

**SUBTITLE C.**  
**MISCELLANEOUS PROVISIONS**

**CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY**

*Commentary by Simon Hughes\**

*Introductory Commentary*

Chapter 31 of Title 2 concerns the procedure for, and effect of, removing the disabilities of minority.<sup>1</sup>

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**§ 31.01. Petition**

(a) A minor who is a resident of this state and is at least 17 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 17 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

*Commentary*

The procedure by which a minor may have the disabilities of minority removed is set forth in chapter 31, but since the age of

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1. See *supra* Editor's Foreword. The two comprehensive commentaries appear in Smith, *Texas Family Code Symposium — Title 2. Parent and Child*, 5 TEX. TECH L. REV. 389, 489 (1974) and Rogers, *Texas Family Code Symposium — Chapter 31. Parent and Child: Removal of Disabilities of Minority*, 13 TEX. TECH L. REV. 1115 (1982). The commentary that deals with chapter 31 amendments that were enacted subsequent to the then most recent comprehensive commentary appears in Smith, *Texas Family Code Symposium Supplement — Title 2. Parent and Child*, 8 TEX. TECH L. REV. 19, 110 (1976).

minority was lowered from twenty-one to eighteen in 1973,<sup>2</sup> this chapter has fallen into general disuse.

Subsection (a) specifies that sixteen years of age is the absolute minimum age when a child may have the disabilities of minority removed. Even though a minor may have these disabilities removed, he or she still may be subject to other statutory obligations. For instance, the provisions and effect of this chapter do not release a minor from the requirements of section 21.032 of the Texas Education Code,<sup>3</sup> despite recent amendment to that code.<sup>4</sup> Generally, though, a minor who has had the disabilities of minority removed for general purposes also has the power and capacity of an adult, except for specific constitutional and statutory age requirements.<sup>5</sup>

Subsection (b) is relatively unimportant because no state has an age of majority lower than eighteen; therefore, a nonresident minor cannot be an adult under the laws of another state unless he or she has had the disabilities of minority removed by way of a court decree. Section 31.08 allows such a foreign decree to be registered in Texas, and it affords validity to such a decree.

Although subsection (c) allows a minor to institute suit in his own name, section 31.04 requires the court to appoint a guardian ad litem to represent the petitioner's interests.<sup>6</sup>

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## § 31.02. Requisites of Petition

**(a) The petition for removal of disabilities of minority must state:**

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2. See TEX. CIV. PRAC. & REM. CODE ANN. § 129.001-.003 (Vernon 1986).

3. TEX. EDUC. CODE ANN. § 21.032 (Vernon Supp. 1982) (requiring a child who has not completed the academic year in which his or her disabilities of minority are removed to attend school until age 18).

4. *Id.* Section 21.032 previously required all persons not more than 16 years of age to attend school; therefore, a 16-year-old child whose disabilities of minority had been removed under subsection (a) would still be obligated to attend school until age 17. Section 21.032 now requires a child to attend school until he or she has completed the academic year in which his or her 17th birthday occurs. TEX. EDUC. CODE ANN. § 21.032 (Vernon Supp. 1990). As a result, a 16- or 17-year-old child who has had disabilities of minority removed must still attend school until age 17 and must complete the academic year in which his or her 17th birthday occurs. *Id.*

5. See TEX. R. CIV. P. 173; TEX. FAM. CODE ANN. § 31.07 (Vernon 1986); see also *infra* commentary accompanying § 31.07.

6. There are circumstances when a guardian ad litem may be appointed and rules which establish the procedure for doing so. See, e.g., TEX. R. CIV. P. 173.

- (1) the name, age, and residence address of the petitioner;
- (2) the name and residence address of each living parent;
- (3) the name and residence address of the guardian of the person and the guardian of the estate, if any;
- (4) the name and residence address of the managing conservator, if any;
- (5) the reasons why removal would be in the best interest of the child; and
- (6) the purposes for which removal is sought.

(b) If the petitioner is not a resident of this state, the following shall be attached to the petition:

- (1) a birth certificate or other adequate proof of the petitioner's age; and
- (2) a copy of the applicable law, certified by the secretary of state, or one holding a similar office, in the minor's state of residence.

(c) The petition must be verified by a parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

#### *Commentary*

The information which must be included in a petition for removal is set out in subsection (a). In the event that the petition only seeks to remove the disabilities of minority for a limited purpose,<sup>7</sup> such purpose must be specified in the petition.

In addition to the requirements under subsection (a), subsection (b) requires a nonresident minor to furnish the court with adequate proof of the petitioner's age and a certified copy of the applicable law in the minor's state of residence. This latter requirement is virtually meaningless because Texas has emancipated all persons eighteen years of age or older<sup>8</sup> and no state has adopted a lesser age of majority. Consequently, Texas law will continue to control transfers of interest in Texas property.<sup>9</sup>

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7. A limited purpose would be the authority to execute a particular instrument.

8. See TEX. CIV. PRAC. & REM. CODE ANN. § 129.001-.003 (Vernon 1986).

9. See Smith, *Texas Family Code Symposium — Title 2. Parent and Child*, 5 TEX. TECH

Subsection (c) specifies that the petition must be verified by either parent of the minor or the managing conservator or guardian, if one has been appointed. On a showing that such a party is unavailable, the guardian ad litem, appointed pursuant to section 31.04, may verify the petition.

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### § 31.03. Venue

**(a) If the petitioner is a resident of this state, the petition shall be filed in the district court of the county where the petitioner resides.**

**(b) If the petitioner is not a resident of this state, the petition may be filed in any district court.**

#### *Commentary*

Subsection (a) is a mandatory venue statute, requiring a resident minor to file in the county in which the minor lives. Subsection (b) permits a nonresident minor to file wherever he or she may choose. This latter provision changes the previous requirement that a nonresident could only petition for removal of disabilities of minority if he or she owned real property in Texas.<sup>10</sup>

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### § 31.04. Guardian Ad Litem

**The court shall appoint a guardian ad litem to represent the interest of the petitioner at the hearing.**

#### *Commentary*

To represent the child's interest in the proceeding, a guardian ad litem must be appointed. The guardian ad litem may be any

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L. REV. 389, 490 (1974) (citing H. GOODRICH & E. SCOLES, CONFLICT OF LAWS 207-10, 296-97 (4th ed. 1964)).

10. TEX. REV. CIV. STAT. ANN. art. 5922a (Vernon 1962) (requiring the nonresident minor to file in the county in which he or she owns real property).

disinterested person, including a parent or person *in loco parentis*.<sup>11</sup>

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#### § 31.05. Nonresident: Appearance

**If the petitioner is not a resident of this state, his disabilities of minority may be removed for a limited purpose without personal appearance of the petitioner. The petitioner may appear through an attorney or a guardian ad litem.**

##### *Commentary*

A nonresident minor may have some disabilities of minority removed without appearing before the court. Appearance is satisfied by the presence of the minor's attorney or guardian ad litem. However, to remove the disabilities of minority for general purposes, the nonresident minor must appear. In contrast, a resident minor must appear before the court in order to have his or her disabilities removed for either general or limited purposes.

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#### § 31.06. Decree

**After a hearing, the court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner. The decree shall specify the purposes for which disabilities are removed.**

##### *Commentary*

The court may, in its discretion, remove the disabilities of minority if doing so is found to be in the best interest of the child. If the decree removes the minor's disabilities only for a limited purpose, that purpose must be specified.

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#### § 31.07. Effect of General Removal

**Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including the capacity to contract.**

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11. See Smith, *Texas Family Code Symposium — Title 2. Parent and Child*, 5 TEX. TECH L. REV. 389, 492 (1974).

*Commentary*

Because the age of majority in Texas is eighteen, this section is only applicable to a sixteen- or seventeen-year-old minor who has had his or her disabilities removed for general purposes. Constitutional or statutory age restrictions<sup>12</sup> still prevent a minor who has had the disabilities of minority removed from purchasing or possessing alcoholic beverages,<sup>13</sup> becoming a notary public,<sup>14</sup> or taking a licensing examination given by a state agency.<sup>15</sup>

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**§ 31.08. Registration of Decrees of Another State or Nation**

**(a) Any nonresident minor who has had his disabilities of minority removed in the state of his residence may file a certified copy of the decree or judgment removing his disabilities in the deed records of any county of this state.**

**(b) When a certified copy of the decree or judgment of a court of another state or nation is filed as provided in Subsection (a) of this section, the minor has the power and capacity of an adult, except as limited by Section 31.07 of this code and by the terms of the decree or judgment filed.**

*Commentary*

This section provides the registration procedure by which a decree of another state or nation which removes the disabilities of the nonresident minor is given effect.

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12. See *supra* note 4 accompanying § 31.01.

13. TEX. ALCO. BEV. CODE ANN. § 106.01-.14 (Vernon 1978 & Supp. 1990).

14. Op. Tex. Att'y Gen. No. 0-2918 (1940).

15. Op. Tex. Att'y Gen. No. 0-2449 (1940).