

SENATE BILL NO. 265

BY SENATOR QUINN (On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Chapter 2 of Title VIII of Book I of the Civil Code, to be comprised of Articles 365 through 371, Civil Code Article 2318, and Title V of Book VII of the Code of Civil Procedure, to be comprised of Articles 3991 through 3998, relative to the emancipation of minors; to provide for the kinds of emancipation; to provide for judicial emancipation; to provide for emancipation by marriage; to provide for limited emancipation by authentic act; to provide for the effective date of an emancipation; to provide for the modification or termination of an emancipation; to provide for parental liability of an unemancipated minor; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 2 of Title VIII of Book I of the Civil Code, comprised of Articles 365 through 371 and Civil Code Article 2318 are hereby amended and reenacted to read as follows:

Chapter 2. ~~Of~~ Emancipation

~~Section 1. General Dispositions~~

~~Art. 365. Kinds of emancipation.~~

1 There are three kinds of emancipation:
 2 1. ~~Emancipation conferring the power of administration.~~
 3 2. ~~Emancipation by marriage.~~
 4 3. ~~Emancipation relieving the minor from the time prescribed by law for~~
 5 ~~attaining the age of majority.~~

6 **Art. 365. Emancipation**

7 **There are three kinds of emancipation: judicial emancipation,**
 8 **emancipation by marriage, and limited emancipation by authentic act.**

9 Revision Comment – 2008

10
 11 This revision establishes an emancipation regime under which a minor can
 12 be emancipated by a judgment of a court, by marriage, and by an authentic act.
 13 Emancipation by authentic act, however, may be limited.

14
 15 ~~Section 2. Of Emancipation Conferring the Power of Administration~~

16
 17 ~~Art. 366. Emancipation by notarial act~~

18 ~~The minor, although not married, may be emancipated by his father~~
 19 ~~or, upon the death of the father, by his mother or, in the event of divorce or~~
 20 ~~separation from bed and board, by the natural tutor or cotutors acting jointly,~~
 21 ~~when he shall have arrived at the full age of fifteen years.~~

22 ~~This emancipation takes place by the declaration to that effect of the~~
 23 ~~father, the mother, or both, before a notary public in the presence of two~~
 24 ~~witnesses.~~

25 **Art. 366. Judicial emancipation**

26
 27 **A court may order for good cause the full or limited emancipation**
 28 **of a minor sixteen years of age or older. Full judicial emancipation**
 29 **confers all effects of majority on the person emancipated, unless**
 30 **otherwise provided by law. Limited judicial emancipation confers the**
 31 **effects of majority specified in the judgment of limited emancipation,**
 32 **unless otherwise provided by law.**

33 Revision Comments – 2008

34
 35 (a) This Article is analogous to the provisions in former Civil Code
 36 Article 385 (enacted by Acts 1976, No. 155) that provided for emancipation
 37 that relieved the minor from the time prescribed by law for attaining the age

1 of majority. *See* C.C. Art. 385 (enacted by Acts 1976, No. 155).

2
3 (b) Among other effects, full judicial emancipation empowers the
4 minor with capacity to incur conventional obligations and to make donations.
5 Unemancipated minors lack capacity to make many donations, *see* C.C. Art.
6 1476 (Rev. 1991), and to contract, *see id.* C.C. Art. 1918 (Rev. 1984).

7
8 (c) By providing that a fully emancipated minor is treated as a major
9 "unless otherwise provided by law," this Article clarifies that laws regulating
10 the conduct of those "under age eighteen," are not affected by emancipation.

11
12 (d) This Article is new in that it provides for limited judicial
13 emancipation. This provision gives a court in an emancipation matter
14 discretion to tailor a judgment of limited emancipation to the needs of the
15 minor and his parents or tutor. For example, if a minor needs capacity to
16 contract in order to further the needs of his business, a judgment of limited
17 emancipation could confer upon him only that capacity. He would be treated
18 as a minor in all other respects.

19
20 (e) Although a court has much discretion to tailor a judgment of
21 limited emancipation to suit the needs of the minor and his parents or tutor,
22 a judgment of limited emancipation might include restrictions on capacity
23 similar to those contained in the 1870 Civil Code, such as (1) limitations on
24 the minor's capacity to alienate immovable property, C.C. Art. 373 (1870);
25 (2) limitations on the amount of the minor's conventional obligations, *see*
26 C.C. Arts. 371-372 (1870); and, (3) limitations on the minor's capacity to
27 make donations, *see* C.C. Art. 374 (1870).

28
29 (f) This Article permits a court to emancipate a minor "for good
30 cause."

31
32 (g) "Good cause" warranting emancipation may exist when the
33 minor's parents need to be protected. For example, emancipation might be
34 appropriate if a minor has run away from home and cannot be found.
35 Emancipation would protect the minor's parents from liability for the acts of
36 an absent child over whom they have no control.

37
38 (h) "Good cause" warranting emancipation may exist when the minor
39 needs the capacity to enter into juridical acts. For example, emancipation
40 might be appropriate if a minor is operating a business and needs to contract
41 with vendors or suppliers without parental assistance.

42
43 (i) "Good cause" warranting emancipation may exist if the parents
44 of a mature and responsible minor give the minor "corrupt examples," "ill
45 treat him excessively," or "refuse him support." *See* C.C. Art. 368 (1870).

46
47 **Art. 367. Emancipation by marriage**

48
49 **A minor is fully emancipated by marriage. Termination of the marriage**
50 **does not affect emancipation by marriage. Emancipation by marriage may not**
51 **be modified or terminated.**

52 Revision Comments – 2008

53
54 (a) This Article retains the concept of emancipation by marriage. *See*
55 C.C. Art. 379 (1870). However, it effects a significant change in the law by
56 rendering the minor "fully emancipated" by marriage. Under the former law,

1 a married minor below the age of sixteen obtained only the power of
 2 administration through marriage. *See id.* C.C. Art. 382 (1870).

3
 4 (b) As used in this Article, the term "marriage" includes both lawful
 5 marriages and putative marriages.
 6

7 (c) This Article reproduces the substance of C.C. Art. 383 (1870).
 8 Therefore, termination of marriage by divorce or by the death of the
 9 emancipated minor's spouse (or otherwise) will not affect his emancipation.
 10

11 ~~Art. 368. Emancipation by reason of ill treatment.~~

12 ~~The minor may be emancipated against the will of his father and mother, when they~~
 13 ~~ill treat him excessively, refuse him support, or give him corrupt examples.~~

14 **Art. 368. Limited emancipation by authentic act**

15 **An authentic act of limited emancipation confers upon a minor age sixteen or**
 16 **older the capacity to make the kinds of juridical acts specified therein, unless otherwise**
 17 **provided by law. The act shall be executed by the minor, and by the parents of the**
 18 **minor, if parental authority exists, or by the tutor of the minor, if parental authority**
 19 **does not exist. All other effects of minority shall continue.**
 20

21 Revision Comments – 2008

22
 23 (a) This Article retains the concept of limited emancipation by authentic act. It
 24 increases the age of eligibility for emancipation from fifteen to sixteen. The limited
 25 emancipation by authentic act does not relieve the parents from liability for the damages
 26 occasioned by their minor child. See Civil Code Article 2318 and the Comments thereto.
 27

28 (b) Within the authentic act of limited emancipation, the parties may provide that the
 29 emancipated minor has the capacity to execute all juridical acts, or certain kinds of juridical
 30 acts, or only specific juridical acts.
 31

32 (c) The requirements for an "authentic act" are set forth in Civil Code Article 1833.
 33

34 **Art. 369. Emancipation; when effective**

35 **Judicial emancipation is effective when the judgment is signed. Emancipation**
 36 **by marriage is effective upon marriage. Limited emancipation by authentic act is**
 37 **effective when the act is executed.**
 38

39 Revision Comment – 2008

40
 41 Emancipation is wholly prospective, has no retroactive effects, and does not affect
 42 the validity or invalidity of an act made by the emancipated person prior to the emancipation.
 43

44 ~~Art. 370. Emancipated minor's powers of administration.~~

45
 46 ~~The minor who is emancipated has the full administration of his estate, and may pass~~
 47 ~~all acts which are confined to such administration, grant leases, receive his revenues and~~

1 moneys which may be due to him, and give receipts for the same.

2 **Art. 370. Modification and termination of judicial emancipation**

3
4 **The court may modify or terminate its judgment of emancipation for good**
5 **cause.**

6 **A judgment modifying or terminating a judgment of emancipation is effective**
7 **toward third persons as to immovable property when the judgment is filed for registry**
8 **in the conveyance records of the parish in which the property is situated, and as to**
9 **movables when the judgment is filed for registry in the conveyance records of the**
10 **parish or parishes in which the minor was domiciled at the time of the judgment.**

11 **A judgment modifying or terminating a judgment of emancipation does not**
12 **affect the validity of an act made by the emancipated minor prior to the effective date**
13 **of modification or termination.**

14 **The termination of judicial emancipation places the minor under the same**
15 **authority to which he was subject prior to emancipation, unless otherwise ordered by**
16 **the court for good cause shown.**

17 Revision Comments – 2008

18
19 (a) "Good cause" exists whenever the reason justifying emancipation—or any other
20 meritorious reason—exists for termination or modification.

21
22 (b) Through the use of the term "may," this Article leaves termination or
23 modification of judicial emancipation to the sound discretion of the court. For example, a
24 court could exercise its discretion to convert a full emancipation into a limited emancipation.

25
26 (c) This Article clarifies that the termination or modification of emancipation is
27 wholly prospective and has no retroactive effects.

28
29 (d) This Article does not change the law regarding the supervisory regime to which
30 the minor will be subject following a termination of emancipation. Under the 1870 Code,
31 "revocation of emancipation places the minor under the same authority to which he was
32 subject previous to his being emancipated." See C.C. Art. 378 (1870). However, this Article
33 clarifies that a court has discretion to place the minor under different authority.

34
35 ~~Art. 371. Limitation on contractual capacity.~~

36 ~~He can not bind himself legally by promise or obligation for any sum exceeding the~~
37 ~~amount of one year of his revenue.~~

38 **Art. 371. Modification or termination of limited emancipation by authentic act**

39 **The parties to an authentic act of limited emancipation may modify or terminate**
40 **the limited emancipation by making a subsequent authentic act. In addition, a court,**
41

1 for good cause, may modify or terminate limited emancipation by authentic act.

2 An authentic act or judgment modifying or terminating limited emancipation
 3 by authentic act is effective toward third persons as to immovable property when the
 4 act or judgment is filed for registry in the conveyance records of the parish in which
 5 the property is situated and as to movables when the act or judgment is filed for
 6 registry in the conveyance records in the parish or parishes in which the minor was
 7 domiciled at the time of the act modifying or terminating limited emancipation by
 8 authentic act.

9 An authentic act or judgment modifying or terminating a prior act of limited
 10 emancipation does not affect the validity of a juridical act made by the minor prior to
 11 the effective date of modification or termination.

12 ~~Art. 372. Limitations on contractual liability; lesion.~~

13 ~~The minor who is emancipated has no right to claim a restitution on the plea of~~
 14 ~~simple lesion against acts of simple administration.~~

15 ~~He has no right either to claim a restitution for simple lesion* against obligations or~~
 16 ~~promises which do not exceed the amount of one year of his revenue.~~

17 ~~If, however, he has contracted in the same year, towards one or more creditors,~~
 18 ~~several obligations, each of which does not exceed the amount of one year of his revenue,~~
 19 ~~but which together exceed that amount, these obligations may be reduced according to the~~
 20 ~~discretion of the judge, whose duty it shall be in such case, to take into consideration the~~
 21 ~~estate of the minor, the probity or dishonesty of the persons who have dealt with him, and~~
 22 ~~the utility and inutility of the expenses.~~

23 ~~Art. 373. Limitation on power of alienation; authority of tutor, undertutor or~~
 24 ~~administrator.~~

25 ~~The emancipated minor who has only the power of administration of his estate~~
 26 ~~cannot alienate, affect or mortgage any of his immovable property without the authorization~~
 27 ~~of the court, on the recommendation of his tutor or of the administrator of his estate, as the~~
 28 ~~case may be, in accordance with the applicable provisions of the Code of Civil Procedure.~~

29 ~~The authority of the tutor and undertutor, or of the administrator of his estate, of such a~~
 30 ~~minor continues for these purposes after his emancipation until the minor reaches the age~~

1 of eighteen years.

2 ~~Art. 374. Limitation on right to make donations.~~

3 ~~The emancipated minor has no right to dispose of his movables or immovables by~~
4 ~~donation *inter vivos* unless it be by marriage contract in favor of the person to whom he is~~
5 ~~to be married.~~

6 ~~Art. 376. General capacity concerning trade.~~

7 ~~The emancipated minor who is engaged in trade, is considered as having arrived at~~
8 ~~the age of majority, for all the acts which have any relation to such trade.~~

9 ~~Art. 377. Causes for revocation of emancipation.~~

10 ~~The emancipation, whatever be the manner in which it may have been effected, may~~
11 ~~be revoked, whenever the minor contracts engagements which exceed the limits prescribed~~
12 ~~by law.~~

13 ~~Art. 378. Effect of revocation.~~

14 ~~The revocation of emancipation places the minor under the same authority to which~~
15 ~~he was subject previous to his being emancipated.~~

16 ~~But if he has been emancipated against the will of his father and mother, for~~
17 ~~excessive ill treatment, refusal to support him, or corrupt examples given him, another tutor~~
18 ~~shall be appointed in the manner provided by law.~~

19 **Section 3. Of Emancipation**

20 ~~Art. 379. Emancipation by marriage.~~

21 ~~The minor, whether male or female, is emancipated of right by marriage.~~

22 ~~Art. 380. Right to appear in court.~~

23 ~~The minor, emancipated by marriage, can appear in courts of justice without the~~
24 ~~assistance of a curator.~~

25 ~~Art. 381. Accounting of former tutor.~~

26 ~~The minor, emancipated by marriage, may demand an account from his tutor and a~~
27 ~~settlement of the tutorship. The tutor is bound to pay him the balance ascertained to be due,~~
28 ~~and to deliver the property in his hands belonging to such minor.~~

29 ~~Art. 382. Special effects of emancipation by marriage.~~

30 ~~A married minor below the age of sixteen years has the power of administration of~~

1 his estate; but he cannot alienate, affect, or mortgage any of his immovable property without
 2 the authorization of the court, as provided in Article 373. The authority of the tutor or
 3 undertutor, or of the administrator of his estate, of such a minor continues for these purposes
 4 after the minor's marriage until the minor reaches the age of sixteen years.

5 ~~Art. 383. Irrevocability of emancipation by marriage.~~

6 ~~This emancipation can not be revoked.~~

7 ~~Art. 384. General rules.~~

8 ~~In other respects, minors emancipated by marriage are bound by the rules laid down~~
 9 ~~in the preceding section.~~

10 ~~Section 4. Of Emancipation relieving the Minor From the Time Prescribed by Law~~
 11 ~~For Attaining the Age of Majority~~

12 ~~Art. 385. Emancipation of minor sixteen years or older.~~

13 ~~A minor sixteen years of age or older may be judicially emancipated and relieved of~~
 14 ~~the disabilities which attach to minority as provided in Articles 3991 through 3994 of the~~
 15 ~~Louisiana Code of Civil Procedure.~~

16 * * *

17 Art. 2318. Acts of a minor minors

18 The father and the mother and, after the decease of either, the surviving parent, are
 19 responsible for the damage occasioned by their minor **child**, or unemancipated children,
 20 residing who resides with them; or who has been placed by them under the care of other
 21 persons, reserving to them recourse against those persons. **However, the father and**
 22 **mother are not responsible for the damage occasioned by their minor child who has**
 23 **been emancipated by marriage, by judgment of full emancipation, or by judgment of**
 24 **limited emancipation that expressly relieves the parents of liability for damages**
 25 **occasioned by their minor child.**

26 The same responsibility attaches to the tutors of minors.

27 Revision Comment -- 2008

28
 29 The purpose of the 2008 amendment to this Article is to clarify the types of
 30 emancipation that will relieve parents from tort liability for their minor children.
 31 There is no intent to change the judicial interpretation of Civil Code Article 2318 as
 32 expressed in *Turner v. Butcher*, 308 So.2d 270 (La. 1975). This Article, in
 33 connection with the 2008 Revision of the law of Emancipation, does change the law

1 as expressed in the case of *Held v. Wilt*, 610 So.2d 1103 (La. App. 5 Cir. 1982)
 2 which held that a notarial emancipation relieves a parent from tort liability for the
 3 acts of their minor children. Compare *Keller v. Rednour*, 416 So.2d 357 (La. App.
 4 4 Cir. 1982). Under the Revision, an emancipation by authentic act has limited
 5 effects and does not affect the liability of a parent under Civil Code Article 2318. See
 6 Civil Code Article 368 (Rev. 2008). This Article is not intended to change the law
 7 with respect to other types of emancipation. See *Speziale v. Kohnke*, 194 So.2d 485
 8 (La. App. 4 Cir. 1967) (father not liable for tort committed by judicially emancipated
 9 minor) and *Stough v. Young*, 185 So. 2d 476 (La. App. 2 Cir. 1938) (parent not liable
 10 for acts of child emancipated by marriage).

11
 12 Section 2. Title V of Book VII of the Louisiana Code of Civil Procedure, formerly
 13 comprised of Articles 3991 through 3994, to be comprised of Articles 3991 through 3998,
 14 is hereby amended and reenacted to read as follows:

15
 16 Title V - Judicial Emancipation

17
 18 ~~Art. 3991. Petition; court where proceeding brought~~

19
 20 ~~The petition of a minor for judicial emancipation shall be filed in the district~~
 21 ~~court in the parish of his domicile, and shall set forth the reasons why he desires to~~
 22 ~~be emancipated and the value of his property, if any.~~

23 **Art. 3991. Petition for judicial emancipation**

24
 25 **A. A minor age sixteen or older may petition for emancipation**
 26 **individually without the participation of his tutor or administrator. The petition**
 27 **of the minor shall name as parties defendant and shall be served personally on**
 28 **the parents of the minor, if parental authority exists, or his tutor if parental**
 29 **authority does not exist.**

30 **B. The parents of a minor age sixteen or older, if parental authority**
 31 **exists, or the tutor of the minor, if parental authority does not exist, may**
 32 **petition for the emancipation of the minor. A petition filed by the parents or**
 33 **tutor of a minor shall name the minor as defendant and shall be served**
 34 **personally on the minor and on an attorney appointed by the court, who shall**
 35 **represent the minor.**

36 **C. A joint petition for judicial emancipation may be filed by a minor age**
 37 **sixteen or older and the parents of the minor, if parental authority exists, or the**
 38 **tutor of the minor, if parental authority does not exist. A joint petition need not**
 39 **be served on any party.**

40 Revision Comments – 2008

1 (a) This Article creates an exception to C.C.P. Art. 683, which provides that
 2 an unemancipated minor does not have capacity to sue.

3
 4 (b) An absent defendant may be served in accordance with Code of Civil
 5 Procedure Articles 5091-5098.

6
 7 (c) When a minor has more than one tutor or administrator, each tutor or
 8 administrator must join as a party plaintiff or be joined as a party defendant to any
 9 action requiring the participation of the minor's tutor or administrator.

10 ~~Art. 3992. Consent of parent or tutor~~

11
 12 ~~The petition of the minor shall be accompanied by a written consent to the~~
 13 ~~emancipation and a specific declaration that the minor is fully capable of managing~~
 14 ~~his own affairs, by the following:~~

15 (1) ~~The father and mother if both are alive, or the survivor if one is dead. If~~
 16 ~~either parent is absent or unable to act, the consent of the other parent alone is~~
 17 ~~necessary. If the parents are judicially separated or divorced, and the custody of the~~
 18 ~~minor has been awarded by judgment to one of the parents, the consent of that parent~~
 19 ~~alone is necessary. A surviving parent is not required to qualify as natural tutor in~~
 20 ~~order to give such consent, nor is the appointment of a special tutor necessary.~~

21 ~~If the petition is filed on the ground of ill treatment, refusal to support, or~~
 22 ~~corrupt examples, parental consent is unnecessary, but the parents or the surviving~~
 23 ~~parent shall be cited to show cause why the minor should not be emancipated.~~

24 (2) ~~The tutor of the minor if one has been appointed. If a tutor of his~~
 25 ~~property and a tutor of his person have been appointed for the minor, the consent of~~
 26 ~~both is necessary. If no tutor has been appointed, or if the tutor has died, resigned,~~
 27 ~~or been removed, and there is no surviving parent who is able to act, a special tutor~~
 28 ~~shall be appointed. If the tutor or special tutor refuses to give his consent, he may~~
 29 ~~be cited to show cause why the minor should not be emancipated.~~

30 **Art. 3992. Petition requirements**

31 **The petition shall be verified by all petitioners and shall set forth**
 32 **the following with particularity:**

33 **(1) The name, domicile, age, and, if known, the current address**
 34 **of the minor.**

35 **(2) The names and current addresses of the parents and any**
 36

1 tutors of the minor, if known.

2 (3) The reasons why good cause exists for emancipation.

3 (4) If limited judicial emancipation is requested, the effects of
4 majority sought to be conferred upon the minor.

5 (5) A descriptive list of the property of the minor, including the
6 location of such property, if known.

7 Revision Comment – 2008

8
9 This Article is new. It is based upon Code of Civil Procedure Article 4541.

10 ~~Art. 3993. Hearing; judgment~~

11
12 ~~If the judge is satisfied that there is good reason for emancipation and~~
13 ~~that the minor is capable of managing his own affairs, he shall render a~~
14 ~~judgment of emancipation, which shall declare that the minor is fully~~
15 ~~emancipated and relieved of all the disabilities which attach to minority, with~~
16 ~~full power to perform all acts as fully as if he had reached the age of~~
17 ~~majority.~~

18 **Art. 3993. Venue for judicial emancipation**

19
20 **Venue for a judicial emancipation proceeding is the parish where**
21 **a party is domiciled.**

22 Revision Comments – 2008

23
24 (a) Under Civil Code Article 39, the "domicile of a minor not
25 emancipated is that of his father, mother, or tutor."

26
27 (b) Civil Code Article 218 (1870) provides that an unemancipated
28 minor may not quit the parental house without the permission of his father
29 and mother.

30
31 (c) For issues relative to jurisdiction, see Code of Civil Procedure
32 Article 10(A)(2).

33
34 ~~Art. 3994. Expenses of proceeding~~

35 ~~Whether the minor succeeds or fails in obtaining a judgment of~~
36 ~~emancipation, all expenses which he may have incurred shall be paid out of~~
37 ~~his estate.~~

38 **Art. 3994. Emancipation hearing**

39 **A. An emancipation hearing shall be a summary proceeding.**

1 **conveyance records of every other parish in which the minor owns immovable**
2 **property.**

3 Section 3. This Act shall be effective on January 1, 2009.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____