
To: Members of the House Judicial Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: January 27, 2022

Subject: House Bill 83:
Family Law – Emancipation of a Minor and Authorization to Marry

Position: SUPPORT

The Maryland State Bar Association (MSBA) FJLSC **supports House Bill 83 – Family Law – Emancipation of a Minor and Authorization to Marry.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Current Legal Background:

Currently, Maryland Family Law Article §2-301 allows minors to marry under the following circumstances:

- At 16 or 17 years of age, either:
 - With the parents’ or guardians’ consenting and swearing that the minor is aged 16 or older; or,
 - Without the consent of said adults, but with a medical certificate that the bride is pregnant or has given birth.
- A 15 year old if s/he has the consent of a parent or guardian and provides the marriage licensing clerk a medical certificate that the bride is pregnant or has given birth.
- A person under the age of 15 years may not marry.

- The current law allows a minor to marry without addressing their emancipation, which is currently triggered only by attaining the age of majority (18).

Benefits of HB 83

HB 83 takes an existing and convoluted construct used to determine when minor may marry, as described above, and simplifies it. From the public policy perspective, marriage of minor children can be used to disguise human trafficking and to conceal abuse, domestic violence, neglect, and rape of the minor either by the spouse or parents. This bill protects minors by disallowing anyone under the age of 17 from marrying and by putting in place various safeguards throughout the process, including, but not limited to: requiring the presentation of a certified order granting emancipation before the clerk may issue a marriage license to a minor; requiring that the other party not be more than 4 years older; require the appointment of counsel to represent the petitioner; require an evidentiary hearing and an in camera interview of the petitioner separate from their parents, guardians or intended spouse.

HB 83 addresses a current dilemma that affects minors who marry but are not yet emancipated by addressing their emancipation in conjunction with obtaining authorization to marry. Currently, marriage is not an emancipating event; however, this bill would change the law and emancipate a minor who qualifies for marriage under the additional terms of this bill. Maryland currently lacks a formal emancipation procedure or statute for minors. A minor does not attain all the capacity, rights, powers, privileges, duties, liabilities, and responsibilities of an adult until reaching the age of majority, which is 18 years of age in Maryland (General Provisions §1-401). Until then, as it pertains to legal age and capacity, a minor is a person under the age of 18 (General Provisions §1-103). Age, not marriage, is the triggering event.

Because marriage is not an emancipating event, a minor lacks capacity to enter into contracts. This could impact a married minor's ability to open a bank account, apply for credit, apply for a job, or establish an estate plan (including without limitation power of attorney and healthcare directive). This bill would require that the equity court address the propriety of emancipation with the authorization to marry, thereby conferring on those minors that are qualified to marry with emancipation. HB 83 addresses this shortcoming by requiring the emancipation of the minor as a condition precedent to marriage.

For the reason(s) stated above, the FJLSC of the MSBA **supports House Bill 83 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith by msmith@lawannapolis.com or by telephone at (410) 280-1700.