

By: Callegari, et al.

H.B. No. 2828

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the offense of coercing a person to have or seek an  
3 abortion and informed and voluntary consent for an abortion;  
4 providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Subchapter B, Chapter 171, Health  
7 and Safety Code, is amended to read as follows:

8 SUBCHAPTER B. VOLUNTARY AND INFORMED CONSENT

9 SECTION 2. Section 171.018, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 171.018. OFFENSE. A physician who intentionally  
12 performs an abortion on a woman in violation of Section 171.011  
13 [~~this subchapter~~] commits an offense. An offense under this  
14 section is a misdemeanor punishable by a fine not to exceed \$10,000.  
15 In this section, "intentionally" has the meaning assigned by  
16 Section 6.03(a), Penal Code.

17 SECTION 3. Subchapter B, Chapter 171, Health and Safety  
18 Code, is amended by adding Sections 171.019, 171.020, 171.021,  
19 171.022, and 171.023 to read as follows:

20 Sec. 171.019. PREVENTION OF COERCED ABORTIONS. (a) Before  
21 any anaesthesia or sedative is given to a woman prior to the  
22 performance of an abortion, a physician shall:

23 (1) verbally inform the woman on whom the abortion is  
24 to be performed that a person cannot coerce or force her to have or

1 seek an abortion and that the physician cannot perform the abortion  
2 unless the woman provides her voluntary and informed consent; and

3 (2) provide the woman on whom the abortion is to be  
4 performed with the coerced abortion form described by Section  
5 171.021:

6 (A) in both English and Spanish; and

7 (B) in a language other than English or Spanish,  
8 if applicable, under Section 171.021(c).

9 (b) A physician may not perform an abortion on a woman  
10 unless, before the abortion, the woman certifies on the coerced  
11 abortion form described by Section 171.021 that she received from  
12 the physician the information and materials required by Subsection  
13 (a).

14 (c) If the woman indicates on the coerced abortion form or  
15 communicates to the physician that she is being coerced or forced to  
16 have or seek an abortion or the physician is otherwise made aware  
17 that the woman has indicated that she is being coerced or forced to  
18 have or seek an abortion, the physician:

19 (1) shall report an offense under Section 25.12, Penal  
20 Code, to local law enforcement;

21 (2) shall provide the referral required by Section  
22 171.020(2);

23 (3) shall provide the woman with access to a telephone  
24 in a private room; and

25 (4) may not perform the abortion until:

26 (A) 48 hours have elapsed:

27 (i) since the woman last communicated to

1 the physician, through the form or otherwise, that the woman was  
2 being coerced or forced to have or seek an abortion; or

3 (ii) to the best of the physician's  
4 knowledge, since the woman last communicated to an agent of the  
5 physician that the woman was being coerced or forced to have or seek  
6 an abortion; and

7 (B) the woman provides her voluntary and informed  
8 consent that the woman states is not a result of coercion.

9 (d) A person who is a volunteer for or an employee of a  
10 physician or an office or facility at which abortions are performed  
11 shall immediately notify the physician who is to perform an  
12 abortion on a woman if the woman communicates to the person that the  
13 woman is being coerced or forced to have or seek an abortion.

14 Sec. 171.020. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE.  
15 The department shall require each physician who performs an  
16 abortion to:

17 (1) maintain a list of domestic violence shelters and  
18 assistance programs that do not:

19 (A) provide abortions or abortion-related  
20 services;

21 (B) make referrals to abortion providers; or

22 (C) affiliate or contract with entities that:

23 (i) provide abortions or abortion-related  
24 services; or

25 (ii) make referrals to abortion providers;  
26 and

27 (2) provide a referral to a domestic violence shelter

1 or assistance program that does not provide or refer for abortions  
2 if the woman seeking an abortion communicates to the facility, the  
3 physician, or an agent of the physician who is performing the  
4 abortion that the woman is being abused or is being coerced or  
5 forced to have or seek the abortion.

6 Sec. 171.021. CONTENTS OF FORM. (a) The department shall  
7 develop a coerced abortion form to be completed by each woman on  
8 whom an abortion is performed in this state. The form must include:

9 (1) the following title centered on the page in  
10 boldfaced capital letters in 26-point font or larger: "NOTICE";

11 (2) the following statement printed in 16-point font  
12 or larger: "It is against the law for a person, regardless of that  
13 person's relationship to you, to coerce or force you to have or seek  
14 an abortion. By law, a physician cannot perform an abortion,  
15 including inducing, prescribing for, or otherwise providing the  
16 means for an abortion, unless you give your voluntary and informed  
17 consent without coercion or force. It is against the law for a  
18 physician to perform an abortion against your will. You have the  
19 right to a telephone in a private room to contact any local or state  
20 law enforcement agency to receive protection from any actual or  
21 threatened physical abuse or violence.";

22 (3) the following statements printed in 14-point font  
23 or larger followed by spaces for the woman to initial:

24 (A) "I understand that I have the right to access  
25 a telephone in a private room to contact a local or state law  
26 enforcement agency to receive protection from any actual or  
27 threatened physical abuse or violence.";

1           (B) "I have been informed in person that no one  
2 can coerce or force me to have or seek an abortion and that an  
3 abortion cannot be provided to me unless I provide my freely given,  
4 voluntary, and informed consent."; and

5           (C) "I have read the above notice and understand  
6 that I have legal protection against being coerced or forced to have  
7 or seek an abortion.";

8           (4) spaces for the signature of the woman on whom an  
9 abortion is to be performed and the date the form was completed; and

10          (5) spaces for the license number, area of specialty,  
11 and signature of the physician who performed the abortion.

12          (b) The department shall provide the form required by  
13 Subsection (a) in both English and Spanish.

14          (c) If the department determines that a substantial number  
15 of residents in this state speak a primary language other than  
16 English or Spanish, the department shall provide the form required  
17 by Subsection (a) in that language. The department shall instruct a  
18 facility that provides abortions to provide the coerced abortion  
19 form in a language other than English or Spanish if the department  
20 determines that a substantial number of residents in the area speak  
21 a primary language other than English or Spanish.

22          Sec. 171.022. PROVISION AND RETENTION OF COERCED ABORTION  
23 FORM. (a) The department shall provide a copy of this section and  
24 Sections 171.019-171.021 and the coerced abortion form required by  
25 Section 171.019 to:

26          (1) a physician who becomes newly licensed to practice  
27 in this state, not later than the 30th day after the date the

1 physician receives the license; and

2 (2) all physicians licensed to practice in this state,  
3 not later than December 1 of each year.

4 (b) A copy of the coerced abortion form certified by the  
5 woman shall be placed in the woman's medical file and kept until at  
6 least the seventh anniversary of the date on which the form was  
7 signed or, if the woman is a minor, at least until the date the woman  
8 reaches 20 years of age, whichever is later.

9 (c) The woman on whom an abortion is performed shall be  
10 given a copy of the completed coerced abortion form in person before  
11 the woman leaves the facility where the abortion is performed.

12 Sec. 171.023. SIGN POSTING. (a) An office or facility at  
13 which abortions are performed shall post the following sign:  
14 "NOTICE: It is against the law for a person, regardless of that  
15 person's relationship to you, to coerce or force you to have or seek  
16 an abortion. By law, a physician cannot perform an abortion,  
17 including inducing, prescribing for, or otherwise providing the  
18 means for an abortion, unless you give your voluntary and informed  
19 consent without coercion or force. It is against the law for a  
20 physician to perform an abortion against your will. You have the  
21 right to a telephone in a private room to contact any local or state  
22 law enforcement agency to receive protection from any actual or  
23 threatened physical abuse or violence."

24 (b) The sign described by Subsection (a) must be:

25 (1) printed with lettering that is legible and in at  
26 least two-inch boldfaced type; and

27 (2) printed and posted in both English and Spanish, as

1 well as any language other than English or Spanish if it is likely  
2 that a substantial number of the residents in the area speak a  
3 language other than English or Spanish as their familiar language.

4 (c) An office or facility at which abortions are performed  
5 shall conspicuously post the sign described by Subsection (a) in  
6 each patient waiting room and each patient consultation room  
7 regularly used by patients seeking abortions.

8 (d) If requested by a patient, the office or facility shall  
9 provide the patient:

10 (1) a paper copy of the sign described by Subsection  
11 (a) in the language preferred by the patient; and

12 (2) access to a telephone in a private room.

13 SECTION 4. Chapter 6, Code of Criminal Procedure, is  
14 amended by adding Article 6.09 to read as follows:

15 Art. 6.09. REPORTS OF COERCION OF ABORTION. A peace officer  
16 who receives a report of or other information indicating the  
17 commission or attempted commission of an alleged offense under  
18 Section 25.12, Penal Code, shall file a police report as necessary  
19 to ensure that law enforcement may investigate the alleged offense.

20 SECTION 5. Chapter 25, Penal Code, is amended by adding  
21 Section 25.12 to read as follows:

22 Sec. 25.12. COERCION OF ABORTION. (a) A person commits an  
23 offense if the person uses coercion to induce a pregnant woman to  
24 have or seek an abortion.

25 (b) An offense under this section is a Class B misdemeanor.

26 (c) A person who in good faith reports to law enforcement  
27 authorities a suspected offense under Subsection (a) is immune from

1 civil liability in an action brought against the person for  
2 reporting the suspected offense.

3 SECTION 6. (a) Not later than December 1, 2011, the  
4 Department of State Health Services shall develop and make  
5 available the form required by Subchapter B, Chapter 171, Health  
6 and Safety Code, as amended by this Act, along with instructions for  
7 completing the form.

8 (b) Not later than December 1, 2011, the Department of State  
9 Health Services shall develop and make available the sign required  
10 by Section 171.023, Health and Safety Code, as added by this Act.

11 (c) Not later than January 1, 2012, the Department of State  
12 Health Services shall distribute forms as required by Section  
13 171.022(a), Health and Safety Code, as added by this Act.

14 SECTION 7. This Act takes effect September 1, 2011.