

**Steering Committee:**

Bill Callegari, Chairman  
Alma Allen, Vice Chairman

Rafael Anchia  
Drew Darby  
Joe Deshotel

Joe Farias  
Harvey Hilderbran

Donna Howard  
Susan King  
George Lavender

Tryon Lewis  
J.M. Lozano

Eddie Lucio III  
Diane Patrick  
Joe Pickett

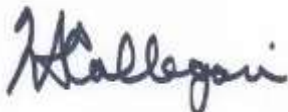
# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, July 9, 2013  
83rd Legislature, Second Called Session, Number 2  
The House convenes at 10 a.m.

HB 2 by Laubenberg, et al., has been set on the Major State Calendar for second reading consideration today and is analyzed starting on page 1.

The House Appropriations Committee had a public hearing scheduled for 8 a.m. in Room E1.030. The House Criminal Jurisprudence Committee had a formal meeting scheduled for 9 a.m. in Room 3W.9.



Bill Callegari  
Chairman  
83(2) – 2

SUBJECT: Regulating abortion procedures, providers, and facilities

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Craddick, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee

3 nays — Giddings, Farrar, Sylvester Turner

2 absent — Menéndez, Oliveira

WITNESSES: For — Elaine Balsley and Dorothy Richardson, Houston Coalition for Life; Gary Bennett, Center for the Preservation of American Ideals; Adryana Boyne, Voces Action; Barbara Crum and John Seago, Texas Right to Life; Dianne Edmondson, Republican National Coalition for Life and Denton County Republican Party; Sylvia Guzman, Amigos de Patriots; Deborah Hinkle, Lutherans for Life; Mary Catharine Maxian, Texas Right to Life; Deborah McGregor, Care Net Pregnancy Center of Central Texas; Elida Munoz, CPLC; Allan Parker, The Justice Foundation; Donna Schmidt, Life Choices Medical Center; David Welch, Texas Pastor Council; Molly White, Operation Outcry; and 36 others; *(Registered, but did not testify:* Stephanie Alban, Elizabeth Graham, Camp Huntington, Amy Luttrell, Lisa Morgan, Ann Parker, Vanessa Rodriguez, Rebecca Welch, Ricky Welch, and Valerie Welch, Texas Right to Life; Sharron Albertson, Suzanne Blackstone, Linda Elliott, and Linda Howard, Golden Corridor Republican Women; Amanda Andrews and Wesley Andrews, Williamson County Cowboy Church; Cindy Asmussen, Karen Lange, Gloria Pope, Jack Pope, Daniel Ramirez, Nancy Jane Ramirez, and Michelle Smith, Concerned Women for America; Nayeli Aviles, Charlie Beard, Rachel Bedknorek, Danielle Cowen, Lara Hector, Ann Weesner, and John Wenske, Pro Life; Mayela Banks, Jennifer Martinez, Denise Seibert, and Kathryn Stewart, Operation Outcry; Honorio Barahona and Luz del Carmen Luna, Cristo Rey Church; Yessy Benitez and Jose Salvador Martinez, Cristo Rey Catholic Church; Gary Bennett, Life Speaks; Mary Berger, Project Gabriel; Ana Bernal, Ashley Granger, Nichola Morrison, and Wes Morrison Central Texas Coalition for Life; Patty Blaszak and Jennifer Pelletier, St. Joseph Catholic School; Christine Bashara, Erin Blauvelt, Rachana Chhin, Deirdre Cooper, Christopher Maska, Beverly Nuckols, Joe Pojman, and Lauren Romero, Texas

Alliance for Life; John Boonzaaijer, Anglican Church in North America; John Boore, Ray Clark, Elizabeth Hooper, Mike Hooper, Debbe Johnson, Rachel Santiago, and Ted Seago, Grace Community Church; Garrett Booth, Grace Church; Megan Bray, Renee Frias, Virginia Losoya, Lillian Oberg, and Matt Schima, San Antonio Coalition for Life; Judy Brisky and Leah Morris, Tarrant County Eagle Forum; Button, St. Mary of the Visitation Parish; Adam Cahn, Cahnman's Musings; Kathryn Casey, St. Elizabeth Adoration Group; Blanca Catala Ivanetz de Lara, Reyna Carolina Fernandez, and Beatriz Torrellas, Emc Pregnancy Center; Alexander Choyce, Eagles for Life; Joshua Clemmons, Catholic Charities of Dallas; Brent Connett, Texas Conservative Coalition; Sheri Danze, JP II Life Center; Jessica Davis, St. Thomas the Apostle Catholic Church; Walter Davis, Griselda Melgares, Estephania Melgares Arcos, Brianna Prada, Brittany Prada, Oscar Prada, Amanda Reed, and Pamela Whitehead, Love Lets Live Powerhouse Church; Evelyn Davison, Onpointbroadcasting.com; Chloe Dayton, Isabel Dayton, Lylia Dayton, Christina Kent, and Zac Tinney, NorthWest Fellowship; Hannah Dayton, Catalyst Teen Center; Nicholas Gamez, NorthWest Fellowship Church; James Dickey, Central Texas Republican Assembly; Todd Dorn, Vida en Misericordia; Julie Drenner and Jonathan Saenz, Texas Values; Rosemary Edwards, Travis County Republican Party; Carol Everett, Women's Wellness Coalition; Charity Farrar and Lenae Hicks, Life Choices Medical Clinic; Savanna Faulkner and Danielle Taimuty, Texas Students for Life; Gabriela Federico, 40 Days for Life - El Paso; Briana Feiler, Roman Catholic Diocese of Austin; John Finkbohner, Mona Finkbohner, and Dot Hogue, Texans for Life Coalition; Jon Francis, The Thirteen Foundation; Joseph Francis, Pro Life Aggies; Betty Garcia, Texans for Life Committee; Cecelia Garcia and Jo Ann Wiese, Pro-life Waco; Karen Garnett, Angela Heiter, Agustina Jinez, Rita Pilgrim, Karen Ward, and Nancy Ward, Catholic Pro Life Committee; Jan Gentry, Jennie Gilchrist, and Ann Quest, Dallas Eagle Forum; MerryLynn Gerstenschlager, Texas Eagle Forum; Mary Guzman, Back to Life Movement; Margie Harris, Tea Party and Right to Life; Corey Haughton, Denton County Republican Party Precinct 1003; Rendie Haynes, Catholic Charities of the Archdiocese of Galveston-Houston; Amanda Hayre, Brenham Bible Church; Kathleen Hazlewood, PCC-Huntsville; Graciela Hemmi, St. Catherine of Siena Church; Destiny Herndon-DeLaRosa and Virginia Richard, New Wave Feminists; Ann Hettinger, Concerned Women for America of Texas; Fredric Hinkle and Ethlene Marshall, Lutherans for Life; Julia Holcomb, Silent No More; Judy Holladay, Lay Missionary of Charity; Kelly Holt, Texas Chapters of the John Birch Society; Margaret

Hotze, Life Advocates; Allen Hwnderon, My Baby & Me Maternity Home; Connie Jackson, Kerry Lorey, Freddy Rodriguez, Susan Rodriguez, Dorinda Sims, and Diane Truitt, CPAI; Earl Jackson, Center for Preservation of American Ideals; Lee Stuart Johnson, Grace International Churches and Ministries; Summer Johnson, Back 2 Life; Ruth Kolek and Nance Shaw, Pro Life Organization of Grimes and Waller Counties; Brenda Lenzen, Catholic Pro Life Committee Dallas; Bob Long, Texas Apostolic Prayer Network; Bethany Martin, Heart of Texas House of Prayer; Floyd Martin, John Birch Society; Christine Melchor, Cheryl Park, and Kaley Spell, Houston Coalition for Life; Tony Melton, The Anglican Church; Madeline Miller, St. Catherine of Siena Catholic Church; Chase Mitchell, Matt McCall for Congress District 21; Audrey Morton, Relevant Radio; William E. Mouser, St. Athanasius Anglican Church; Steve Munisteri, Republican Party of Texas; Louis Ortega, Dios Es Amor Group; Elizabeth Pawelek, 40 Days for Life; Jaydee Perales, St. Williams Catholic Church Moms Group; Jean Pickett, NWF; Kasandra Quijano, Students for the Right to Life at UTSA; Susasn Racciato, Post Abortion Counseling; Dena Ransom, Helping Hands Pregnancy Resource Center; Polly Robinette, Barbara Wingfield, Bannockburn Baptist Church; Angela Rodriguez, 40 Days for Life and Sidewalk Angels; Lynette Salmon, Respect Life Ministry Sacred Heart of Jesus, Manvel, Texas Kathleen Shearer, Coalition for Life; Spencer Shelton, Austin Christian Fellowship Northwest; Tennille Siller, Bound4Life San Antonio; Nicholas Simoneaux, The Voice at Northwest Vista; Blanca Skok, The Source for Women of Houston; David Smith, Austin Baptist Association; Annette Sprawls, St. Williams Catholic; Teresa Stadelman, Catholic ProLife Committee; Carol Stewart, Tea Party; Corey Tabor, Full Life Community Church; Alex Taylor, UD Crusaders for Life; Aurora Tinajero and Patricia Vasquez, Catholic Prolife Committee of North Texas; Marcela Uribe, Lay Missionaries of Charity; Cindi Vana, National Day of Prayer; Aubrey Vaughan, Tri County Texas Tea Party LLC; Jason Vaughn, Pro-Life Texas; Leroy Vigil, University of St. Thomas; Sheridan Wade, Arlington Pregnancy Center; Scott Walsh, Secular Franciscans; Charlotte Ward and Steve Ward, Catholic Pro Life Committee of North Texas; George Wawrykow, Couples for Christ Foundation for Family & Life; Bart Waxman, Jubilee Campaign's Law of Life Project; Stephanie Welch, Texas Pastor Council; John Wenske, Pro Life Group; Cynthia Wenz, The Source for Women; Samuel West and Kyleen Wright, Texans for Life; Laurence White, Our Savior Lutheran; Dean Wright, New Revolution Now Institute, Inc.; Donna Young, First Look Pregnancy Center; and about 1,090 others)

Against — Elizabeth Burr, Capital Area Democratic Women; Elizabeth Gruhn, Kingwood Area Democrats; Bradley Price, Texas District of the American Congress of Obstetricians and Gynecologists; Stacy Wilson, Texas Hospital Association; and 40 others; (*Registered, but did not testify*: Kim Adams, Sue Berkel, Anne Budroni, and Melinda Horan, Planned Parenthood; Tanene Allison, Joe Bowen, and Berta Maritza Garcia-Mapes, Texas Democratic Party; Hallie Boas, Rise Up TX; P. Bringardner, American Nursing Association; Terri Burke, Lee Henderson, and Debbie Russell, ACLU of Texas; Heather Busby, Melissa Nicholson, and Blake Rocap, NARAL Pro-Choice Texas; Grace Chimene, Texas League of Woman Voters; Alexander Clark, Texas Young Democrats; Russell Crawford, ScientificAbortionLaws.com; Hillary-Anne Crosby, Vagina :: The Zine; Laura Croteau, Austin Rock City Realty; Laura Davila and Deanna Kilgore, Feminist Austin Networking Group; Nora Dearing, Matagorda County Democratic Party; Ann Dzuik, Stand with Texas Women; Justine Fanarof and Monica Garcia, Anti-Defamation League; Suzy Gonzalez, San Antonio International Women's Day Committee; Amy Hagstrom Miller and Samantha Riemer, Whole Woman's Health; Laura Hammons, Daughters of Vietnam Veterans; Joanne Hawley, Secular Texas; Suzanne Hemphill, Amelia Long, and Bijal Patel, Lilith Fund; Tina Hester, Jane's Due Process; Ilyse Hogue, NARAL Pro-Choice America; Lisa Hollier, Texas District of the American Congress of Obstetricians and Gynecologists; Harold Huff, Austin County Democratic Party; Austin Kaplan, Liberal Austin Democrats; Johanna Kraus-Darden, Austin Young Democrats; Eric Lara, COLLABnART; Januari Leo, Legacy Community Health Services; A'Ja Lyve, Pro-Choice Houston; Steve Mapes, National Democratic Party; Athena Mason, Pro-Choice Aggies; Blake Medley, University Democrats; Peggy Morton, First Unitarian Universalist of Austin Social Action Committee; Barbara Noblin, Capital Area Democratic Women; Allyson Parks, Battleground Texas; Vi Patel, Houston Indy Media; Yvonne Pelayo, Planned Parenthood South Texas and NARAL Pro-Choice Texas; Susan Pintchovski, National Council of Jewish Women; Denise Shannon, Catholics for Choice; Celeste Sheppard, American Congress of Obgyn; Sarah Slamen, Houston NOW; Jan Soifer, Travis County Democratic Party; Shannon Sprague, TCDP; Stout, Travis County Green Party; Ellen Sturtz, GetEQUAL Texas; Jeff Syptak, Harris County Democrats; Clarissa Trevino, Women for Women International; and about 2,060 others)

On — Ellen Cooper, Department of State Health Services; (*Registered,*

*but did not testify:* Penny Britton; Chad Davis; Stuart Greenfield; Annie Hudson; Ben Machado; Monserrat Torres-bernal)

**BACKGROUND:** Health and Safety Code, sec. 170.002 prohibits the performance of an abortion on a woman who is pregnant with a viable unborn child during the third trimester unless, in the physician's best medical judgment:

- it is necessary to prevent the woman's death or substantial risk of serious impairment to her physical or mental health; or
- the fetus has a severe and irreversible abnormality identified by reliable diagnostic procedures.

The 78th Legislature in 2003 enacted HB 15 by Corte, which added Health and Safety Code, ch. 171 (the Woman's Right to Know Act). Sec. 171.004 requires that an abortion of a fetus age 16 weeks or greater be performed at an ambulatory surgical center or hospital licensed to perform the abortion.

Health and Safety Code, sec. 245.010(c) prohibits certain health and safety standards of an abortion facility from being more stringent than Medicare certification standards.

The Department of State Health Services said that in 2011, there were 55,876 induced pregnancy terminations in abortion facilities, 16,237 in ambulatory surgery centers, and 357 in hospitals, physicians' offices, and other/unknown. Of the 72,470 reported abortions, 403 were reported as involving pregnancies post-20-week gestation.

**DIGEST:** HB 2 would add new requirements to state laws governing abortions, the facilities where abortions are performed or induced, and the distribution of abortion-inducing drugs.

**Twenty-week ban.** HB 2 would add subch. C, the Preborn Pain Act, to Health and Safety Code, ch. 171. The subchapter would require a physician, prior to performing an abortion, to determine the probable "post-fertilization age," defined as the age of the unborn child calculated from the fusion of a human spermatozoon with a human ovum.

An abortion could not be performed or induced if a physician determined that the probable post-fertilization age of the unborn child was 20 weeks or greater.

The ban would not apply to an abortion required to save a woman's life or to prevent her from suffering an irreversible physical impairment of a major bodily function, other than a psychological condition. The prohibition also would not apply to an abortion performed on an unborn child who had a severe fetal abnormality. HB 2 would adopt the Health and Safety Code, sec. 285.202 definition of "severe fetal abnormality" as a life-threatening physical condition that, in reasonable medical judgment, is incompatible with life outside the womb, regardless of the provision of life-saving medical treatment. A physician performing a post-20-week abortion would be required to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provided the best opportunity for the unborn child to survive.

In a civil or criminal proceeding arising from a prohibited abortion under the Preborn Pain Act, the identity of the woman would not be subject to public disclosure unless the woman consented or a court found, following a hearing, that disclosure was essential to the administration of justice. The bill would allow court records to be sealed and courtrooms to be closed to prevent the disclosure. It would not authorize the prosecution of a woman on whom an abortion was performed or attempted in violation of the Preborn Pain Act.

**Physician and facility requirements.** The bill would require a physician performing or inducing an abortion to have active admitting privileges at a hospital providing obstetrical or gynecological health care services that was located within 30 miles of the abortion facility. The physician would be required to provide the woman with emergency telephone contact information for the physician or other health care personnel and the nearest hospital in case of complications. A violation of these requirements would be a class A misdemeanor, punishable only by a fine of \$4,000 or less.

Beginning September 1, 2014, the minimum standards for an abortion facility would be equivalent to those for an ambulatory surgical center. The bill would repeal a statutory provision prohibiting certain minimum standards for abortion facilities from being more stringent than Medicare certification standards. The executive commissioner of the Health and Human Services Commission would be required to adopt the new standards for abortion facilities by January 1, 2014.

HB 2 would include among the annual reporting requirements by facilities for each abortion performed the probable post-fertilization age of the unborn child rather than the period of gestation.

The bill would amend the Occupations Code to make it a prohibited practice for a physician to perform or induce an abortion in violation of the 20-week ban. The bill would exempt physicians who violated the Preborn Pain Act from criminal penalties provided under certain provisions of the Occupations Code.

**Drug-induced abortions.** The bill would add a separate subchapter on abortion-inducing drugs such as the Mifeprex regimen, also known as RU-486. Under this subchapter, a drug, medicine, or other substance that may be known to cause an abortion but that was prescribed, dispensed, or administered for other medical reasons would not be considered an abortion-inducing drug.

An act would not be considered an abortion if done with the intent to:

- save the life or preserve the health of the unborn child;
- remove an unborn child whose death was caused by a spontaneous abortion;
- remove an ectopic pregnancy; or
- treat a maternal disease or illness for which a prescribed, drug, medicine, or other substance was indicated.

HB 2 would define “abortion-inducing drug” as a drug, medicine, or substance — including a regimen of two or more drugs, medicines, or substances — prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy with knowledge that the termination will with reasonable likelihood cause the death of the woman’s unborn child. The term would include off-label use of drugs known to have abortion-inducing properties that were administered with the intent of causing an abortion, including the Mifeprex regimen. The term would not include a drug, medicine, or other substance that may be known to cause an abortion but that was prescribed, dispensed, or administered for other medical reasons.

The bill would prohibit anyone other than a physician from giving, selling, dispensing, administering, providing, or prescribing an abortion-inducing drug to a pregnant woman. Physicians would be required to follow the



protocol tested and authorized by the U.S. Food and Drug Administration (FDA) as outlined in the final printed label of the drug, except they could administer 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.

A physician would be required to provide the woman with a copy of the label and a telephone number to reach the physician or other health care personnel for questions or to receive medical assistance following any complications. A follow-up visit would be required within 14 days after use of the drug to confirm that the pregnancy had been completely terminated and to assess the degree of bleeding. Doctors would be required to report serious adverse events related to the drugs to the FDA through the MedWatch Reporting System.

The Texas Medical Board would be authorized to take disciplinary action or assess an administrative penalty against a physician who violated the provisions concerning abortion-inducing drugs. A woman who received a medical abortion under this subchapter could not be assessed a penalty.

**Severability.** The bill would include language to sever any provision declared temporarily or permanently restrained or enjoined by judicial order from all other provisions of Texas law regulating or restricting abortions, allowing provisions not subject to a judicial order to continue to be enforced.

**Findings.** HB 2 would adopt legislative findings that substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization and that the state has a compelling interest in protecting the lives of those unborn children. The findings would state that restricting elective abortions at or later than 20 weeks post-fertilization does not impose an undue burden because the woman has had adequate time to decide to have an abortion.

**Effective date.** The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the second called session (October 29, 2013, if both houses adjourn sine die on July 30).

**SUPPORTERS**

HB 2 would recognize advances in knowledge of fetal development that

SAY: demonstrate unborn children can feel pain at 20 weeks post fertilization and would prohibit abortions at that stage. The bill also would improve the standard of care for women seeking earlier abortions, whether medically induced or drug-induced.

**Fetal pain.** HB 2 would recognize the state's compelling interest in protecting an unborn child from pain. There is scientific evidence suggesting that a preborn child is capable of feeling pain at 20 weeks post-fertilization because neuroreceptors are functioning.

According to a recent study by the University of Arkansas for Medical Sciences, fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that are illustrative of pain signaling. Sonogram pictures show babies in utero withdrawing from a probe as early as 12 weeks. In addition, doctors sometimes use anesthesia when performing procedures on a fetus in recognition of possible pain.

Other states have enacted some of the provisions in HB 2, including prohibiting abortions after a certain point in pregnancy, requiring physicians who perform abortions to have hospital admission privileges, and requiring abortion facilities to meet the same standards as ambulatory surgical centers. While some laws in other states are under federal court review, Texas would join a national trend of states that are passing these laws.

The 2005 article in the *Journal of the American Medical Association* cited by opponents is out of date and does not reflect numerous studies done since that time providing evidence that a five-month-old baby in the womb does feel pain.

While banning most abortions after 20 weeks, the bill would make appropriate exceptions for pregnancies that threatened a mother's life or major bodily function and when a severe fetal abnormality was present. It would not be appropriate to make exceptions based on subjective, and possibly inaccurate, evaluations of a pregnant woman's mental state, which could be influenced by hormonal mood swings that many women experience at various times during pregnancy.

The bill would not affect the ability of a woman who became pregnant due to rape or incest from having an abortion before the 20th week of

pregnancy. In these unfortunate cases, HB 2 would provide sufficient time for a woman to receive an abortion if she so chose.

While some have said the bill should not create an exception for fetal abnormalities, this exception in the bill to the 20-week ban would be consistent with that in current law banning third-trimester abortions. Under the definition of “severe fetal abnormality,” the bill would allow post-20-week abortions only in situations where a physician determined that the unborn child would be unlikely to survive outside the womb, even with medical treatment.

**Physician and facility requirements.** HB 2 would ensure a higher level of care by requiring all abortions to be performed in an ambulatory surgical center. Compared to ordinary abortion facilities, these surgical centers hire more highly qualified professionals and implement more rigorous quality-assurance programs. Ambulatory surgical centers are checked for compliance with safety requirements and must be equipped with back-up generators and better air filtration systems. Higher standards could prevent the occurrence of a situation in Texas like the one recently exposed in Philadelphia, in which Dr. Kermit Gosnell was convicted of murder after killing babies who were born alive. A patient also died at that substandard clinic.

The bill would give operators of abortion facilities sufficient time to comply with the new standards, which would not take effect until September 2014. While improving standards comes at a cost, abortion facility operators should be willing to invest some of their profits to ensure the highest level of care for their patients.

Abortion clinics that provide other health services could continue to provide those services under HB 2. If facilities chose to close, women would have other options for cancer screenings and birth control through the Texas Women’s Health Program.

Doctors who provide abortions should be required to have admitting privileges at a nearby hospital in case one of their patients suffers complications and needs to be hospitalized. All of the state’s existing facilities are within 30 miles of a hospital where they could be admitted, and two-thirds of physicians who perform abortions already have those privileges. The bill would force doctors who did not have hospital admitting privileges to upgrade their standards or stop performing

abortions.

The provisions of HB 2 allowing an exception to prohibited abortions for cases where a mother's life or major bodily function was in danger would protect physicians who were treating conditions such as ectopic pregnancy or miscarriage.

**Drug-induced abortions.** HB 2 would ensure the safety of women using RU-486 to induce an abortion by requiring physicians to administer the medication in the manner approved by the FDA, which says the drugs should be taken on two different days at a clinic under a doctor's supervision. Some abortion facilities are sending women home to take the second dosage alone without giving them information about what to do if complications arise. HB 2 would allow an exception from FDA guidelines for lower dosages recommended by the American College of Obstetricians and Gynecologists.

The bill would ensure that women safely took the drugs and left the facility prepared to contact a physician or other medical personnel, as well as the nearest hospital, in case of emergency. The bill also would protect women by requiring a follow-up visit within 14 days to make sure the pregnancy had been completely terminated.

OPPONENTS  
SAY:

HB 2 would use the disputed claim that fetuses at 20 weeks of development can feel pain to deny women their constitutional right to an abortion. The bill also would make it more difficult for abortion clinics to operate by adding difficult and costly new requirements for facilities and physicians that are not necessary for early abortions.

**Fetal pain.** The U.S. Supreme Court legalized abortion nationwide in 1973 and allowed states to place restrictions on the procedure from the time of viability. HB 2 would be unconstitutional because it would ban abortions of fetuses before they were viable outside the womb based on an unproven claim that a 20-week-old fetus can feel pain. The authors of a 2005 article in the *Journal of the American Medical Association (JAMA)* reviewed research into fetal development and concluded that the fetus probably does not feel pain before 29 or 30 weeks. The American Congress of Obstetricians and Gynecologists said it accepts the findings of the 2005 JAMA article and that no studies since 2005 demonstrate fetal recognition of pain.

The bill would be subject to constitutional challenges similar to one that resulted in a federal appeals court in May 2013 striking down an Arizona law that bans abortions from 20 weeks' gestation. The court said it was "unalterably clear" under U.S. Supreme Court rulings that women have a right to terminate pregnancies until a fetus is viable. Courts are weighing challenges to similar laws in other states.

Some fetal abnormalities may not be detected until a woman is at least 20 weeks into her pregnancy. HB 2 could place barriers to an abortion under those circumstances by interfering with a doctor's discretion to perform an abortion after this deadline.

The bill would not allow for an exception based on the pregnant woman's mental health status or for pregnancies resulting from rape or incest. The law should allow for a woman and her physician to consider the potential ramifications of bringing a baby to term on the woman's mental health.

**Physician and facility requirements.** Early abortions are safer and simpler procedures than those commonly performed in ambulatory surgical centers. Texas women are adequately protected under current law, which requires only those who have been pregnant for 16 weeks or longer to receive abortions in ambulatory surgical centers.

HB 2 could result in the closure of clinics and increases in patient charges for abortions, which could force women into choosing unsafe options. Of the state's 42 abortion clinics, 36 would not meet the ambulatory surgical center requirements, and retrofitting those facilities to meet the new standards would be prohibitively expensive. According to Whole Woman's Health, it costs an additional \$40,000 each month to operate a practice's surgical center compared to its non-surgical centers. Abortion facilities already are appropriately regulated and subject to annual, unannounced inspections.

The current surgical centers performing abortions are located in the state's major metropolitan areas. If clinics in other parts of the state closed, it could force women to travel long distances and would increase the cost of exercising their constitutional right to an abortion. The closure of some clinics also could impact women's access to other health services, including family planning and cancer screening.

HB 2 would interfere in the physician-patient relationship and replace a

physician's judgment with a legislatively created standard of care. The bill could have a chilling effect on physicians using their best judgment when complications arose from pregnancy, such as miscarriage, partial spontaneous abortion, and infection. The unintended consequences could risk a woman's future fertility or even her life.

It could be difficult for doctors who perform or induce abortions to meet the requirement to have admitting privileges at a hospital with an obstetrical unit located within 30 miles. Some private, religiously affiliated hospitals do not admit physicians who perform abortions. Additionally, a representative of the Texas Hospital Association testified that this provision of HB 2 would be contrary to the purpose of admitting privileges, which are designed to regulate patient care conducted in the hospital rather than a procedure performed at an outside facility.

**Drug-induced abortions.** Women should not be required to go to an ambulatory surgical center to take abortion-inducing drugs that are currently being safely administered in abortion facilities. The current protocol of having the patient take the first dose of RU-486 in the clinic and take the second dose at home later has proved safe. The bill would require an additional, unnecessary visit to a facility so a physician could observe the woman taking the second dose.

HB 2 is overly specific in directing physicians on how to treat women who are seeking drug-induced abortions. The bill also could be read to require a physician or other health care personnel who administered the drugs to be available by phone 24 hours a day, indefinitely.

OTHER  
OPPONENTS  
SAY:

The bill should not include an exception from the 20-week ban for severe fetal abnormalities because such a provision would discriminate against unborn children with such disabilities. These children sometimes survive despite a physician's expectations. Their lives should be equally valued and not denied the protection of the Preborn Pain Act.

NOTES:

The Senate companion, SB 1 by Hegar, was heard July 8 by the Senate Health and Human Services Committee.