

Senate Bill 53

By: Senators Smith of the 52nd, Harp of the 29th, Hill of the 32nd, Wiles of the 37th and Weber of the 40th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated,  
2 relating to legitimacy, so as to provide for a father to legitimate his child by establishing  
3 paternity; to provide where petitions of legitimation shall be filed and served; to address the  
4 issues of custody and visitation in certain legitimation actions; to provide for legitimation by  
5 a voluntary acknowledgment of paternity in certain circumstances; to provide for related  
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to  
10 legitimacy, is amended by striking Code Section 19-7-22, relating to petition for legitimation  
11 of child, notice to mother, court order, effect, and intervention by father, and inserting in lieu  
12 thereof the following:

13 "19-7-22.

14 (a) A father of a child born out of wedlock may render ~~the same~~ his relationship with the  
15 child legitimate by petitioning the superior court of the county of ~~his residence, the county~~  
16 ~~of residence of the child, or, if a petition for the adoption of the child is pending, the county~~  
17 ~~in which the adoption petition is filed for legitimation of the child.~~ the residence of the  
18 child's mother or other party having legal custody or guardianship of the child; provided,  
19 however, that if the mother or other party having legal custody or guardianship of the child  
20 resides outside the state or cannot, after due diligence, be found within the state, the  
21 petition may be filed in the county of the father's residence or the county of the child's  
22 residence. If a petition for the adoption of the child is pending, the father shall file the  
23 petition for legitimation in the county in which the adoption petition is filed.

24 (b) The petition shall set forth the name, age, and sex of the child, the name of the mother,  
25 and, if the father desires the name of the child to be changed, the new name. If the mother  
26 is alive, she shall ~~have notice of the petition for legitimation.~~ be named as a party and shall

1 be served and provided an opportunity to be heard as in other civil actions under Chapter  
 2 11 of Title 9, the 'Georgia Civil Practice Act.'

3 (c) Upon the presentation and filing of the petition, the court may pass an order declaring  
 4 the father's relationship with the child to be legitimate, and ~~to be capable of inheriting from~~  
 5 ~~the father~~ that the father and child shall be capable of inheriting from each other in the  
 6 same manner as if born in lawful wedlock and specifying the name by which the child shall  
 7 be known.

8 (d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of  
 9 Code Section 15-11-28, in the juvenile court of the county in which a deprivation  
 10 proceeding regarding the child is pending.

11 (e) Except as provided by subsection (f) of this Code section, the court shall upon notice  
 12 to the mother further establish such duty as the father may have to support the child,  
 13 considering the facts and circumstances of the mother's obligation of support and the needs  
 14 of the child as provided under Code Section 19-6-15.

15 (f) After a petition for legitimation is granted, if a demand for a jury trial as to support has  
 16 been properly filed by either parent, then the case shall be transferred from juvenile court  
 17 to superior court for such jury trial.

18 (f.1) The petition for legitimation may also include claims for visitation or custody. If  
 19 such claims are raised in the legitimation action, the court may order, in addition to  
 20 legitimation, visitation or custody based on the best interests of the child standard. In a  
 21 case involving allegations of family violence, the provisions of paragraph (2) of subsection  
 22 (a) of Code Section 19-9-1 shall also apply.

23 ~~(g)(1) Consistent with the purpose of subsection (a) of this Code section, whenever the~~  
 24 ~~Department of Human Resources petitions the superior court or other authorized trier of~~  
 25 ~~fact to establish paternity, the father may intervene to petition~~ In any petition to establish  
 26 paternity pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the alleged  
 27 father's response may assert a third-party action for the legitimation of the child born out  
 28 of wedlock ~~if the mother of the child consents to the filing of such legitimation petition.~~  
 29 Upon the determination of paternity or if a voluntary acknowledgment of paternity has  
 30 been made and has not been rescinded pursuant to Code Section 19-7-46.1, the court or  
 31 trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51  
 32 may enter an order or decree legitimating a child born out of wedlock, provided that such  
 33 is in the best interest of the child. ~~Issues~~ Whenever a petition to establish the paternity of  
 34 a child is brought by the Department of Human Resources, issues of name change,  
 35 visitation, and custody shall not be determined by the court until such time as a separate  
 36 petition is filed by one of the parents or by the legal guardian of the child, in accordance  
 37 with Code Section 19-11-8; if the petition is brought by a party other than the Department

1 of Human Resources or if the alleged father seeks legitimation, the court may determine  
2 issues of name change, visitation, and custody in accordance with subsections (b) and  
3 (f.1) of this Code section. Custody of the child shall remain in the mother unless or until  
4 a court order is entered addressing the issue of custody.  
5 (2) In any voluntary acknowledgment of paternity which has been made and has not been  
6 rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely  
7 agree and consent, the child may be legitimated by the inclusion of a statement indicating  
8 a voluntary acknowledgment of legitimation."

9 **SECTION 2.**

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