

Senate File 366 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1216)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the emancipation of a minor and family in need
2 of assistance proceedings.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2058SV 83
5 jm/rj/14

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1 1 Section 1. Section 232.125, subsection 2, Code 2009, is
1 2 amended to read as follows:
1 3 2. Such a petition may be filed by the child's parent,
1 4 guardian or custodian, ~~or~~ by the child, or on the court's own
1 5 motion as provided in section 232C.2. The judge, county
1 6 attorney, or juvenile court officer may authorize such parent,
1 7 guardian, custodian, or child to file a petition with the
1 8 clerk of the court without the payment of a filing fee.
1 9 Sec. 2. Section 232.127, Code 2009, is amended by adding
1 10 the following new subsection:
1 11 NEW SUBSECTION. 11. If after hearing pursuant to this
1 12 section, the court finds, by clear and convincing evidence,
1 13 that no remedy is available that would result in strengthening
1 14 or maintaining the familial relationship, the court may order
1 15 the minor emancipated pursuant to section 232C.3, subsection
1 16 4.
1 17 Sec. 3. NEW SECTION. 232C.1 EMANCIPATION PETITION ==
1 18 HEARING.
1 19 1. A minor who desires to become emancipated may file a
1 20 petition for an order of emancipation in juvenile court if all
1 21 of the following apply:
1 22 a. The minor is sixteen years of age or older.
1 23 b. The minor is a resident of this state.
1 24 c. The minor is not in the care, custody, or control of
1 25 the state.
1 26 2. A petition filed pursuant to this section shall contain
1 27 the following:
1 28 a. The petitioner's name, mailing address, and date of
1 29 birth.
1 30 b. The name, mailing address of the petitioner's parents
1 31 or legal guardian.
1 32 c. Specific facts to support the petition including but
1 33 not limited to the following:
1 34 (1) The minor has demonstrated financial self-sufficiency,
1 35 including proof of employment or other means of support, which
2 1 does not include assistance or subsidies from a federal,
2 2 state, or local governmental agency.
2 3 (2) The minor has demonstrated an ability to manage the
2 4 personal affairs of the minor.
2 5 (3) The minor has demonstrated an ability and commitment
2 6 to obtain and maintain education, vocational training, or
2 7 employment.
2 8 (4) Any other information considered necessary to support
2 9 the petition.
2 10 d. Any one of the following:
2 11 (1) Documentation that the minor has been living on the
2 12 minor's own for at least three consecutive months.
2 13 (2) A statement explaining the reasons the minor believes
2 14 the home of the minor's parents or legal guardian is not a
2 15 healthy or safe environment.
2 16 (3) A notarized statement that contains written consent to

2 17 emancipation by the minor's parents or legal guardian.

2 18 3. The court shall hold a hearing on the petition within
2 19 ninety days of the filing of the petition. Notice of the
2 20 hearing, with a copy of the petition attached, shall be served
2 21 by personal service on the minor's parent or legal guardian at
2 22 least thirty days prior to the hearing date. Any other
2 23 parties shall be notified as provided by the rules of civil
2 24 procedure for service of an original notice.

2 25 4. The minor may participate in the court proceedings on
2 26 the minor's own behalf, or may be represented by the minor's
2 27 own counsel, or the court may appoint a guardian ad litem on
2 28 behalf of the minor.

2 29 Sec. 4. NEW SECTION. 232C.2 STAY == MEDIATION ==
2 30 REFERRAL TO FAMILY IN NEED OF ASSISTANCE.

2 31 1. Prior to an emancipation hearing held pursuant to
2 32 section 232C.1, the court, on its own motion, may stay the
2 33 proceedings, and refer the parties to mediation, or request
2 34 that the department of human services investigate any
2 35 allegations of child abuse or neglect contained in the
3 1 petition, and order that a written report be prepared and
3 2 filed by the department.

3 3 2. If a minor's parent or guardian objects to the petition
3 4 filed pursuant to section 232C.1, the juvenile court shall
3 5 stay the proceedings and refer the parties to mediation unless
3 6 the juvenile court finds that mediation would not be in the
3 7 best interests of the minor.

3 8 3. If an agreement is reached through mediation, the
3 9 parties shall file the signed agreement with the juvenile
3 10 court.

3 11 4. Notwithstanding subsections 1 through 3, the juvenile
3 12 court, on its own motion, may discontinue emancipation
3 13 proceedings pursuant to this chapter and interpret the
3 14 petition as a petition to initiate family in need of
3 15 assistance proceedings and consider the petition under
3 16 sections 232.122 through 232.127.

3 17 Sec. 5. NEW SECTION. 232C.3 DETERMINATION OF
3 18 EMANCIPATION == BEST INTERESTS OF THE MINOR.

3 19 1. The juvenile court shall determine emancipation based
3 20 on the best interests of the minor and shall consider all
3 21 relevant factors including the following:

3 22 a. The potential risks and consequences of emancipation
3 23 and whether the minor understands the risks and consequences
3 24 of emancipation.

3 25 b. The ability of the minor to be financially
3 26 self-sufficient.

3 27 c. The education level of the minor and success achieved
3 28 in school.

3 29 d. The criminal record of the minor.

3 30 e. The desires of the minor.

3 31 f. The recommendations of the parents or guardian of the
3 32 minor.

3 33 2. The minor has the burden of proving by clear and
3 34 convincing evidence that the requirements for ordering
3 35 emancipation under this section have been met.

4 1 3. The juvenile court shall carefully consider the best
4 2 interests of the minor and after hearing and consideration of
4 3 the factors enumerated in this section, the juvenile court may
4 4 order the minor emancipated or deny the petition for
4 5 emancipation.

4 6 4. If after referral of a petition for the initiation of
4 7 family in need of assistance proceedings pursuant to section
4 8 232C.2, the juvenile court finds, by clear and convincing
4 9 evidence, that no remedy is available that would result in
4 10 strengthening or maintaining the familial relationship under
4 11 the family in need of assistance proceedings pursuant to
4 12 sections 232.122 through 232.127, the juvenile court may order
4 13 the minor emancipated as provided in this section.

4 14 Sec. 6. NEW SECTION. 232C.4 EFFECT OF EMANCIPATION
4 15 ORDER.

4 16 1. An emancipation order shall have the same effect as a
4 17 child reaching the age of majority with respect to but not
4 18 limited to the following:

4 19 a. The ability to sue or be sued in the child's own name.

4 20 b. The right to enter into a binding contract.

4 21 c. The right to establish a legal residence.

4 22 d. The right to incur debts.

4 23 e. The right to consent to medical, dental, or psychiatric
4 24 care.

4 25 2. An emancipation order shall have the same effect as the
4 26 child reaching the age of majority and the parents are exempt
4 27 from the following:

4 28 a. Future child support obligations for the emancipated
4 29 child.
4 30 b. An obligation to provide medical support for the
4 31 emancipated child, unless deemed necessary by the court.
4 32 c. Tort liability for the actions of the child after
4 33 emancipation.
4 34 d. A right to the income or property of the emancipated
4 35 child.
5 1 e. A responsibility for the debts of the emancipated
5 2 child.
5 3 3. An emancipated minor shall remain subject to voting
5 4 restrictions under chapter 48A, gambling restrictions under
5 5 chapter 99B, 99D, 99F, 99G, or 725, alcohol restrictions under
5 6 chapter 123, compulsory attendance requirements under chapter
5 7 299, and cigarette tobacco restrictions under chapter 453A.
5 8 4. An emancipated child shall not be considered an adult
5 9 for prosecution except as provided in section 232.8.
5 10 5. Notwithstanding sections 232.147 through 232.151, the
5 11 emancipation order shall be released by the juvenile court
5 12 subject to rules prescribed by the supreme court.
5 13 6. A parent who is absolved of child support obligations
5 14 pursuant to an emancipation order shall notify the child
5 15 support recovery unit of the department of human services of
5 16 the emancipation.

5 17 EXPLANATION

5 18 This bill relates to a petition for the emancipation of a
5 19 minor and family in need of assistance proceedings.
5 20 The bill provides that a minor 16 years of age or older may
5 21 file a petition for an order of emancipation in juvenile court
5 22 provided the minor is a resident of the state, and is not in
5 23 the care, custody, or control of a state agency.
5 24 The bill requires the petition for emancipation to include
5 25 facts supporting the financial self-sufficiency of the minor
5 26 which shall not include assistance or subsidies from a
5 27 governmental agency, and shall include the ability and
5 28 commitment of the minor to manage the personal affairs of the
5 29 minor, the ability and commitment of the minor to obtain
5 30 educational training or employment, and any other information
5 31 considered relevant to support the petition.
5 32 Under the bill, the petition shall also include
5 33 documentation of the minor living on the minor's own for at
5 34 least three months, a statement explaining the reasons the
5 35 minor believes the home of the minor's parents or guardian is
6 1 not a healthy or safe environment, or a notarized statement
6 2 that contains written consent to emancipation by the minor's
6 3 parents or guardian.
6 4 The bill provides that the juvenile court shall hold a
6 5 hearing on the petition within 90 days of the filing of the
6 6 petition. Notice of the hearing shall be by personal service
6 7 upon the child's parent or legal guardian at least 30 days
6 8 prior to the hearing date.
6 9 The bill provides that prior to any hearing on
6 10 emancipation, the juvenile court may stay the proceedings, and
6 11 refer the minor and the minor's parents or guardian to
6 12 mediation, or request the department of human services to
6 13 investigate any abuse or neglect allegations of the minor and
6 14 file a report with the court.
6 15 The bill allows the court, on its own motion, to
6 16 discontinue emancipation proceedings and interpret the
6 17 emancipation petition as a petition to initiate family in need
6 18 of assistance proceedings and to consider the petition under
6 19 Code sections 232.122 through 232.127. If after referral of a
6 20 petition for the initiation of family in need of assistance
6 21 proceedings, the court finds, by clear and convincing
6 22 evidence, that no remedy is available that would result in
6 23 strengthening or maintaining the familial relationship under
6 24 the family in need of assistance proceedings, the court may
6 25 order the minor emancipated under the bill.
6 26 The bill requires the juvenile court to determine
6 27 emancipation based upon the best interests of the minor.
6 28 Under the bill, the juvenile court shall consider all relevant
6 29 factors including the potential risks and consequences of
6 30 emancipation, the ability of the minor to be self-sufficient,
6 31 the education level of the minor, the minor's criminal record,
6 32 and the desires of the minor and the minor's parents or
6 33 guardian.
6 34 If the court orders emancipation of the child, the effect
6 35 of the order shall be that the minor has the power to sue or
7 1 be sued, enter into binding contracts, establish a legal
7 2 residence, incur debts, and make medical decisions.
7 3 An emancipated minor under the bill remains subject to

7 4 voting, alcohol, gambling, and tobacco restrictions as
7 5 provided by law. An emancipated minor is also required to
7 6 attend school as provided in Code chapter 299.
7 7 If the court orders emancipation of the child, the parents
7 8 or guardian of the child are exempt from making future child
7 9 support payments, providing medical support, unless deemed
7 10 necessary by the court, tort liability for actions after
7 11 emancipation, rights to the income or property of the
7 12 emancipated child, and from the responsibility of any debts
7 13 incurred after emancipation.
7 14 The bill requires a parent who has been absolved of child
7 15 support obligations to notify the child support recovery unit
7 16 of the department of human services of the emancipation.
7 17 The bill provides that an emancipated child shall not be
7 18 considered an adult for prosecution except as provided in
7 19 section 232.8.
7 20 LSB 2058SV 83
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