

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 714**

FINAL READING

Introduced by Howard, 9; Vargas, 7; Thibodeau, 6.

Read first time January 03, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to minors; to amend section 25-307, Reissue
- 2 Revised Statutes of Nebraska; to provide a procedure for judicial
- 3 emancipation of a minor; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 12 of this act provide a procedure for  
2 judicial emancipation of a minor.

3           Sec. 2. A minor who is at least sixteen years of age, who is  
4 married or living apart from his or her parents or legal guardian, and  
5 who is a legal resident may file a petition in the district court of his  
6 or her county of residence for a judgment of emancipation. The petition  
7 shall be signed and verified by the minor.

8           Sec. 3. A petition for emancipation filed pursuant to section 2 of  
9 this act shall state:

10           (1) The name, age, and address of the minor;

11           (2) The names and addresses of the parents of the minor, if known;

12           (3) The name and address of any legal guardian of the minor, if  
13 known;

14           (4) If the name or address of a parent or legal guardian is unknown,  
15 the name and address of the child's nearest known relative residing  
16 within this state;

17           (5) Whether the minor is a party to or the subject of a pending  
18 judicial proceeding in this state or any other jurisdiction, or the  
19 subject of a judicial order of any description issued in connection with  
20 such pending judicial proceeding, if known;

21           (6) The state, county, and case number of any court case in which an  
22 order of support has been entered, if known;

23           (7) That the minor is seeking a judgment of emancipation;

24           (8) That the minor is filing the petition as a free and voluntary  
25 act; and

26           (9) Specific facts to support the petition, including:

27           (a) That the minor willingly lives apart from his or her parents or  
28 legal guardian;

29           (b) That the minor is able to support himself or herself without  
30 financial assistance, or, in the alternative, the minor has no parent,  
31 legal guardian, or custodian who is providing support;

1       (c) That the minor is mature and knowledgeable to manage his or her  
2 affairs without the guidance of a parent or legal guardian;

3       (d) That the minor has demonstrated an ability and commitment to  
4 obtain and maintain education, vocational training, or employment;

5       (e) The reasons why emancipation would be in the best interests of  
6 the minor; and

7       (f) The purposes for which emancipation is requested.

8       Sec. 4. Upon the filing of a petition for emancipation, the court  
9 shall fix a time for a hearing on the petition. The hearing shall be held  
10 not less than forty-five days and not more than sixty days after the  
11 filing of such petition unless any party for good cause shown requests a  
12 continuance of the hearing or all parties agree to a continuance.

13       Sec. 5. (1) Upon filing a petition pursuant to section 4 of this  
14 act, and at least thirty days prior to the hearing date, the petitioner  
15 shall serve a notice of filing, together with a copy of the petition for  
16 emancipation and a summons to appear at the hearing, upon:

17       (a) The parents or legal guardian of the minor or, if the parents or  
18 legal guardian cannot be found, the nearest known relative of the minor  
19 residing within the state, if any; and

20       (b) The legal custodian of the minor, if any.

21       (2) Service and summons shall be made in accordance with section  
22 25-505.01.

23       (3) Upon a motion and showing by affidavit that service cannot be  
24 made with reasonable diligence by any other method provided by statute,  
25 the court may permit service to be made (a) by leaving the process at the  
26 party's usual place of residence and mailing a copy by first-class mail  
27 to the party's last-known address, (b) by publication, or (c) by any  
28 manner reasonably calculated under the circumstances to provide the party  
29 with actual notice of the proceedings and an opportunity to be heard.

30       Sec. 6. Upon filing the petition, a notice of filing, together with  
31 a copy of the petition for emancipation and a summons to appear at the

1 hearing, shall be served:

2 (1)(a) Upon the parents or legal guardian of the minor or, if the  
3 parents or legal guardian cannot be found, the nearest known relative of  
4 the minor residing within the state, if any; and

5 (b) Upon the legal custodian of the minor, if any; or

6 (2) By publication pursuant to section 25-519, if service pursuant  
7 to subdivision (1) of this section is not possible.

8 Sec. 7. The court shall hold a hearing on the merits of the  
9 petition no sooner than forty-five days after the date of filing but  
10 within sixty days after the date of its filing. The petitioner shall  
11 notify by certified mail the petitioner's parent or legal guardian or the  
12 petitioner's nearest known relative residing within the state, whichever  
13 is given notice under section 6 of this act, if any, and the petitioner's  
14 legal custodian, if any, of the time, date, and place of the hearing at  
15 least thirty days prior to the hearing date. Proof of such notice shall  
16 be filed prior to the hearing on the petition. For good cause shown, the  
17 court may continue the initial emancipation hearing.

18 Sec. 8. The minor's parent or legal guardian and the minor's legal  
19 custodian may file an objection to the petition for emancipation within  
20 thirty days of service of the notice of the hearing.

21 Sec. 9. (1) The minor has the burden of proving by clear and  
22 convincing evidence that the requirements for ordering emancipation under  
23 this section have been met. Prior to entering a judgment of emancipation,  
24 the court shall advise the minor of the consequences of emancipation,  
25 including, but not limited to, the benefits and services available to an  
26 emancipated minor and the risks involved with being emancipated. Such  
27 advisements shall include, at a minimum, the words to the following  
28 effect:

29 (a) If you become emancipated, you will have some of the rights that  
30 come with adulthood. These rights include: Handling your own affairs;  
31 living where you choose; entering into contracts; keeping and spending

1 your money; making decisions regarding your own health care, medical  
2 care, dental care, and mental health care, without parental knowledge;  
3 enlisting in the military without your parent's consent; marrying without  
4 your parent's consent; applying for public assistance; suing someone or  
5 being sued; enrolling in school or college; and owning real property;

6 (b) Even if you are emancipated, you still must: Stay in school as  
7 required by Nebraska law; be subject to child labor laws and work permit  
8 rules limiting the number of hours you can work; and be of legal age to  
9 consume alcohol; and

10 (c) When you become emancipated: You lose your right to have  
11 financial support for basic living expenses for food, clothing, and  
12 shelter, and health care paid for by your parents or guardian; your  
13 parents or guardian will no longer be legally or financially responsible  
14 if you injure someone; and being emancipated does not automatically make  
15 you eligible for public assistance or benefits.

16 (2) If, after hearing, the court determines that emancipation is in  
17 the best interests of the minor and that the minor understands his or her  
18 rights and responsibilities under sections 1 to 12 of this act as an  
19 emancipated minor, the court shall enter a judgment of emancipation. In  
20 making its determination regarding the petition for emancipation, the  
21 court shall determine whether the petitioner has proven each of the facts  
22 set forth in subdivision (9) of section 3 of this act.

23 Sec. 10. (1) A judgment of emancipation removes the disability of  
24 minority insofar as that disability may affect: (a) Establishment of his  
25 or her own residence; (b) incurring indebtedness or contractual  
26 obligations of any kind; (c) consenting to medical, dental, or  
27 psychiatric care without the consent, knowledge, or liability of parents  
28 or a guardian; (d) enlisting in the military without a parent's or  
29 guardian's consent; (e) marrying without a parent's or guardian's  
30 consent; (f) being individually eligible for public assistance; (g) the  
31 litigation and settlement of controversies; (h) enrolling in any school

1 or college; and (i) acquiring, encumbering, and conveying property or any  
2 interest therein. For the purposes described in this subsection, the  
3 minor shall be considered in law as an adult and any obligation or  
4 benefit he or she incurs is enforceable by and against such minor without  
5 regard to his or her minority.

6 (2) A minor emancipated by court order shall be considered to have  
7 the rights and responsibilities of an adult, except for those specific  
8 constitutional and statutory age requirements regarding voting, use of  
9 alcoholic beverages, gambling, use of tobacco, and other health and  
10 safety regulations relevant to the minor because of his or her age.

11 (3) The emancipated minor shall be provided a certified copy of the  
12 judgment of emancipation at the time the judgment is entered. Upon  
13 presentation of the judgment of emancipation, a third party shall be  
14 allowed to retain a copy of the same as proof of the minor's ability to  
15 act as stated in this section.

16 (4) Unless otherwise provided in the judgment of emancipation, the  
17 judgment of emancipation shall explicitly suspend any order regarding  
18 custody, parenting time, or support of the minor and be reported by the  
19 district court clerk to the jurisdiction that issued such order.

20 Sec. 11. An emancipated minor shall not be considered an adult for  
21 prosecution of a criminal offense.

22 Sec. 12. (1) A motion for rescission may be filed by any interested  
23 person or public agency in order to rescind a judgment of emancipation on  
24 the following grounds:

25 (a) The minor has become indigent and has insufficient means of  
26 support; or

27 (b) The judgment of emancipation was obtained by fraud,  
28 misrepresentation, or the withholding of material information.

29 (2) The motion for rescission shall be filed in the district court  
30 in which the petition for emancipation was filed. The motion for  
31 rescission of a judgment of emancipation shall be granted if it is

1 proven:

2 (a) That rescinding the judgment of emancipation is in the best  
3 interests of the emancipated minor; and

4 (b)(i) That the minor has become indigent and has insufficient means  
5 of support; or

6 (ii) That the judgment of emancipation was obtained by fraud,  
7 misrepresentation, or the withholding of material information.

8 (3) Upon the filing of a motion for rescission, the court shall fix  
9 a time for a hearing on the motion. The hearing shall be held not less  
10 than forty-five days and not more than sixty days after the filing of  
11 such motion unless any party for good cause shown requests a continuance  
12 of the hearing or all parties agree to a continuance.

13 (4)(a) Upon filing a motion pursuant to subsection (3) of this  
14 section, and at least thirty days prior to the hearing date, the movant  
15 shall serve a notice of filing, together with a copy of the motion for  
16 rescission and a summons to appear at the hearing, upon:

17 (i) The emancipated person;

18 (ii) The parents or the person who was the legal guardian of the  
19 emancipated person or, if the parents or legal guardian cannot be found,  
20 the nearest known relative of the emancipated person residing within the  
21 state, if any; and

22 (iii) The legal custodian of the emancipated person prior to  
23 emancipation, if any.

24 (b) Service and summons shall be made in accordance with section  
25 25-505.01.

26 (c) Upon a motion and showing by affidavit that service cannot be  
27 made with reasonable diligence by any other method provided by statute,  
28 the court may permit service to be made (i) by leaving the process at the  
29 party's usual place of residence and mailing a copy by first-class mail  
30 to the party's last-known address, (ii) by publication, or (iii) by any  
31 manner reasonably calculated under the circumstances to provide the party

1 with actual notice of the proceedings and an opportunity to be heard.

2 (d) The emancipated minor may file a written response objecting to  
3 the motion to rescind emancipation within thirty days after service of  
4 the notice of the hearing.

5 (5) If, after hearing, the court determines by clear and convincing  
6 evidence that rescinding the judgment of emancipation is in the best  
7 interests of the minor because the minor has become indigent and has  
8 insufficient means of support, or because the judgment of emancipation  
9 was obtained by fraud, misrepresentation, or the withholding of material  
10 information, the court shall rescind the judgment of emancipation.

11 (6) If a prior order regarding custody, parenting time, or support  
12 of the minor was suspended by the judgment of emancipation, the order  
13 rescinding the judgment of emancipation shall be reported by the district  
14 court clerk to the jurisdiction that issued such order and shall serve to  
15 reinstate such prior order of custody, parenting time, or support.

16 (7) The parents or legal guardian or legal custodian of a minor  
17 emancipated by court order are not liable for any debts incurred by the  
18 minor child during the period of emancipation.

19 (8) Rescinding a judgment of emancipation does not affect an  
20 obligation, responsibility, right, or interest that arose during the  
21 period of time that the judgment of emancipation was in effect.

22 Sec. 13. Section 25-307, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 25-307 Except as provided by the Nebraska Probate Code and sections  
25 1 to 12 of this act, the action of an infant shall be commenced,  
26 maintained, and prosecuted by his or her guardian or next friend. Such  
27 actions may be dismissed with or without prejudice by the guardian or  
28 next friend only with approval of the court. When the action is commenced  
29 by his or her next friend, the court has power to dismiss it, if it is  
30 not for the benefit of the infant, or to substitute the guardian of the  
31 infant, or any person, as the next friend. Any action taken pursuant to



1 this section shall be binding upon the infant.

2 Sec. 14. Original section 25-307, Reissue Revised Statutes of  
3 Nebraska, is repealed.