

By: Schaefer

H.B. No. 4034

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of an attorney ad litem to represent an
3 unborn child during a court proceeding authorizing a pregnant minor
4 to consent to an abortion.

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

6 SECTION 1. Section 33.001, Family Code, is amended by
7 adding Subdivision (4-a) to read as follows:

8 (4-a) "Unborn child" has the meaning assigned by
9 Section 171.061, Health and Safety Code.

10 SECTION 2. Section 33.003, Family Code, is amended by
11 amending Subsections (b), (h), and (l) and adding Subsections
12 (e-1), (f-1), and (f-2) to read as follows:

13 (b) The application must be filed in:

14 (1) a county court at law, court having probate
15 jurisdiction, or district court, including a family district court,
16 in the minor's county of residence;

17 (2) if the minor's parent, managing conservator, or
18 guardian is a presiding judge of a court described by Subdivision
19 (1):

20 (A) a county court at law, court having probate
21 jurisdiction, or district court, including a family district court,
22 in a contiguous county; or

23 (B) a county court at law, court having probate
24 jurisdiction, or district court, including a family district court,

1 in the county where the minor intends to obtain the abortion; or

2 (3) if the minor's county of residence has a population
3 of less than 10,000:

4 (A) a court described by Subdivision (1);

5 (B) a county court at law, court having probate
6 jurisdiction, or district court, including a family district court,
7 in a contiguous county; or

8 (C) a county court at law, court having probate
9 jurisdiction, or district court, including a family district court,
10 in the county in which the facility at which the minor intends to
11 obtain the abortion is located [~~or~~

12 [~~(4) a county court at law, court having probate
13 jurisdiction, or district court, including a family district court,
14 in the county in which the facility at which the minor intends to
15 obtain the abortion is located, if the minor is not a resident of
16 this state].~~

17 (e-1) The minor's guardian ad litem appointed under
18 Subsection (e) is entitled to have access to the minor and
19 information related to the minor in accordance with Section
20 107.006.

21 (f-1) The court shall appoint an attorney ad litem to
22 represent an unborn child during a proceeding under this section.
23 The unborn child's attorney ad litem is entitled to have access to
24 the minor and information related to the minor in accordance with
25 Section 107.006.

26 (f-2) The attorney general shall develop and maintain a
27 registry listing the name of and contact information for attorneys

1 qualified to serve as attorneys ad litem in this state who
2 voluntarily notify the attorney general of their willingness to
3 serve, or on request of the attorney general consent to serve, as
4 attorneys ad litem for an unborn child in proceedings under this
5 section.

6 (h) The court shall rule on an application submitted under
7 this section and shall issue written findings of fact and
8 conclusions of law not later than 5 p.m. on the fifth business day
9 after the date the application is filed with the court. On request
10 by the minor, the minor's guardian ad litem, or the unborn child's
11 attorney ad litem, the court shall grant an extension of the period
12 specified by this subsection. If a request for an extension is
13 made, the court shall rule on an application and shall issue written
14 findings of fact and conclusions of law not later than 5 p.m. on the
15 fifth business day after the date the minor or attorney ad litem, as
16 applicable, states that the minor or attorney ad litem [~~she~~] is
17 ready to proceed to hearing. Proceedings under this section shall
18 be given precedence over other pending matters to the extent
19 necessary to assure that the court reaches a decision promptly,
20 regardless of whether an extension [~~the minor~~] is granted [~~an~~
21 ~~extension~~] under this subsection.

22 (l) An order of the court issued under this section is
23 confidential and privileged and is not subject to disclosure under
24 Chapter 552, Government Code, or discovery, subpoena, or other
25 legal process. The order may not be released to any person but the
26 pregnant minor, the pregnant minor's guardian ad litem, the unborn
27 child's attorney ad litem, the pregnant minor's attorney, the

1 physician who is to perform the abortion, another person designated
2 to receive the order by the minor, or a governmental agency or
3 attorney in a criminal or administrative action seeking to assert
4 or protect the interest of the minor. The supreme court may adopt
5 rules to permit confidential docketing of an application under this
6 section.

7 SECTION 3. Sections 33.004(b) and (c), Family Code, are
8 amended to read as follows:

9 (b) The court of appeals shall rule on an appeal under this
10 section not later than 5 p.m. on the fifth business day after the
11 date the notice of appeal is filed with the court that denied the
12 application. On request by the minor, the minor's guardian ad
13 litem, or the unborn child's attorney ad litem, the court shall
14 grant an extension of the period specified by this subsection. If a
15 request for an extension is made, the court shall rule on the appeal
16 not later than 5 p.m. on the fifth business day after the date the
17 minor or attorney ad litem, as applicable, states that the minor or
18 attorney ad litem ~~[she]~~ is ready to proceed. Proceedings under this
19 section shall be given precedence over other pending matters to the
20 extent necessary to assure that the court reaches a decision
21 promptly, regardless of whether an extension ~~[the minor]~~ is granted
22 ~~[an extension]~~ under this subsection.

23 (c) A ruling of the court of appeals issued under this
24 section is confidential and privileged and is not subject to
25 disclosure under Chapter 552, Government Code, or discovery,
26 subpoena, or other legal process. The ruling may not be released to
27 any person but the pregnant minor, the pregnant minor's guardian ad

1 litem, the unborn child's attorney ad litem, the pregnant minor's
2 attorney, another person designated to receive the ruling by the
3 minor, or a governmental agency or attorney in a criminal or
4 administrative action seeking to assert or protect the interest of
5 the minor. The supreme court may adopt rules to permit confidential
6 docketing of an appeal under this section.

7 SECTION 4. Section 33.006, Family Code, is amended to read
8 as follows:

9 Sec. 33.006. GUARDIAN AD LITEM AND ATTORNEY AD LITEM
10 IMMUNITY. A guardian ad litem appointed for a pregnant minor under
11 this chapter or attorney ad litem appointed for an unborn child who
12 is ~~and~~ acting in the course and scope of the appointment is not
13 liable for damages arising from an act or omission of the guardian
14 or attorney ad litem committed in good faith. The immunity granted
15 by this section does not apply if the conduct of the guardian or
16 attorney ad litem is committed in a manner described by Sections
17 107.009(b)(1)-(3) [~~107.003(b)(1)-(4)~~].

18 SECTION 5. Section 33.007(a), Family Code, is amended to
19 read as follows:

20 (a) A court acting under Section 33.003 or 33.004 may issue
21 an order requiring the state to pay:

22 (1) the cost of any attorney ad litem and any guardian
23 ad litem appointed for the minor or any attorney ad litem appointed
24 for an unborn child;

25 (2) notwithstanding Sections 33.003(n) and 33.004(e),
26 the costs of court associated with the application or appeal; and

27 (3) any court reporter's fees incurred.

1 SECTION 6. To the extent of any conflict, this Act prevails
2 over another Act of the 87th Legislature, Regular Session, 2021,
3 relating to nonsubstantive additions to and corrections in enacted
4 codes.

5 SECTION 7. This Act takes effect September 1, 2021.