

LEGISLATIVE BILL 714

Approved by the Governor April 17, 2018

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

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

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

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

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

(1) The name, age, and address of the minor;
(2) The names and addresses of the parents of the minor, if known;
(3) The name and address of any legal guardian of the minor, if known;
(4) If the name or address of a parent or legal guardian is unknown, the name and address of the child's nearest known relative residing within this state;

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

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

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

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

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

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

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

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

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

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

(f) The purposes for which emancipation is requested.

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

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

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

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

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

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

Sec. 6. Upon filing the petition, a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, shall be served:

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

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

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

Sec. 7. The court shall hold a hearing on the merits of the petition no

sooner than forty-five days after the date of filing but within sixty days after the date of its filing. The petitioner shall notify by certified mail the petitioner's parent or legal guardian or the petitioner's nearest known relative residing within the state, whichever is given notice under section 6 of this act, if any, and the petitioner's legal custodian, if any, of the time, date, and place of the hearing at least thirty days prior to the hearing date. Proof of such notice shall be filed prior to the hearing on the petition. For good cause shown, the court may continue the initial emancipation hearing.

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

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

(a) If you become emancipated, you will have some of the rights that come with adulthood. These rights include: Handling your own affairs; living where you choose; entering into contracts; keeping and spending your money; making decisions regarding your own health care, medical care, dental care, and mental health care, without parental knowledge; enlisting in the military without your parent's consent; marrying without your parent's consent; applying for public assistance; suing someone or being sued; enrolling in school or college; and owning real property;

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

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

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

Sec. 10. (1) A judgment of emancipation removes the disability of minority insofar as that disability may affect: (a) Establishment of his or her own residence; (b) incurring indebtedness or contractual obligations of any kind; (c) consenting to medical, dental, or psychiatric care without the consent, knowledge, or liability of parents or a guardian; (d) enlisting in the military without a parent's or guardian's consent; (e) marrying without a parent's or guardian's consent; (f) being individually eligible for public assistance; (g) the litigation and settlement of controversies; (h) enrolling in any school or college; and (i) acquiring, encumbering, and conveying property or any interest therein. For the purposes described in this subsection, the minor shall be considered in law as an adult and any obligation or benefit he or she incurs is enforceable by and against such minor without regard to his or her minority.

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

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

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

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

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

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

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

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

(a) That rescinding the judgment of emancipation is in the best interests

of the emancipated minor; and

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

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

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

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

(i) The emancipated person;

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

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

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

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

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

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

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

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

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

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

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

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