

By: Leach

H.B. No. 612

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to voluntary and informed consent to an abortion and  
3 prevention of coerced abortions; providing penalties; creating an  
4 offense.

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

6 SECTION 1. Chapter 6, Code of Criminal Procedure, is  
7 amended by adding Article 6.11 to read as follows:

8 Art. 6.11. REPORTS OF COERCION OF ABORTION. (a) A peace  
9 officer who receives a report of or other information alleging the  
10 commission or attempted commission of an offense under Section  
11 25.12, Penal Code, shall file a police report as necessary to ensure  
12 that law enforcement may investigate the alleged offense.

13 (b) A peace officer receiving a report or other information  
14 indicating that a person has coerced or forced or attempted to  
15 coerce or force a pregnant minor to have or seek an abortion shall  
16 notify the Department of Family and Protective Services.

17 SECTION 2. Section 33.002, Family Code, is amended by  
18 adding Subsection (a-1) to read as follows:

19 (a-1) A physician giving notice under Subsection (a)(1)  
20 shall inform the minor's parent, managing conservator, or guardian  
21 that any person, including the minor's parent, conservator, or  
22 guardian, who coerces or forces the minor to have or seek an  
23 abortion commits an act defined as child abuse under Texas law.

24 SECTION 3. Section 261.001(1), Family Code, is amended to

1 read as follows:

2 (1) "Abuse" includes the following acts or omissions  
3 by a person:

4 (A) mental or emotional injury to a child that  
5 results in an observable and material impairment in the child's  
6 growth, development, or psychological functioning;

7 (B) causing or permitting the child to be in a  
8 situation in which the child sustains a mental or emotional injury  
9 that results in an observable and material impairment in the  
10 child's growth, development, or psychological functioning;

11 (C) physical injury that results in substantial  
12 harm to the child, or the genuine threat of substantial harm from  
13 physical injury to the child, including an injury that is at  
14 variance with the history or explanation given and excluding an  
15 accident or reasonable discipline by a parent, guardian, or  
16 managing or possessory conservator that does not expose the child  
17 to a substantial risk of harm;

18 (D) failure to make a reasonable effort to  
19 prevent an action by another person that results in physical injury  
20 that results in substantial harm to the child;

21 (E) sexual conduct harmful to a child's mental,  
22 emotional, or physical welfare, including conduct that constitutes  
23 the offense of continuous sexual abuse of young child or children  
24 under Section 21.02, Penal Code, indecency with a child under  
25 Section 21.11, Penal Code, sexual assault under Section 22.011,  
26 Penal Code, or aggravated sexual assault under Section 22.021,  
27 Penal Code;

1 (F) failure to make a reasonable effort to  
2 prevent sexual conduct harmful to a child;

3 (G) compelling or encouraging the child to engage  
4 in sexual conduct as defined by Section 43.01, Penal Code,  
5 including compelling or encouraging the child in a manner that  
6 constitutes an offense of trafficking of persons under Section  
7 20A.02(a)(7) or (8), Penal Code, prostitution under Section  
8 43.02(b), Penal Code, or compelling prostitution under Section  
9 43.05(a)(2), Penal Code;

10 (H) causing, permitting, encouraging, engaging  
11 in, or allowing the photographing, filming, or depicting of the  
12 child if the person knew or should have known that the resulting  
13 photograph, film, or depiction of the child is obscene as defined by  
14 Section 43.21, Penal Code, or pornographic;

15 (I) the current use by a person of a controlled  
16 substance as defined by Chapter 481, Health and Safety Code, in a  
17 manner or to the extent that the use results in physical, mental, or  
18 emotional injury to a child;

19 (J) causing, expressly permitting, or  
20 encouraging a child to use a controlled substance as defined by  
21 Chapter 481, Health and Safety Code;

22 (K) causing, permitting, encouraging, engaging  
23 in, or allowing a sexual performance by a child as defined by  
24 Section 43.25, Penal Code; [~~or~~]

25 (L) knowingly causing, permitting, encouraging,  
26 engaging in, or allowing a child to be trafficked in a manner  
27 punishable as an offense under Section 20A.02(a)(5), (6), (7), or

1 (8), Penal Code, or the failure to make a reasonable effort to  
2 prevent a child from being trafficked in a manner punishable as an  
3 offense under any of those sections; or  
4 (M) coercing or forcing a child to have or seek an  
5 abortion.

6 SECTION 4. 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 5. Section 171.015, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE  
12 AGENCIES. The informational materials must include:

13 (1) geographically indexed materials designed to  
14 inform the pregnant woman of public and private agencies and  
15 services that:

16 (A) are available to assist a woman through  
17 pregnancy, childbirth, and the child's dependency, including:

18 (i) a comprehensive list of adoption  
19 agencies;

20 (ii) a description of the services the  
21 adoption agencies offer;

22 (iii) a description of the manner,  
23 including telephone numbers, in which an adoption agency may be  
24 contacted; ~~and~~

25 (iv) a comprehensive list of agencies and  
26 organizations that offer sonogram services at no cost to the  
27 pregnant woman;

1                   (v) pregnancy resource centers and  
2 maternity homes;

3                   (vi) a comprehensive list of assistance  
4 programs for victims of family violence and human trafficking;

5                   (vii) the telephone number and Internet  
6 website of the National Human Trafficking Resource Center;

7                   (viii) a list of persons licensed to  
8 practice in this state as social workers, licensed professional  
9 counselors, licensed marriage and family therapists, and  
10 psychologists who have volunteered to assist women being coerced or  
11 forced to have or seek an abortion or volunteered to provide  
12 services for human trafficking rescue and restoration; and

13                   (ix) nonprofit organizations that provide  
14 free legal aid to women being coerced or forced to have or seek an  
15 abortion or to victims of human trafficking;

16                   (B) do not provide abortions or abortion-related  
17 services or make referrals to abortion providers; and

18                   (C) are not affiliated with organizations that  
19 provide abortions or abortion-related services or make referrals to  
20 abortion providers; and

21                   (2) a toll-free, 24-hour telephone number that may be  
22 called to obtain an oral list and description of agencies described  
23 by Subdivision (1) that are located near the caller and of the  
24 services the agencies offer.

25                   SECTION 6. Subchapter B, Chapter 171, Health and Safety  
26 Code, is amended by adding Sections 171.019, 171.020, 171.021,  
27 171.022, and 171.023 to read as follows:

1       Sec. 171.019. PREVENTION OF COERCED ABORTIONS. (a) Before  
2 any anesthesia or sedative is given to a woman and before an  
3 abortion is performed on the woman, a physician shall:

4               (1) verbally inform the woman that:

5                       (A) a person cannot coerce or force her to have or  
6 seek an abortion; and

7                       (B) the physician cannot perform the abortion  
8 unless the woman provides her voluntary and informed consent; and

9               (2) provide the woman with the coerced abortion form  
10 described by Section 171.021:

11                       (A) in both English and Spanish; and

12                       (B) in a language other than English or Spanish  
13 if required under Section 171.021(c).

14       (b) A physician may not perform an abortion on a woman  
15 unless, before the abortion, the woman certifies on the coerced  
16 abortion form described by Section 171.021 that she received from  
17 the physician the information and materials required by Subsection  
18 (a).

19       (c) If the woman indicates on the coerced abortion form or  
20 on a form consenting to the procedure or at any time before the  
21 abortion communicates verbally to the physician or the physician's  
22 agent that she is being coerced or forced to have or seek an  
23 abortion or is a victim of human trafficking or the physician is  
24 otherwise made aware that the woman has indicated she is being  
25 coerced or forced to have or seek an abortion or is a victim of human  
26 trafficking, the physician:

27               (1) shall report an offense under Section 25.12, Penal

1 Code, to local law enforcement and:

2 (A) if the woman is a minor, make a report to the  
3 Department of Family and Protective Services; and

4 (B) if the woman indicates that she is a victim of  
5 human trafficking, report an offense under Section 20A.02, Penal  
6 Code, to local law enforcement;

7 (2) shall provide the information described by Section  
8 171.015;

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

11 (4) may not perform the abortion until:

12 (A) if the woman indicated she was being coerced  
13 or forced to have or seek an abortion, 72 hours have elapsed:

14 (i) since the woman last communicated to  
15 the physician, through the form or otherwise, that the woman was  
16 being coerced or forced to have or seek an abortion; or

17 (ii) to the best of the physician's  
18 knowledge, since the woman last communicated to an agent of the  
19 physician or law enforcement that the woman was being coerced or  
20 forced to have or seek an abortion;

21 (B) the woman provides her voluntary and informed  
22 consent that the woman states is not a result of coercion; and

23 (C) local law enforcement has completed the  
24 investigation and report required under Section 171.020 and Article  
25 6.11, Code of Criminal Procedure, and, as applicable, the  
26 Department of Family and Protective Services has completed an  
27 investigation under Subchapter D, Chapter 261, Family Code.

1       (d) A volunteer for or an employee of a physician or an  
2 office or facility at which abortions are performed shall  
3 immediately notify the physician who is to perform an abortion on a  
4 woman if the woman communicates to the volunteer or employee that  
5 the woman is being coerced or forced to have or seek an abortion or  
6 that the woman is a victim of human trafficking.

7       (e) The woman on whom the abortion is to be performed may  
8 withdraw consent to the abortion at any time before the performance  
9 of the abortion.

10       Sec. 171.020. PHYSICIAN'S DUTY TO REPORT COERCION AND HUMAN  
11 TRAFFICKING; INVESTIGATION AND ASSISTANCE. (a) If a woman claims  
12 to have been coerced or forced to have or seek an abortion, the  
13 physician or physician's agent shall immediately report the  
14 suspected coercion and the name of the individual suspected of  
15 coercing the woman to the appropriate local law enforcement agency  
16 and, if the woman is a minor, to the Department of Family and  
17 Protective Services.

18       (b) If a physician or physician's agent has reasonable  
19 suspicion that a woman is a victim of human trafficking, the  
20 physician or physician's agent shall report the suspected  
21 trafficking in the manner provided by Subsection (a).

22       (c) The appropriate local law enforcement agency has a duty  
23 to respond and shall write a report not later than 12 hours after  
24 notification of the alleged coercion or trafficking under this  
25 section. A report must be made in response to every notification by  
26 a physician or physician's agent under this section, regardless of  
27 whether the law enforcement agency knows that a report about the

1 coercion or trafficking was previously made.

2 (d) Notwithstanding Sections 261.301 and 261.3015, Family  
3 Code, the Department of Family and Protective Services shall  
4 respond not later than 12 hours after notification of the alleged  
5 coercion or trafficking of a minor under this section.

6 (e) The appropriate local law enforcement agency and the  
7 Department of Family and Protective Services shall:

8 (1) investigate each report of suspected coercion or  
9 trafficking under this section; and

10 (2) if warranted, refer the case to the appropriate  
11 prosecuting authority.

12 (f) If the investigation shows that the minor's parent,  
13 conservator, or guardian is coercing or forcing or attempting to  
14 coerce or force the minor to have or seek an abortion, the  
15 Department of Family and Protective Services shall take any  
16 appropriate action under Title 5, Family Code.

17 (g) The fact that a woman has signed a form under Section  
18 171.021 does not affect:

19 (1) the duty of a physician or physician's agent under  
20 this section; or

21 (2) the culpability of a person coercing or forcing a  
22 woman to have or seek an abortion.

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

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

1           (2) the following statement printed in 16-point font  
2 or larger: "Texas law prohibits a person, regardless of that  
3 person's relationship to you (for example, your husband, parent,  
4 boyfriend, or teacher), from coercing or forcing you to have or seek  
5 an abortion. You have the right to a telephone in a private room to  
6 contact any local law enforcement agency to receive protection from  
7 any actual or threatened physical abuse or violence. Coercing or  
8 forcing a woman to have or seek an abortion is child abuse if the  
9 woman is a minor and may be punishable by up to a year in jail and up  
10 to a \$4,000 fine. Human trafficking, including sex trafficking, is  
11 a violation of the law, and the state can help victims of  
12 trafficking. Texas law prohibits a physician from performing an  
13 abortion, including inducing, prescribing for, or otherwise  
14 providing the means for an abortion, unless you give your voluntary  
15 and informed consent without coercion or force. Texas law also  
16 prohibits a physician from performing an abortion against your  
17 will.";

18           (3) the following statements printed in 14-point font  
19 or larger followed by spaces for the woman and, if the woman is a  
20 minor, the woman's parent, managing conservator, or guardian, if  
21 present, to initial:

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

26                   (B) "I understand that victims of human  
27 trafficking may receive assistance and resources from this state

1 and protection by local law enforcement.";

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

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

9 (E) "I freely give my voluntary consent to this  
10 abortion without being coerced or forced."; and

11 (F) "I am aware that Texas law defines child  
12 abuse to include a parent, conservator, or guardian who coerces or  
13 forces his or her daughter or a child under his or her care to have  
14 or seek an abortion.";

15 (4) spaces for the signature of the woman and, if the  
16 woman is a minor, the woman's parent, managing conservator, or  
17 guardian, if present, and the date the form was completed;

18 (5) spaces for the license number, area of specialty,  
19 and signature of the physician who performed the abortion; and

20 (6) the telephone number for the National Domestic  
21 Violence Hotline.

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

24 (c) If the department determines that a substantial number  
25 of residents in this state speak a primary language other than  
26 English or Spanish, the department shall provide the form required  
27 by Subsection (a) in that language. The department shall instruct a

1 facility that provides abortions to provide the coerced abortion  
2 form in a language other than English or Spanish if the department  
3 determines that a substantial number of residents in the area speak  
4 a primary language other than English or Spanish.

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

9 (1) a physician who becomes newly licensed to practice  
10 in this state, not later than the 30th day after the date the  
11 physician receives the license; and

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

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

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

22 Sec. 171.023. SIGN POSTING. (a) An office or facility at  
23 which abortions are performed shall post the following sign:  
24 "NOTICE: Texas law prohibits a person, regardless of that person's  
25 relationship to you (for example, your husband, parent, boyfriend,  
26 or teacher), from coercing or forcing you to have or seek an  
27 abortion. You have the right to a telephone in a private room to

1 contact any local law enforcement agency to receive protection from  
2 any actual or threatened physical abuse or violence. Coercing or  
3 forcing a woman to have or seek an abortion is child abuse if the  
4 woman is a minor and may be punishable by up to a year in jail and up  
5 to a \$4,000 fine. Human trafficking, including sex trafficking, is  
6 a violation of the law, and the state can help victims of  
7 trafficking. Texas law prohibits a physician from performing an  
8 abortion, including inducing, prescribing for, or otherwise  
9 providing the means for an abortion, unless you give your voluntary  
10 and informed consent without coercion or force. Texas law also  
11 prohibits a physician from performing an abortion against your  
12 will.".

13 (b) The sign described by Subsection (a) must:

14 (1) be printed with lettering that is legible and in at  
15 least two-inch boldfaced type;

16 (2) be printed and posted in both English and Spanish,  
17 as well as any language other than English or Spanish if it is  
18 likely that a substantial number of the residents in the area speak  
19 a language other than English or Spanish as their primary language;  
20 and

21 (3) include the telephone number for the National  
22 Domestic Violence Hotline.

23 (c) An office or facility at which abortions are performed  
24 shall conspicuously post the sign described by Subsection (a) in  
25 each patient waiting room, each patient consultation room regularly  
26 used by patients seeking abortions, and the room in which abortions  
27 are performed or induced.

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

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

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

6        SECTION 7. Chapter 25, Penal Code, is amended by adding  
7 Section 25.12 to read as follows:

8        Sec. 25.12. COERCION OF ABORTION. (a) A person commits an  
9 offense if the person uses coercion to cause a pregnant woman to  
10 have or seek an abortion, unless:

11            (1) the pregnant woman is younger than 18 years of age;  
12 and

13            (2) the actor is the parent, conservator, or guardian  
14 of the pregnant woman.

15            (b) An offense under this section is a Class A misdemeanor.

16            (c) A person who in good faith reports to law enforcement  
17 authorities a suspected offense under Subsection (a) is immune from  
18 civil liability in an action brought against the person for  
19 reporting the suspected offense.

20        SECTION 8. (a) As soon as practicable after the effective  
21 date of this Act, the Department of State Health Services shall:

22            (1) develop and make available:

23                    (A) the coerced abortion form required by  
24 Subchapter B, Chapter 171, Health and Safety Code, as amended by  
25 this Act, along with instructions for completing the form; and

26                    (B) the sign required by Section 171.023, Health  
27 and Safety Code, as added by this Act; and

1           (2) revise the informational materials under Section  
2 [171.015](#), Health and Safety Code, as amended by this Act.

3           (b) The executive commissioner of the Health and Human  
4 Services Commission may identify rules required by the passage of  
5 this Act that must be adopted on an emergency basis and may use the  
6 procedures established under Section [2001.034](#), Government Code,  
7 for adopting those rules. The executive commissioner is not  
8 required to make the finding described by Section [2001.034\(a\)](#),  
9 Government Code, to adopt emergency rules under this subsection.

10          (c) A physician or other person subject to the requirements  
11 of Sections [171.019](#), [171.020](#), [171.021](#), [171.022](#), and [171.023](#), Health  
12 and Safety Code, as added by this Act, is not required to provide,  
13 use, or retain the coerced abortion form under Section [171.019](#),  
14 [171.021](#), or [171.022](#), Health and Safety Code, as added by this Act,  
15 or post the sign required under Section [171.023](#), Health and Safety  
16 Code, as added by this Act, before the Department of State Health  
17 Services develops and makes available the form and the sign.

18          (d) A physician is not criminally liable under Section  
19 [171.018](#), Health and Safety Code, for failing to provide updated  
20 informational materials under Section [171.015](#), Health and Safety  
21 Code, as amended by this Act, failing to provide, use, or retain the  
22 coerced abortion form under Section [171.019](#), [171.021](#), or [171.022](#),  
23 Health and Safety Code, as added by this Act, or failing to post the  
24 sign required under Section [171.023](#), Health and Safety Code, as  
25 added by this Act, before the Department of State Health Services  
26 develops and makes available the revised informational materials,  
27 the form, or the sign.

1           SECTION 9. The changes in law made by this Act apply only to  
2 an offense under Section 33.002, Family Code, as amended by this  
3 Act, or Section 25.12, Penal Code, as added by this Act, committed  
4 on or after September 1, 2017. An offense committed before  
5 September 1, 2017, is governed by the law in effect on the date the  
6 offense was committed, and the former law is continued in effect for  
7 that purpose. For purposes of this section, an offense was  
8 committed before September 1, 2017, if any element of the offense  
9 occurred before that date.

10           SECTION 10. This Act takes effect immediately if it  
11 receives a vote of two-thirds of all the members elected to each  
12 house, as provided by Section 39, Article III, Texas Constitution.  
13 If this Act does not receive the vote necessary for immediate  
14 effect, this Act takes effect September 1, 2017.