

SUBJECT: Informed and voluntary consent for an abortion

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Craddick, Frullo, Gallego, Harless, Hilderbran, Huberty, Oliveira, Smithee

2 nays — Menendez, Turner

2 absent — Geren, Solomons

WITNESSES: For — Carolyn Cline, Downtown Pregnancy Center; Regina Saucier, Raffa Clinic; Nakita Williams, Eastland County Open Door; Lynne Davis; Chris Ward; (*Registered, but did not testify*: Karen Garnett, Catholic Pro-Life Committee, Respect Life Ministry of the Diocese of Dallas; MerryLynn Gerstenschlager, Texas Eagle Forum; Elizabeth Graham, Emily Horne, Emily Kebodeaux, Texas Right to Life; Maria Huemmer, Texas Catholic Conference-Roman Catholic Bishops of Texas; Jonathan Saenz, Liberty Institute; Kyleen Wright, Texans for Life; Bill Button, Bailey Cline-Coke; Andrea Fernandez; B.J. Lee; Barbara Martone; John Martone; Marie McCoy; Reina Merasati; Jeremy Rechtien; Heather Shepperd; Catarina Torres; Patricia Vasquez; Rebecca Visosky)

Against — (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Jamie Smith, NARAL Pro Choice Texas; Kailey Voellinger, NARAL Pro Choice Texas)

BACKGROUND: Under Health and Safety Code, ch. 171, subch. B, the Woman's Right to Know Act, a person may not perform an abortion on a woman without her voluntary and informed consent.

For consent to be informed and voluntary, the woman must be informed:

- of the name of the physician who will perform the abortion;
- of the medical risks associated with abortion and with carrying the child to term;
- of the probable gestational age of the unborn child at the time of the abortion;

- that assistance is available for prenatal and neonatal care and childbirth;
- of the father's liability for child support;
- that public and private agencies provide pregnancy prevention counseling and medical referrals; and
- that the woman has a right to review printed materials provided by the Department of State Health Services (DSHS), which describe the unborn child and list agencies that offer alternatives to abortion.

Before the abortion, the woman must certify in writing that she received the above information, and the physician must receive and retain a copy of this certification. The information must be provided to the woman orally, by telephone, or in person and at least 24 hours before the abortion.

A physician who intentionally performs an abortion on a woman in violation of the informed consent requirements commits a misdemeanor punishable by a fine of not more than \$10,000.

DIGEST:

HB 2828 would require a physician, before performing an abortion, to inform the woman that a person could not force her to have the procedure. Before giving any anesthesia or sedative to a woman for the abortion, the physician would have to verbally inform her that a person could not force her to have or seek an abortion and that the physician could not perform the abortion unless the woman provided her voluntary and informed consent.

The physician would have to provide the woman with a standardized coerced abortion form developed by DSHS. Using specific wording and font requirements, the form would have to state that coercion of abortion was illegal and that the woman had a right to a telephone in a private room to contact law enforcement for protection from any actual or threatened physical abuse or violence. The form would have to include spaces for the woman to initial that she understood these rights.

The form would have to contain spaces for the woman's signature, the date, and the physician's license number, area of specialty, and signature. The form would have to be provided in both English and Spanish, and if applicable, another language.

A physician could not perform an abortion on a woman unless the woman certified on the form that she had received the information and materials required by the bill.

If the woman indicated that she was being coerced, or the physician was otherwise made aware that the woman was being coerced, the physician would have to report this to law enforcement, provide a referral to a domestic violence shelter or program that did not provide or refer for abortions, and give the woman access to a telephone in a private room.

The physician could not perform the abortion until 48 hours had elapsed after the woman had last communicated that she was being coerced and provided her voluntary and informed consent that she confirmed did not result from coercion.

A copy of the signed coerced abortion form would have to be placed in the woman's medical file and kept for at least seven years or, if the woman was a minor, at least until the woman reached 20 years old, whichever was later. The woman would have to be given a copy of the completed form.

An abortion facility would have to post a sign conspicuously in each waiting and consultation room. Using specific wording and font requirements, the form would have to state that coercion of abortion was illegal and that each woman had the right to a telephone in a private room to contact law enforcement for protection from any actual or threatened physical abuse or violence. The form would have to be provided in both English and Spanish, and if applicable, another language.

A peace officer who received a report or other information indicating an alleged offense under the bill would have to file a police report.

A person would commit an offense if the person used coercion to induce a pregnant woman to have or seek an abortion. An offense under the bill would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). A person who in good faith reported a suspected offense to law enforcement would be immune from civil liability in an action brought against the person for reporting the suspected offense.

The DSHS would have to develop and make available the required sign, coerced abortion form, and instructions for completing the form by

December 1, 2011. The department would have to distribute the forms by January 1, 2012.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

HB 2828 would provide legal protection for a woman who may not be seeking an abortion voluntarily. It would create a standard screening process to ensure that a pregnant woman was not coerced or forced to seek an abortion.

No person should be forced to undergo any operation against her will, and the bill would provide the opportunity for a woman to obtain assistance and protection before undergoing a life-altering surgery. Although informed consent already is required, many women, especially young women, have been coerced by partners or relatives to have an unwanted abortion. HB 2828 would provide additional protections to make sure that the woman's consent was voluntary and to provide her with the resources to make the decision that she actually wanted.

The bill would not invite harassment from a person who reported a suspected offense to law enforcement. A person who reported an offense would have to do so in good faith. If a person was being malicious or untruthful, law enforcement would address that problem accordingly. HB 2828 would not require law enforcement to investigate; it only would give them the option to do so.

The bill would not prevent a woman from receiving medical care. Although a physician would only refer a woman to shelters and assistance programs that did not provide or affiliate with entities that provided abortions or abortion-related services, the woman would be free to seek medical care at a different location on her own.

**OPPONENTS
SAY:**

HB 2828 is unnecessary because informed consent already is required for all surgical procedures, including abortion, and informed consent is not present if the patient has been coerced or forced to seek the procedure. Women seeking an abortion already are screened for informed consent, and physicians know that informed consent does not exist if coercion is present.

Laws exist today for a woman's right to choose to have an abortion, and this bill would represent a moralistic obstacle for a woman attempting to

exercise her freedom of choice. The bill is not aimed at making informed consent better, but at making it more difficult and more intimidating for a woman to choose to have an abortion.

The bill would serve as an invitation for harassment because it would provide immunity for a person who reported suspected offenses. A person could continuously report suspected offenses, which could result in burdening peace officers with excessive police reports and the harassment of targeted facilities.

Under the bill, a woman who indicated she was being coerced would not be referred to actual medical care. The list of shelters and assistance programs that would qualify as a referral would be narrowly limited to ideologically based organizations that did not perform medical care. For example, if a hospital had ever performed an abortion, it would not qualify for the list, nor would a facility that had ever referred a woman to a hospital that had ever performed an abortion.

In many domestic violence situations, a woman is coerced into keeping a pregnancy, often through the denial or sabotage of contraceptives. HB 2828 would do nothing to address this prevalent problem.

NOTES:

The companion bill, SB 1183 by Williams, was referred to the Senate State Affairs Committee on March 16.