

Senate Bill 420

By: Senators Unterman of the 45th, Schaefer of the 50th, Johnson of the 1st, Thomas of the 2nd, Harp of the 29th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child
2 custody proceedings, so as to provide for the creation, authorization, procedure, revocation,
3 and termination of a power of attorney from a parent to a grandparent for the care of a
4 grandchild; to provide for short titles; to provide definitions; to provide for the creation of
5 a pilot program to provide a subsidy to certain grandparents raising grandchildren under
6 certain circumstances; to provide for an assessment and evaluation of the pilot program; to
7 provide for other related matters; to provide an effective date; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 This Act shall be known and may be cited as the "Care of a Grandchild Act."

12 style="text-align:center">**SECTION 2.**

13 The General Assembly finds that:

14 (1) An increasing number of relatives in Georgia, including grandparents and
15 great-grandparents, are providing care to children who cannot reside with their parents
16 due to the parents' incapacity or inability to perform the regular and expected functions
17 in the care and support of the children;

18 (2) Parents need a means to allow grandparents and great-grandparents to have authority
19 to act on behalf of grandchildren and great-grandchildren without legal intervention;

20 (3) Grandparents and great-grandparents caring for their grandchildren and
21 great-grandchildren under these circumstances often do not have sufficient financial
22 resources to provide for such children; and

23 (4) Providing both a statutory mechanism for granting authority and limited financial
24 support under certain circumstances for these grandparents and great-grandparents caring

1 for their grandchildren and great-grandchildren enhances family preservation and
2 stability.

3 **SECTION 3.**

4 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
5 proceedings, is amended by adding a new Article 4 to read as follows:

6 "ARTICLE 4

7 Part 1

8 19-9-120.

9 This part shall be known and may be cited as the 'Power of Attorney for the Care of a
10 Grandchild Act.'

11 19-9-121.

12 (a) A parent or parents of a minor child may delegate to any grandparent or
13 great-grandparent residing in this state caregiving authority regarding the minor child when
14 hardship prevents the parent or parents from caring for the child. This authority may be
15 delegated without the approval of a court by executing in writing a power of attorney for
16 the care of a minor child in a form substantially complying with the provisions of this part.

17 (b) Hardships may include, but are not limited to:

18 (1) The serious illness or incarceration of a parent;

19 (2) The physical or mental condition of the parent or the child such that care and
20 supervision of the child cannot be provided by the parent; and

21 (3) The loss or uninhabitability of the child's home as the result of a natural disaster.

22 (c) The instrument providing for the power of attorney shall be executed by both parents,
23 if both parents are living and have legal custody of the minor child, and shall state with
24 specificity the details of the hardship preventing the parent or parents from caring for the
25 child.

26 (d) If only one parent has legal custody of the minor child, then such parent shall execute
27 the instrument. The noncustodial parent shall be notified in writing of the name and
28 address of the grandparent or great-grandparent who has been appointed the agent under
29 the power of attorney. The executing parent shall send the notification by certified mail,
30 return receipt requested, or by statutory overnight delivery to the noncustodial parent at the
31 noncustodial parent's last known address.

1 (e) The power of attorney for the care of a minor child shall be signed and acknowledged
2 before a notary public by the parent or parents, as the case may be, executing the power of
3 attorney.

4 (f) Through the power of attorney for the care of a minor child, the parent may authorize
5 the agent grandparent or great-grandparent to perform the following functions without
6 limitation:

7 (1) Enroll the child in school and extracurricular activities;

8 (2) Obtain medical, dental, and mental health treatment for the child; and

9 (3) Provide for the child's food, lodging, housing, recreation, and travel.

10 Nothing contained in this Code section shall be construed to limit the power of the parent
11 to grant additional powers to the agent grandparent or great-grandparent.

12 (g) The agent grandparent or great-grandparent shall have the right to enroll the minor
13 child in a local school system serving the area where the agent grandparent or
14 great-grandparent resides. The local school system shall allow such agent grandparent or
15 great-grandparent with a properly executed power of attorney for care of a minor child to
16 enroll the minor child. Prior to enrollment, the local school system may require
17 documentation of the minor child's residence with such agent grandparent or
18 great-grandparent and verification of the validity of the stated hardship. Except where
19 limited by federal law, the agent grandparent or great-grandparent shall have the same
20 rights, duties, and responsibilities that would otherwise be exercised by the parent or
21 parents pursuant to the laws of this state. A local school system shall have the discretion
22 to enroll a minor child pursuant to a power of attorney for care of a minor child that does
23 not substantially comply with this part. As used in this Code section, the term 'local school
24 system' means any county or independent school system as defined in Code Section 20-1-9.

25 (h) If the minor child ceases to reside with the agent grandparent or great-grandparent, the
26 agent grandparent or great-grandparent shall notify any person, local school system, or
27 health care provider that has been provided the power of attorney for care of a minor child
28 that the child no longer resides with the agent grandparent or great-grandparent.

29 (i) The agent grandparent or great-grandparent shall have the authority to act on behalf of
30 the minor child until the parent or parents, as the case may be, who executed the power of
31 attorney for care of a minor child revoke the power of attorney in writing.

32 (j) The power of attorney for care of a minor child may also be terminated by any order
33 of a court of competent jurisdiction that appoints a legal guardian or legal custodian.

34 (k) An agent grandparent or great-grandparent under a power of attorney for care of a
35 minor child shall act in the best interests of the minor child. Such agent grandparent or
36 great-grandparent shall not be liable for consenting or refusing to consent to medical,

1 dental, or mental health care for a minor child when such decision is made in good faith
2 and is exercised in the best interests of the minor child.

3 (l) No person, school official, or health care provider who acts in good faith reliance on
4 a power of attorney for care of a minor child shall be subject to criminal or civil liability
5 or professional disciplinary action for such reliance.

6 (m) A person who relies on the written power of attorney for care of a minor child has no
7 obligation to make any further inquiry or investigation. Nothing in this part shall relieve
8 any individual from liability for violations of other provisions of law.

9 19-9-122.

10 (a) The statutory power of attorney for care of a minor child form contained in this Code
11 section may be used to grant an agent grandparent or great-grandparent powers with respect
12 to the minor child's registration for school and medical, dental, and mental health care and
13 is not intended to be exclusive. No provision of this part shall be construed to bar use by
14 the parent of any other or different form of power of attorney for care of a minor child that
15 complies with this part. If a different power of attorney for care of a minor child is used,
16 it may contain any or all of the provisions set forth or referred to in this Code section.
17 When a power of attorney for care of a minor child in substantially the form set forth in this
18 Code section is used, it shall have the same meaning and effect as prescribed in this part.
19 Substantially similar forms may include forms from other states.

20 (b) The power of attorney for care of a minor child shall be in substantially the following
21 form:

22 'GEORGIA POWER OF ATTORNEY FOR CARE OF A MINOR CHILD

23 NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
24 GRANDPARENT OR GREAT-GRANDPARENT THAT YOU DESIGNATE (THE
25 AGENT) BROAD POWERS TO CARE FOR YOUR MINOR CHILD INCLUDING
26 REGISTERING THE CHILD FOR SCHOOL; MAKING MEDICAL, DENTAL, AND
27 MENTAL HEALTH CARE DECISIONS FOR THE CHILD, INCLUDING THE
28 POWER TO REQUIRE, CONSENT TO, REFUSE, OR WITHDRAW ANY TYPE OF
29 PERSONAL CARE OR MEDICAL TREATMENT FOR ANY PHYSICAL OR
30 MENTAL CONDITION AND TO ADMIT THE CHILD TO OR DISCHARGE THE
31 CHILD FROM ANY HOSPITAL, HOME, OR OTHER INSTITUTION; AND
32 PROVIDING FOR THE CHILD'S FOOD, LODGING, HOUSING, RECREATION,
33 AND TRAVEL. THE AGENT IS REQUIRED TO EXERCISE DUE CARE TO ACT
34 FOR THE CHILD'S BENEFIT AND IN ACCORDANCE WITH THIS FORM. A
35 COURT CAN TAKE AWAY THE POWERS OF THE AGENT IF IT FINDS THAT
36 THE AGENT IS NOT ACTING PROPERLY. UNTIL YOU REVOKE THIS POWER

1 OR A COURT TERMINATES THE POWER, THE AGENT MAY EXERCISE THE
 2 POWERS GIVEN IN THIS POWER OF ATTORNEY FOR CARE OF A MINOR
 3 CHILD THROUGHOUT THE CHILD’S MINORITY. IF THERE IS ANYTHING
 4 ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK
 5 A LAWYER TO EXPLAIN IT TO YOU.

6 POWER OF ATTORNEY FOR CARE OF A MINOR CHILD

7 made this _____ day of _____, _____.

8 1. I, _____ (insert name and address of parent or
 9 parents), hereby appoint _____ (insert name and
 10 address of grandparent or great-grandparent to be named as agent) as attorney in fact
 11 (the agent) for my child _____ (insert name of child) to act
 12 for me and in my name in any way that I could act in person to register my child for
 13 school; seek medical, dental, and mental health treatment; provide for the child’s food,
 14 lodging, housing, recreation, and travel; and otherwise make any and all decisions for
 15 my child’s well-being. The agent shall have the same access to school, medical, dental,
 16 and mental health records or any other records relating to my minor child that I have
 17 including the right to disclose the contents thereof to others.

18 THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS
 19 POSSIBLE SO THAT THE AGENT WILL HAVE THE AUTHORITY TO MAKE
 20 ANY DECISION THAT I COULD MAKE ON BEHALF OF MY MINOR CHILD
 21 SUBJECT TO THE LIMITATIONS, IF ANY, CONTAINED IN PARAGRAPH 2
 22 BELOW.

23 2. The powers granted above shall not include the following powers or shall be subject to
 24 the following rules or limitations (here you may include any specific limitations that
 25 you deem appropriate):

26 _____
 27 _____
 28 _____

29 THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED IN WRITING
 30 BY THE PARENT OR PARENTS AT ANY TIME. IN THE ABSENCE OF AN
 31 AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS
 32 POWER OF ATTORNEY FOR CARE OF A MINOR CHILD SHALL BECOME
 33 EFFECTIVE AT THE TIME THIS POWER OF ATTORNEY IS SIGNED AND
 34 WILL CONTINUE UNTIL REVOKED IN WRITING OR THE MINOR CHILD
 35 REACHES THE AGE OF MAJORITY UNLESS A LIMITATION ON THE

BEGINNING DATE OR DURATION IS MADE BY INITIALING AND COMPLETING EITHER OR BOTH OF PARAGRAPHS (3) AND (4) BELOW:

3. () This power of attorney for care of a minor child shall become effective on _____ (insert a future date on which you desire this power of attorney for care of a minor child to take effect).

4. () This power of attorney for care of a minor child shall terminate on _____ (insert a future date or event on which you want this power of attorney for care of a minor child to terminate prior to the minor child reaching the age of majority).

5. This power of attorney for care of a minor child is being executed because of the following hardship:

_____ (A) The serious illness or incarceration of a parent;

_____ (B) The physical or mental condition of the parent or the child such that care and supervision of the child cannot be provided by the parent;

_____ (C) The loss or uninhabitability of the child's home as the result of a natural disaster; or

_____ (D) Other hardship:

_____ (describe specifically the other hardship or hardships).

IF YOU WISH TO NAME A GUARDIAN FOR YOUR MINOR CHILD IN THE EVENT THAT A COURT DECIDES THAT A GUARDIAN SHOULD BE APPOINTED, YOU MAY, BUT ARE NOT REQUIRED TO, DO SO BY INSERTING THE NAME AND ADDRESS OF SUCH PERSON IN THE FOLLOWING PARAGRAPH. YOU MAY, BUT ARE NOT REQUIRED TO, NOMINATE AS GUARDIAN THE SAME PERSON THAT YOU HAVE NAMED IN THIS FORM AS AGENT.

6. If a guardian of my minor child is to be appointed, I nominate the following person to serve as such guardian: _____ (insert name and address of person nominated to be guardian of the minor child).

7. I am fully informed as to all of the contents of this form and I understand the full import of this grant of powers to my agent.

Parent Signature: _____ (Seal)

Parent Signature: _____ (Seal)

Signed and sealed in the presence of _____, Notary Public.

My Commission expires: _____.'

Part 2

19-9-140.

This part shall be known and may be cited as the 'Grandchildren's Caregiver Subsidy Act.'

19-9-141.

As used in this part, the term:

(1) 'Department' means the Department of Human Resources.

(2) 'Grandchild subsidy' means the aid provided on behalf of children in the pilot program under the terms of this part.

(3) 'Grandparent' means any grandparent as defined in Code Section 19-7-3.

(4) 'Great-grandparent' means any parent of a grandparent.

(5) 'Parent' means any parent with legal custody of a minor child.

19-9-142.

(a) The department shall establish a pilot program for providing a grandchild subsidy to eligible persons pursuant to this part.

(b) The grandchild subsidy under the pilot program shall be provided under this part on behalf of any minor child:

(1) Who is in the legal custody or guardianship of a grandparent or great-grandparent; and

(2) Whose grandparent or great-grandparent has an annual income less than 200 percent of the federal poverty level for the number of dependents including grandchildren and great-grandchildren living in the household.

(c) Such grandparent or great-grandparent meeting the criteria in subsection (b) of this Code section shall receive a special monthly grandchild subsidy benefit equal to 90 percent of the state-wide average foster care rate. Such grandparent or great-grandparent shall remain eligible for the grandchild subsidy for each month that the grandchild or great-grandchild continues to live with the grandparent or great-grandparent, provided that the other criteria under this part are met.

(d) Any grandchild subsidy paid to a grandparent or great-grandparent shall not affect the eligibility of the grandchild or great-grandchild to receive Medicaid or PeachCare for Kids benefits or benefits from any other state or federal program for which the grandchild or great-grandchild would otherwise be eligible.

(e)(1) The department shall request participation in this pilot program established pursuant to this part from current grandparent raising grandchildren programs including, but not limited to: Kinship Resource Center in Clayton County, St. Joseph's Mercy Care

1 Center for Grandparents Raising Grandchildren in Rome, Project Healthy Grandparents
2 at Athens Community Council on Aging in Athens, and Project Healthy Grandparents at
3 Georgia State University in Atlanta.

4 (2) The department shall provide for the implementation of the pilot program and shall
5 ensure that:

6 (A) No more than 1,300 families at any given time shall be participating in the pilot
7 program;

8 (B) No later than the fifth day of each month the grandparent or great-grandparent shall
9 provide written affirmation that the grandchild or great-grandchild continues to live in
10 the grandparent's or great-grandparent's household;

11 (C) A periodic verification of eligibility to remain in the program shall be completed
12 at least annually for each family participating in the program; and

13 (D) A yearly status report shall be submitted to the department's Division of Aging
14 Services."

15 **SECTION 2.**

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