

**SFA**



BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED  
DEC 03 1988

Michigan State Library

House Bill 5253 (Substitute S-2 as reported)

House Bill 5254 (Substitute S-1 as reported)

Sponsor: Representative Perry Bullard

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 11-9-88

### ***RATIONALE***

Those who staff runaway shelters and other facilities involved with the problems of youths report an increasing trend of children being banned from their parent's household. While in some of these cases parents simply have kicked kids out, in others parents have used emancipation laws in an effort to terminate parental obligations legally. Although the practice varies from county to county, in many jurisdictions all that is necessary to emancipate a minor is to file a statement to that effect with the county clerk's office. Although the law states that emancipation "does not occur if the minor is in fact dependent upon his or her parents for support", there is strong anecdotal evidence that many of the youths emancipated by their parents are unable to support themselves. These minors have difficulty obtaining jobs, housing, and medical care because they are neither recognized as adults nor under the legal authority of an adult who can vouch for them. Few have the financial and social skills necessary to survive on their own, and attending school is made more difficult by changing living arrangements. Although legal action to enforce parental responsibilities could be pursued, the juvenile authorities generally lack adequate resources to investigate situations involving adolescent neglect. Many people believe that a revision of the law is needed to ensure that minors are not emancipated unless they are reasonably prepared to assume the burdens of adulthood.

### ***CONTENT***

House Bills 5253 (S-2) and 5254 (S-1) would amend Public Act 293 of 1968, which establishes the conditions for emancipation of minors, and the Michigan Vehicle Code, respectively, to provide for the emancipation of a minor by court order pursuant a petition filed by the minor and to require emancipated status to be indicated on a minor's drivers license.

#### **House Bill 5253 (S-2)**

The bill would amend Public Act 293 of 1968 to establish a procedure by which a minor could petition the Probate Court for emancipation. The bill would do all of the following:

- Delete certain current emancipation provisions.
- Require a minor who sought emancipation to file a petition with the Probate Court.
- Establish a hearing procedure for the court to decide whether emancipation should be granted pursuant to a minor's petition.

- Allow a parent of an emancipated minor to petition the court to rescind the emancipation order.
- Specify the rights of an emancipated minor.

#### **Deleted Emancipation Provisions**

The bill specifies that emancipation could occur either by "operation of law" or pursuant to a petition filed by a minor with the Probate Court. Emancipation by operation of law occurs when a minor is married; when a minor reaches 18 years of age; when a minor is on active duty with the U.S. armed forces; for the purposes of consenting to routine, nonsurgical medical care, when the minor is in the custody of a law enforcement agency; or if a court of competent jurisdiction orders an emancipation in the minor's best interests. The bill would delete the last instance.

Also deleted under the bill would be a provision under which both parents, a surviving parent, or a parent who has exclusive rights of custody can effect emancipation of a minor by filing a written instrument with the county clerk, or by other conduct that indicates intent to release parental rights. In addition, the bill would remove provisions which specify that abandonment by the parents is "presumptive evidence of emancipation and relinquishment of parental rights", that emancipation by a parent's action is not in effect if the minor is dependent on his or her parents for support, and that an emancipated minor may acquire his or her own domicile. Finally, the bill would remove a provision that specifies that emancipation by action of the parent or marriage of the minor can be revoked by an agreement between the parents and the minor "or by a resumption of family relations inconsistent with the prior emancipation".

#### **Petition for Emancipation**

The bill would require that a minor who sought emancipation petition the Probate Court in the county where the minor lived. The petition would have to be signed and verified by the minor. It would have to include his or her full name and birth date and the county and state where he or she was born along with a certified copy of the minor's birth certificate. The petition also would have to include all of the following:

- The name and last known address of the minor's parents, guardian, or custodian.
- The minor's current address and length of residency there.

OVER

H.B. 5253 (S-2) & 5254 (S-1) (11-9-88)

- An affidavit signed by the minor's custodial parent declaring that he or she did not contest the application.
- A declaration indicating that the minor had demonstrated the ability to manage his or her financial affairs.
- A declaration indicating ability to manage personal and social affairs.

The petition also would have to include an affidavit that contained a declaration of personal knowledge by the individual filing the affidavit of the minor's circumstances and that emancipation would be in the minor's best interests. Such an affidavit would have to be filed by a physician, nurse, member of the clergy, psychologist, family therapist, social worker, school administrator, counselor, or teacher, law enforcement officer, or child care provider. A copy of the petition and a summons to appear at the emancipation hearing would have to be served on the parents or guardian, and a notice of the hearing would have to be sent to the person who filed the affidavit.

After a minor filed a petition for emancipation, the court could do one or more of the following:

- Assign a court employee to investigate the petition's allegations and file a report that contained the investigation's results.
- Appoint legal counsel for the minor.
- Appoint legal counsel for the parents or guardian, if they were indigent and opposed the petition.
- Dismiss the petition if the custodial parent were providing support and did not consent to the petition.

#### Emancipation Hearing

The hearing would have to be held before a judge or referee without a jury. If the minor requested a hearing before a judge rather than a referee, the request would have to be granted. The court would be required to issue an order of emancipation if it determined that emancipation was in the minor's best interests and the minor established all of the following:

- That his or her parents or guardian did not object to the petition; or, if there were objection, that the parent or guardian was not providing support.
- That he or she was at least 16 years of age and a resident of Michigan.
- The ability to manage his or her financial affairs, including proof of employment or other means of support. (This could not include General Assistance or Aid to Families with Dependent Children.)
- The ability to manage his or her personal and social affairs, including housing.
- An understanding of his or her rights and responsibilities.

The minor would have the burden of showing by a preponderance of evidence that emancipation should be ordered. If the court issued an order, it would have to retain a copy until the emancipated minor reached the age of 25 years. An emancipation obtained fraudulently would be voidable, but voiding the order would not affect any obligation, responsibility, right, or interest that arose during the time the emancipation order was in effect. The minor or the parent or guardian could appeal the court's decision regarding the emancipation petition. Such an appeal would have to be filed in the Court of Appeals.

#### Petition to Rescind

Under the bill, an emancipated minor or a parent of an emancipated minor could petition the Probate Court to

rescind its emancipation order. A copy of the petition and a summons would have to be served on the minor and his or her parents. The court would have to grant the petition and rescind the order if it determined one or more of the following:

- That the minor was indigent and had no means of support.
- That the minor and his or her parents agreed that the order should be rescinded.
- That there was a resumption of family relations inconsistent with the emancipation order.

If a petition for rescission of an emancipation order were granted, the court would have to issue an order of rescission and retain a copy of that order until the minor reached the age of 25 years. Rescission would not alter any contractual obligations or rights or any property rights or interests that arose during the emancipation period. The minor or his or her parent could appeal the court's decision regarding the petition to rescind the emancipation order. Such an appeal would have to be filed in the Court of Appeals.

#### Rights of an Emancipated Minor

An emancipated minor, whether emancipated by operation of law or by court order, would have the rights and responsibilities of an adult except for those that have age requirements (e.g., voting and drinking of alcoholic beverages). The bill specifies that an emancipated minor would be considered emancipated for all of the following purposes:

- The right to enter into enforceable contracts, including apartment leases.
- The right to sue or be sued; the right to retain earnings; and the right to establish a separate domicile.
- The right to act autonomously and as an adult in business relationships, except estate or property matters that the court determined could require a conservator or guardian ad litem.
- The right to earn a living, subject only to health and safety regulations designed to protect individuals under the age of majority.
- The right to authorize health care without parental knowledge or liability.
- The right to apply for a driver's license or other State licenses; the right to register for school; and the right to marry.
- The right to apply for medical assistance under the Medicaid program, and for other welfare assistance.
- The right, if a parent, to make decisions and give authority in caring for a minor child.
- The right to make a will.

The parents of an emancipated minor would be jointly and severally obligated to support the minor. The parents would not be liable, however, for any debts incurred by the minor during the emancipation period.

MCL 722.4

#### House Bill 5254 (S-1)

The bill would amend the Michigan Vehicle Code to exclude emancipated minors from a provision of the Code that requires a minor's application for a driver's license to be signed by a parent, guardian, or other responsible adult. The bill also would require that an emancipated minor's status as such be indicated on the back of his or her driver's license.

## SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-2) to House Bill 5253. The substitute would expand the list of items that would have to be included in a minor's petition for emancipation by adding an affidavit signed by the custodial parent, stating that he or she did not contest the application. The substitute also would allow the Probate Court to dismiss a petition if the minor's custodial parent did not consent to emancipation and was providing support. Neither of these provision were included in the House-passed version of the bill.

In addition, the substitute would restrict an emancipated minor's right to act autonomously in business relationships by excluding from that action estate and property matters that the court determined required a conservator or guardian ad litem. Finally, the House-passed version specified that an emancipated minor's right, if a parent, to make decisions concerning his or her own child would include the right to execute a consent or release pertaining to the child's adoption. The Senate substitute removed the provision specifying that parental rights include adoption decisions.

The Senate Judiciary Committee also adopted a substitute (S-1) to House Bill 5254 to incorporate amendments to the Michigan Vehicle Code that were added by Public Act 346 of 1988 (Senate Bill 700), which was part of the truck safety package.

## FISCAL IMPACT

### House Bill 5253 (S-2)

The bill would have an indeterminate impact on State and local government. Increased costs to the court system cannot be estimated.

### House Bill 5254 (S-1)

The bill would have no fiscal impact on State or local government.

## ARGUMENTS

### *Supporting Argument*

Under existing law, it is far too easy for a parent to abandon a teenaged child merely by signing an emancipation document. Such unwillingly emancipated teens generally are not incorrigible delinquents. Rather, a review of case histories reveals a large number of children who were cast out because of interpersonal problems with stepparents or other family members. House Bill 5253 (S-2) would ensure that a minor could not be emancipated by the unilateral action of an irresponsible parent, and would impose uniform emancipation standards to be employed by courts across the State. Further, the bill would refine and articulate the adult rights and responsibilities that are to be accorded emancipated minors.

### *Opposing Argument*

While House Bill 5253 (S-2) would impede the emancipation of teenagers whose parents do not want them, it would do little to ease the plight of already-emancipated youths. The expression of rights contained in the bill would not be sufficient if other applicable laws do not acknowledge or allow those rights. Further, the difficulties teens face in supporting themselves are well known, but the bill contains no clear expression of policy on whether an emancipated

minor would have a right to various entitlement programs (other than Medicaid, to which the bill specifically refers) such as General Assistance. Under the bill, an emancipated minor would have the right to apply for such programs, but the bill also specifies that parents would have a continuing obligation to support a minor emancipated by court order.

**Response:** The list of rights and the expression of the parental obligation to support a child would offer the opportunity for case workers to raise issues with the Probate Court and to obtain judicial solutions to individual problems.

### *Opposing Argument*

The bills would unduly interfere in private family matters. Parents would be unable to discipline unruly teenagers by throwing them out of the house. A strong-willed youngster could obtain emancipation over the objections of his or her parents.

**Response:** Parents not only have a moral obligation to care for their children, they have, under existing law, a legal obligation to support them. A parent should not be allowed simply to dump a child who has become a burden. In addition, although a minor could obtain emancipation if a parent objected, it would have to be shown that the objecting parent was not providing the minor with support. The criteria to be imposed by House Bill 5253 (S-2) would ensure that a minor would not be emancipated unless he or she was prepared for it.

Legislative Analyst: P. Affholter

Fiscal Analyst: B. Bowerman

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.