

BILL ANALYSIS

H.B. 2828
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, an abortion may be performed with the voluntary and informed consent of the woman on whom the abortion is to be performed. However, while the Woman's Right to Know Act has provisions for informed consent to an abortion, the law does not adequately address the issue regarding whether the woman's choice is in fact her own and not the result of coercion or force, and an abortion provider generally does not determine that the woman's consent is voluntary. Although pregnant women frequently are victims of domestic violence, there is little protection for a pregnant woman to prevent her from being forced by an abusive partner to have or seek an abortion. Similarly, there is little protection for a pregnant minor to prevent the minor from being forced into an abortion by a parent. H.B. 2828 seeks to ensure that the pregnant woman's choice to have or seek an abortion is not the result of coercion or force and that a pregnant woman who may be a victim of domestic violence is made aware of the legal protections available against such coercion or force.

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. 2828 amends the Penal Code to create the Class B misdemeanor offense of coercion of abortion. The bill makes it an offense for a person to use coercion for the purpose of inducing a pregnant woman to have or seek an abortion. The bill makes a person who in good faith reports to law enforcement authorities a suspected offense of coercion of abortion immune from civil liability in an action brought against the person for reporting the suspected offense.

H.B. 2828 amends the Code of Criminal Procedure to require a peace officer who receives a report of or other information indicating the commission or attempted commission of an alleged offense of coercion of abortion to file a police report as necessary to ensure that law enforcement may investigate the alleged offense.

H.B. 2828 amends the Health and Safety Code to require the Department of State Health Services (DSHS) to require each physician who performs an abortion to maintain a list of domestic violence shelters and assistance programs that do not provide abortions or abortion-related services, make referrals to abortion providers, or affiliate or contract with entities that provide abortions or abortion-related services or make referrals to abortion providers. The bill requires DSHS to require each physician who performs an abortion to provide a referral to a domestic violence shelter or assistance program that does not provide or refer for abortions if the woman seeking an abortion communicates to the facility, the physician, or an agent of the physician who is performing the abortion that the woman is being abused or is being coerced or forced to have or seek the abortion. The bill requires DSHS to develop a coerced abortion form to be completed by each woman on whom an abortion is performed in Texas. The bill sets out requirements relating to the content and format of the form and requires DSHS to provide the

form in both English and Spanish. The bill requires DSHS, if DSHS determines that a substantial number of residents in Texas speak a primary language other than English or Spanish, to provide the form in that language and to instruct a facility that provides abortions to provide the coerced abortion form in a language other than English or Spanish if DSHS determines that a substantial number of residents in the area speak a primary language other than English or Spanish.

H.B. 2828 requires an office or facility at which abortions are performed to post a sign with certain specified language relating to voluntary consent for abortion in each patient waiting room and each patient consultation room regularly used by patients seeking abortions. The bill establishes the format and language requirements for the sign and requires the office or facility, if requested by a patient, to provide the patient a paper copy of the sign in the language preferred by the patient and access to a telephone in a private room.

H.B. 2828 requires a physician, before any anaesthesia or sedative is given to a woman prior to the performance of an abortion, to verbally inform the woman on whom the abortion is to be performed that a person cannot coerce or force her to have or seek an abortion; verbally inform the woman that the physician cannot perform the abortion unless the woman provides her voluntary and informed consent; and provide the woman on whom the abortion is to be performed with the coerced abortion form in both English and Spanish and, if applicable, in a language other than English or Spanish. The bill prohibits a physician from performing an abortion on a woman unless, before the abortion, the woman certifies on the coerced abortion form that she received from the physician the information and materials relating to voluntary consent required by the bill's provisions. The bill requires a physician to report an offense of coercion of abortion to local law enforcement, provide the required referral to a domestic violence shelter or assistance program, and provide the woman with access to a telephone in a private room, if a woman indicates on the coerced abortion form or communicates to the physician that she is being coerced or forced to have or seek an abortion or the physician is otherwise made aware that the woman has indicated that she is being coerced or forced to have or seek an abortion. The bill prohibits a physician, if made aware of such circumstances, from performing the abortion until 48 hours have elapsed since the woman last communicated to the physician, through the form or otherwise, that the woman was being coerced or forced to have or seek an abortion or, to the best of the physician's knowledge, since the woman last communicated to an agent of the physician that the woman was being coerced or forced to have or seek an abortion, and the woman provides her voluntary and informed consent that the woman states is not a result of coercion. The bill requires a person who is a volunteer for or an employee of a physician or an office or facility at which abortions are performed to immediately notify the physician who is to perform an abortion on a woman if the woman communicates to the person that the woman is being coerced or forced to have or seek an abortion.

H.B. 2828 requires a copy of the coerced abortion form certified by a woman undergoing an abortion to be placed in the woman's medical file and kept until at least the seventh anniversary of the date on which the form was signed or, if the woman is a minor, at least until the date the woman reaches 20 years of age, whichever is later. The bill requires a woman on whom an abortion is performed to be given a copy of the completed coerced abortion form in person before the woman leaves the facility where the abortion is performed. The bill requires DSHS to provide a copy of certain provisions of the bill and the coerced abortion form developed by DSHS to a physician who becomes newly licensed to practice in Texas not later than the 30th day after the date the physician receives the license and to all physicians licensed to practice in Texas not later than December 1 of each year.

H.B. 2828 requires DSHS, not later than December 1, 2011, to develop and make available the coerced abortion form, along with instructions for completing the form, and to develop and make available the required sign relating to voluntary consent for abortion. The bill requires DSHS to distribute the coerced abortion form to physicians as required by the bill's provisions not later than January 1, 2012. The bill makes conforming changes.

EFFECTIVE DATE

September 1, 2011.