requirement, including the date, time, and name of the person making the effort, in the woman's medical record.

H.B. 2 requires a physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion and who knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug to report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred. The bill requires the Texas Medical Board to enforce the bill's provisions relating to abortion-inducing drugs and authorizes the board to take disciplinary action or assess an administrative penalty under the Medical Practice Act against a person who violates the bill's provisions relating to the distribution of such drugs. The bill prohibits such a penalty from being assessed against a pregnant woman who receives a medical abortion.

H.B. 2 requires the minimum standards for an abortion facility, on and after September 1, 2014, to be equivalent to the minimum standards adopted for ambulatory surgical centers and, effective September 1, 2014, repeals a statutory provision prohibiting certain minimum standards for abortion facilities from being more stringent than Medicare certification standards. The bill requires the executive commissioner of the Health and Human Services Commission to adopt the required minimum standards not later than January 1, 2014, and specifies that a licensed abortion facility is not required to comply with the adopted standards before September 1, 2014. The bill requires the probable post-fertilization age of the unborn child, rather than the period of gestation, to be included in the annual report required to be submitted to the Department of State Health Services by an abortion facility on each abortion performed at the abortion facility.

H.B. 2 amends the Occupations Code to make it a prohibited practice for a physician or an applicant for a license to practice medicine to perform or induce or attempt to perform or induce an abortion in violation of the Preborn Pain Act. The bill exempts a violation of the act from the criminal penalties provided under statutory provisions relating to practicing medicine in violation of the Medical Practice Act. The bill provides for the construction, enforcement, and severability of its provisions.

H.B. 2 repeals Section 245.010(c), Health and Safety Code, effective September 1, 2014.

**EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.