

House Bill 847 (AS PASSED HOUSE AND SENATE)

By: Representatives Butler of the 18th, Oliver of the 83rd, and Smith of the 70th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15 and Chapter 3 of Title 19 of the Official Code of Georgia
2 Annotated, relating to juvenile proceedings and marriage generally, so as to establish the
3 conditions for minors to become emancipated by law; to provide for definitions; to provide
4 for the rights and duties of parents, and guardians; to provide for court proceedings for
5 emancipation; to provide for powers of the court relative to an emancipation proceeding; to
6 provide for rescission and the effect of rescission on obligations, rights, or interests; to
7 provide for the rights and responsibilities of an emancipated minor; to provide that a person
8 be at least 18 years of age in order to contract for marriage except under limited
9 circumstances; to repeal an exception to such age requirement in the case of pregnancy or
10 live birth; to repeal an exception to parental consent based upon pregnancy or live birth; to
11 change certain provisions relating to proof of age for applicants to marry; to change certain
12 provisions relating to parental consent; to repeal a provision relating to notification of parents
13 for underage applicants and additional fees; to amend Titles 1, 13, 19, and 44, relating
14 respectively to general provisions, contracts, domestic relations, and property, so as to correct
15 cross-references; to change certain provisions relating to rights of minors; to change certain
16 provisions relating to minors' contracts for property or valuable consideration or necessities;
17 to change certain provisions relating to in whom parental power lies; to change certain
18 provisions relating to parents' obligation to child born out of wedlock; to change certain
19 provisions relating to abandonment of a dependent child; to change certain provisions
20 relating to voidance and ratification of conveyance to or by an infant; to change certain
21 provisions relating to reversion of property set apart for spouse, children, or dependents; to
22 provide for related matters; to repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
26 proceedings, is amended by adding a new article to the end of the chapter, to read as follows:

"ARTICLE 6

1

2 15-11-200.

3 As used in this article, the term:

4 (1) 'Emancipation' means termination of the rights of the parents to the custody, control,
5 services, and earnings of a minor.

6 (2) 'Minor' means a person who is at least 16 but less than 18 years of age.

7 (3) 'Parents' has the same meaning as set forth in Code Section 15-11-2.

8 15-11-201.

9 (a) Emancipation may occur by operation of law or pursuant to a petition filed by a minor
10 with the juvenile court as provided in this article.

11 (b) An emancipation occurs by operation of law:

12 (1) When a minor is validly married;

13 (2) When a person reaches the age of 18 years; or

14 (3) During the period when the minor is on active duty with the armed forces of the
15 United States.16 (c) An emancipation occurs by court order pursuant to a petition filed by a minor with the
17 juvenile court as provided in Code Sections 15-11-202 through 15-11-207.

18 15-11-202.

19 A minor seeking emancipation shall file a petition for emancipation in the juvenile court
20 in the county where the minor resides. The petition shall be signed and verified by the
21 minor, and shall include:22 (1) The minor's full name and birth date, and the county and state where the minor was
23 born;

24 (2) A certified copy of the minor's birth certificate;

25 (3) The name and last known address of the minor's parents or guardian, and if no parent
26 or guardian can be found, the name and address of the minor's nearest living relative
27 residing within this state;

28 (4) The minor's present address and length of residency at that address;

29 (5) A declaration by the minor indicating that he or she has demonstrated the ability to
30 manage his or her financial affairs; the minor may include any information he or she
31 considers necessary to support the declaration;32 (6) A declaration by the minor indicating that he or she has the ability to manage his or
33 her personal and social affairs; the minor may include any information he or she
34 considers necessary to support the declaration; and

1 (7) The names of adults who have personal knowledge of the minor's circumstances and
 2 believe that under those circumstances emancipation is in the best interest of the minor.
 3 Such individuals may include any of the following:

- 4 (A) Physician or osteopath licensed pursuant to Chapter 34 of Title 43;
- 5 (B) Registered professional nurse or licensed practical nurse licensed pursuant to
 6 Chapter 26 of Title 43;
- 7 (C) Psychologist licensed pursuant to Chapter 39 of Title 43;
- 8 (D) Professional counselor, social worker, or marriage and family therapist licensed
 9 pursuant to Chapter 10A of Title 43;
- 10 (E) School guidance counselor, school social worker, or school psychologist;
- 11 (F) School administrator, school principal, or school teacher;
- 12 (G) Member of the clergy;
- 13 (H) Law enforcement officer; or
- 14 (I) Attorney.

15 15-11-203.

16 (a) Upon filing the petition, a copy of the petition for emancipation and a summons to
 17 appear at the hearing shall be served on the minor's parents or guardian, if applicable, upon
 18 any individual who provided an affidavit as set forth in paragraph (7) of Code Section
 19 15-11-202, and any other individual named in the petition.

20 (b) Any individual served with the petition for emancipation may file an answer to such
 21 petition in the juvenile court within 30 days of being served.

22 15-11-204.

23 (a) After a petition for emancipation is filed, the court may:

- 24 (1) Assign an employee of the court or appoint a guardian ad litem to investigate the
 25 allegations of the petition and to file a report containing the results of the investigation
 26 with the court, including a recommendation as to whether it is in the best interest of the
 27 minor that the petition for emancipation be granted;
- 28 (2) Appoint an attorney for the minor; and
- 29 (3) Appoint an attorney for the minor's parents or guardian if they are indigent and if
 30 they oppose the petition.

31 (b) After a petition for emancipation is filed, the court shall seek an affidavit from each
 32 individual identified in the petition pursuant to paragraph (7) of Code Section 15-11-202
 33 which describes why the individual believes the minor should be emancipated.

1 15-11-205.

2 (a) The hearing shall be before a judge; and the court shall issue an emancipation order if
3 it determines that emancipation is in the best interest of the minor and the minor
4 establishes:

5 (1) That the minor's parent or guardian does not object to the petition; or if a parent or
6 guardian objects to the petition, that the best interest of the child is served by allowing
7 the emancipation to occur by court order;

8 (2) That the minor is a resident of this state;

9 (3) That the minor has demonstrated the ability to manage his or her financial affairs,
10 including proof of employment or other means of support; 'other means of support' does
11 not include general assistance or aid received from means-tested public assistance
12 programs such as Temporary Assistance for Needy Families or similar programs under
13 Title IV-A of the federal Social Security Act;

14 (4) That the minor has the ability to manage his or her personal and social affairs,
15 including, but not limited to, proof of housing; and

16 (5) That the minor understands his or her rights and responsibilities under this article as
17 an emancipated minor.

18 (b) A minor who petitions the court for emancipation shall have the burden of showing by
19 a preponderance of evidence that emancipation should be ordered.

20 (c) If the court issues an emancipation order, the court shall retain a copy of the order until
21 the emancipated minor becomes 25 years of age.

22 (d) An emancipation obtained by fraud is voidable. Voiding an emancipation order does
23 not affect an obligation, responsibility, right, or interest that arose during the period of time
24 the order was in effect.

25 (e) The minor or a parent or guardian of the minor may appeal the court's grant or denial
26 of an emancipation petition. The appeal shall be filed in the Court of Appeals.

27 15-11-206.

28 (a) A minor emancipated by court order may petition the juvenile court that issued the
29 emancipation order to rescind such order.

30 (b) A copy of the petition for rescission and a summons shall be served on the minor's
31 parents or guardian.

32 (c) The court shall grant the petition and rescind the order of emancipation if it finds:

33 (1) That the minor is indigent and has no means of support;

34 (2) That the minor and the minor's parents or guardian agrees that the order should be
35 rescinded; or

- 1 (3) That there is a resumption of family relations inconsistent with the existing
2 emancipation order.
- 3 (d) If a petition for rescission is granted, the court shall issue an order rescinding the
4 emancipation order and retain a copy of the order until the minor becomes 25 years of age.
- 5 (e) Rescission of an emancipation order does not alter any contractual obligations or rights
6 or any property rights or interests that arose during the period of time that the emancipation
7 order was in effect.
- 8 (f) The minor or a parent or guardian of the minor may appeal the court's grant or denial
9 of a petition for rescission of an emancipation order. The appeal shall be filed in the Court
10 of Appeals.

11 15-11-207.

- 12 (a) A minor emancipated by operation of law or by court order shall be considered to have
13 the rights and responsibilities of an adult, except for those specific constitutional and
14 statutory age requirements regarding voting, use of alcoholic beverages, and other health
15 and safety regulations relevant to the minor because of his or her age. The rights of a
16 minor to receive any transfer of property or money pursuant to 'The Georgia Transfers to
17 Minors Act' under Article 5 of Chapter 5 of Title 44; under the Uniform Transfers to
18 Minors Act, the Uniform Gift to Minors Act, or other substantially similar act of another
19 state; or pursuant to a trust agreement shall not be affected by a declaration of an
20 emancipation under this article.
- 21 (b) A minor shall be considered emancipated for the purposes of, but not limited to:
- 22 (1) The right to enter into enforceable contracts, including apartment leases;
- 23 (2) The right to sue or be sued in his or her own name;
- 24 (3) The right to retain his or her own earnings;
- 25 (4) The right to establish a separate domicile;
- 26 (5) The right to act autonomously, and with the rights and responsibilities of an adult, in
27 all business relationships, including, but not limited to, property transactions and
28 obtaining accounts for utilities, except for those estate or property matters that the court
29 determines may require a conservator or guardian ad litem;
- 30 (6) The right to earn a living, subject only to the health and safety regulations designed
31 to protect those under the age of 18 regardless of their legal status;
- 32 (7) The right to authorize his or her own preventive health care, medical care, dental
33 care, and mental health care, without parental knowledge or liability;
- 34 (8) The right to apply for a driver's license or other state licenses for which he or she
35 might be eligible;
- 36 (9) The right to register for school;

- 1 (10) The right to apply for medical assistance programs and for other welfare assistance,
 2 if needed;
- 3 (11) The right, if a parent, to make decisions and give authority in caring for his or her
 4 own minor child; and
- 5 (12) The right to make a will.
- 6 (c) The parents or guardian of a minor emancipated by court order are not liable for any
 7 debts incurred by the minor during the period of emancipation.

8 15-11-208.

- 9 (a) The duty to provide support for a minor child shall continue until an emancipation
 10 order is granted.
- 11 (b) A child emancipated under this article shall not be considered a 'deprived child' for
 12 purposes of Part 6 of Article 1 of this chapter.
- 13 (c) The provisions set forth in Code Section 19-3-2 regarding age limitations to contract
 14 for marriage shall apply to a minor who has become emancipated under this article."

15 **SECTION 2.**

16 Title 1 of the Official Code of Georgia Annotated, relating to general provisions, is amended
 17 by striking Code Section 1-2-8, relating to rights of minors, and inserting in lieu thereof the
 18 following:

19 "1-2-8.

20 The law prescribes certain ages at which persons shall be considered of sufficient maturity
 21 to discharge certain civil functions, to make contracts, and to dispose of property. Prior to
 22 those ages they are minors and are, on account of that disability, unable to exercise these
 23 rights as citizens unless such minor becomes emancipated by operation of law or pursuant
 24 to Article 6 of Chapter 11 of Title 15."

25 **SECTION 3.**

26 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by
 27 striking Code Section 13-3-20, relating to minors' contracts for property or valuable
 28 consideration or necessaries, and inserting in lieu thereof the following:

29 "13-3-20.

30 (a) Generally the contract of a minor is voidable. If in a contractual transaction a minor
 31 receives property or other valuable consideration and, after arrival at the age of ~~majority~~
 32 18, retains possession of such property or continues to enjoy the benefit of such other
 33 valuable consideration, ~~he~~ the minor shall have thereby ratified or affirmed the contract and
 34 it shall be binding on him or her. Such contractual transaction shall also be binding upon

1 any minor who becomes emancipated by operation of law or pursuant to Article 6 of
 2 Chapter 11 of Title 15.

3 (b) The contract of a minor for necessities shall be binding on ~~him as if he were of legal~~
 4 ~~majority~~ the minor as if the minor were 18 years of age except that the party furnishing
 5 them to ~~him must~~ the minor shall prove that the parent or guardian of such minor had failed
 6 or refused to supply sufficient necessities for ~~him~~ the minor, that the minor was
 7 emancipated by operation of law, or the minor was emancipated pursuant to Article 6 of
 8 Chapter 11 of Title 15."

9 SECTION 4.

10 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 11 amended by striking subsection (a) of Code Section 19-7-1, relating to in whom parental
 12 power lies, and inserting in lieu thereof the following:

13 "(a) Until ~~he~~ a child reaches the age of ~~majority~~ 18 or becomes emancipated, the child shall
 14 remain under the control of his or her parents, who are entitled to ~~his~~ the child's services
 15 and the proceeds of ~~his~~ the child's labor. In the event that a court has awarded custody of
 16 the child to one parent, only the parent who has custody of the child is entitled to ~~his~~ the
 17 child's services and the proceeds of ~~his~~ the child's labor."

18 SECTION 5.

19 Said title is further amended by striking Code Section 19-7-24, relating to parents' obligation
 20 to child born out of wedlock, and inserting in lieu thereof the following:

21 "19-7-24.

22 It is the joint and several duty of each parent of a child born out of wedlock to provide for
 23 the maintenance, protection, and education of the child until ~~he~~ the child reaches the age
 24 of ~~majority~~ 18 or becomes emancipated, except to the extent that the duty of one parent is
 25 otherwise or further defined by court order."

26 SECTION 6.

27 Said title is further amended by striking paragraph (2) of subsection (j) of Code Section
 28 19-10-1, relating to abandonment of a dependent child, and inserting in lieu thereof the
 29 following:

30 "(2) Service of any sentence suspended in abandonment cases may be ordered by the
 31 court having jurisdiction thereof at any time before the child or children reach the age of
 32 ~~majority~~ 18 or become emancipated, after a hearing as provided in paragraph (1) of this
 33 subsection and a finding by the court that the defendant has failed or refused to comply

1 with the terms and conditions upon which service of the sentence was suspended by the
2 court having jurisdiction thereof."

3 SECTION 6A.

4 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage
5 generally, is amended by striking Code Section 19-3-2, relating to who may contract
6 marriage, and inserting in lieu thereof the following:

7 "19-3-2.

8 (a) To be able to contract marriage, a person must:

9 (1) Be of sound mind;

10 (2) Except as provided in subsection (b) of this Code section, be Be at least 16 18 years
11 of age. If either applicant is under the age of majority, parental consent shall be required,
12 as provided in Code Section 19-3-37. However, the age limitations contained in this
13 paragraph shall not apply upon proof of pregnancy on the part of the female or in
14 instances in which both applicants are the parents of a living child born out of wedlock,
15 in which case the parties may contract marriage regardless of age;

16 (3) Have no living spouse of a previous undissolved marriage. The dissolution of a
17 previous marriage in divorce proceedings must be affirmatively established and will not
18 be presumed. Nothing in this paragraph shall be construed to affect the legitimacy of
19 children; and

20 (4) Not be related to the prospective spouse by blood or marriage within the prohibited
21 degrees.

22 (b) If either applicant for marriage is 16 or 17 years of age, parental consent as provided
23 in Code Section 19-3-37 shall be required."

24 SECTION 6B.

25 Said chapter is further amended by striking in its entirety Code Section 19-3-36, relating to
26 proof of age of applicants, physician's certificate of pregnancy or parenthood of applicants
27 under age of 16, inspection of certificate, and destruction of certificate, and inserting in lieu
28 thereof the following:

29 "19-3-36.

30 The judge of the probate court to whom the application for a marriage license is made shall
31 satisfy himself or herself that the provisions set forth in Code Section 19-3-2 regarding age
32 limitations are met or that such limitations are not required by virtue of an order issued
33 pursuant to Code Section 15-11-183. If the judge does not know of his or her own
34 knowledge the age of a party for whom a marriage license is sought, the judge shall require
35 the applicant to furnish the court with documentary evidence of proof of age in the form

1 of a birth certificate, driver's license, baptismal certificate, certificate of birth registration,
 2 selective service card, court record, passport, immigration papers, alien papers, citizenship
 3 papers, armed forces discharge papers, armed forces identification card, or hospital
 4 admission card containing the full name and date of birth. In the event an applicant does
 5 not possess any of the above but appears to the judge to be at least 25 years of age, the
 6 applicant, in lieu of furnishing the judge with one of the above, may give an affidavit to the
 7 judge stating the applicant's age. Applicants who have satisfactorily proved that they have
 8 reached the age of majority may be issued a marriage license immediately."

9 **SECTION 6C.**

10 Said chapter is further amended by striking subsection (b) of Code Section 19-3-37, relating
 11 to parental consent to marriage of underage applicants, when necessary, and how obtained,
 12 and inserting in lieu thereof the following:

13 *"(b) When parental consent required; how obtained. ~~Except when the female applicant~~*
 14 *~~is pregnant or when both applicants are the parents of a living child born out of wedlock,~~*
 15 *~~in In cases where the parties applying for a license have not yet reached the age of majority~~*
 16 *~~are 16 or 17 years of age, their ages to be proved to the judge of the probate court as~~*
 17 *~~provided in Code Section 19-3-36, the parents or guardians of each underage applicant~~*
 18 *~~must shall appear in person before the judge and consent to the proposed marriage,~~*
 19 *~~provided that if physical presence because of illness or infirmity is impossible, an affidavit~~*
 20 *~~by the incapacitated parent or guardian along with an affidavit signed by a licensed~~*
 21 *~~attending physician stating that the parent or guardian is physically incapable of being~~*
 22 *~~present shall suffice. The licensed attending physician shall include only those physicians~~*
 23 *~~licensed under Chapter 34 of Title 43 or under corresponding requirements pertaining to~~*
 24 *~~licensed attending physicians in sister states."~~*

25 **SECTION 6D.**

26 Said chapter is further amended by striking and reserving Code Section 19-3-38, relating to
 27 notification of parents of underage applicants and an additional fee, and inserting in lieu
 28 thereof the following:

29 "19-3-38.

30 ~~The judge of the probate court shall be required, in all cases where parental consent is not~~
 31 ~~required under Code Sections 19-3-2, 19-3-36, and 19-3-37, to notify the parents of any~~
 32 ~~male or female 17 years of age or younger who applies for a marriage license. The parents~~
 33 ~~shall be notified immediately by first-class mail at their last known address. In license~~
 34 ~~applications which require notification of parents under this Code section, the judge shall~~

1 collect an additional fee of \$1.00, which shall be in addition to any other fee authorized by
 2 law. Reserved."

3 SECTION 7.

4 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
 5 striking Code Section 44-5-41, relating to voidance and ratification of conveyance to or by
 6 an infant, and inserting in lieu thereof the following:

7 "44-5-41.

8 A deed, security deed, bill of sale to secure debt, or any other conveyance of property or
 9 interest in property to or by a minor is voidable unless such minor has become emancipated
 10 by operation of law or pursuant to Article 6 of Chapter 11 of Title 15. If a minor has
 11 conveyed property or an interest in property, ~~he~~ the minor may void the conveyance upon
 12 arrival at the age of ~~majority~~ 18; and, if ~~he~~ the minor makes another conveyance at that
 13 time, it will void the first conveyance without reentry or repossession. If property or an
 14 interest in property has been conveyed to a minor and, after arrival at the age of ~~majority~~
 15 18, ~~he~~ the minor retains the possession or benefit of the property or interest in property, ~~he~~
 16 the minor shall have thereby ratified or affirmed the conveyance."

17 SECTION 8.

18 Said title is further amended by striking Code Section 44-13-20, relating to reversion of
 19 property set apart for spouse, children, or dependents, and inserting in lieu thereof the
 20 following:

21 "44-13-20.

22 Property set apart pursuant to Code Section 44-13-2 for a spouse, for a spouse and minor
 23 children, for minor children alone, or for dependents of a debtor (1) upon the death of the
 24 spouse or the spouse's remarriage, when set apart to the spouse alone, (2) upon the
 25 attaining of the age of ~~majority~~ 18 by the minor children or their ~~marriage~~ emancipation
 26 during minority, when set apart for the minor children, (3) upon the death or remarriage of
 27 the spouse and the attaining of the age of ~~majority~~ 18 by the minor children or the ~~marriage~~
 28 emancipation of the minor children, when set apart to the spouse and minor children, and
 29 (4) upon a former dependent person's no longer being eligible to be claimed by the debtor
 30 as a dependent for income tax purposes pursuant to Code Section 48-7-26, shall revert to
 31 the estate from which it was set apart unless it was sold or reinvested pursuant to this
 32 article, in which case this Code section shall apply to and follow all the reinvestments
 33 unless the fee simple has been sold as provided in this article."

1

SECTION 9.

2 All laws and parts of laws in conflict with this Act are repealed.