

The Senate Judiciary Committee offered the following substitute to SB 420:

**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                   **SECTION 1.**

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

12                   **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

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

### **SECTION 3.**

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

"ARTICLE 4

Part 1

19-9-120.

This part shall be known and may be cited as the 'Power of Attorney for the Care of a Minor Child Act.'

19-9-121.

(a) As used in this part, the term:

(1) 'School' means:

(A) Any county or independent school system as defined in Code Section 20-1-9;

(B) Any private school as such term is defined in code Section 20-2-690;

(C) A home study program meeting the requirements set forth in subsection (c) of Code Section 20-2-690;

(D) Pre-kindergarten programs; or

(E) Early care and education programs as such term is defined in paragraph (6) of Code Section 20-1A-2.

(2) 'Serious illness' means a physical or mental illness as determined by a licensed health care professional, including a psychiatrist or psychologist, that causes the parent to be unable to care for the minor child due to the physical or mental condition or health of the parent including a condition created by medical treatment.

(3) 'Terminal illness' has the same meaning as the term 'terminal condition' as provided in paragraph (13) of Code Section 31-32-2.

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

(c)(1) Hardships may include, but are not limited to:

(A) The death, serious illness, terminal illness, or incarceration of a parent;

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

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

5           (D) One or both parents are on active military duty.

6           (2) Hardship shall not include the granting of a power of attorney for the care of a minor  
7 child for the purpose of subverting an investigation of the child's welfare by the  
8 Department of Human Resources or other agency responsible for such investigations.

9           (d) The instrument providing for the power of attorney shall be executed by both parents,  
10 if both parents are living and have legal custody of the minor child, and shall state with  
11 specificity the details of the hardship preventing the parent or parents from caring for the  
12 child.

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

19           (f) The power of attorney for the care of a minor child shall be signed and acknowledged  
20 before a notary public by the parent or parents, as the case may be, executing the power of  
21 attorney.

22           (g) Through the power of attorney for the care of a minor child, the parent may authorize  
23 the agent grandparent or great-grandparent to perform the following functions without  
24 limitation:

- 25           (1) Enroll the child in school and extracurricular activities;  
26           (2) Obtain medical, dental, and mental health treatment for the child; and  
27           (3) Provide for the child's food, lodging, housing, recreation, and travel.

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

30           (h) The agent grandparent or great-grandparent shall have the right to enroll the minor  
31 child in a school serving the area where the agent grandparent or great-grandparent resides.  
32 The school shall allow such agent grandparent or great-grandparent with a properly  
33 executed power of attorney for care of a minor child to enroll the minor child. Prior to  
34 enrollment, the school may require documentation of the minor child's residence with such  
35 agent grandparent or great-grandparent and verification of the validity of the stated  
36 hardship. Except where limited by federal law, the agent grandparent or great-grandparent

1 shall have the same rights, duties, and responsibilities that would otherwise be exercised  
2 by the parent or parents pursuant to the laws of this state.

3 (i) If the minor child ceases to reside with the agent grandparent or great-grandparent, the  
4 agent grandparent or great-grandparent shall notify any person, school, or health care  
5 provider that has been provided the power of attorney for care of a minor child that the  
6 child no longer resides with the agent grandparent or great-grandparent.

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

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

12 (l) An agent grandparent or great-grandparent under a power of attorney for care of a  
13 minor child shall act in the best interests of the minor child. Such agent grandparent or  
14 great-grandparent shall not be liable for consenting or refusing to consent to medical,  
15 dental, or mental health care for a minor child when such decision is made in good faith  
16 and is exercised in the best interests of the minor child.

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

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

23 (o) Each parent who executes the power of attorney for care of a minor child shall certify  
24 that such action is not for the primary purpose of enrolling the child in a school so that the  
25 child may participate in the academic or interscholastic athletic programs provided by that  
26 school or for any other unlawful purpose. Violation of this subsection shall be punishable  
27 in accordance with Georgia law and shall require, in addition to any other remedies,  
28 repayment by such parent of all costs incurred by the school as a result of the violation.

29 (p) The power of attorney for care of a minor child is not intended to replace the temporary  
30 written grant of permission to seek emergency medical treatment or other services for a  
31 minor child while in the custody of an adult who is not the parent and who is temporarily  
32 supervising the child at the parent's request.

33 19-9-122.

34 (a) The statutory power of attorney for care of a minor child form contained in this Code  
35 section may be used to grant an agent grandparent or great-grandparent powers with respect  
36 to the minor child's registration for school and medical, dental, and mental health care and

is not intended to be exclusive. No provision of this part shall be construed to bar use by the parent of any other or different form of power of attorney for care of a minor child that complies with this part. If a different power of attorney for care of a minor child is used, it may contain any or all of the provisions set forth or referred to in this Code section. When a power of attorney for care of a minor child in substantially the form set forth in this Code section is used, it shall have the same meaning and effect as prescribed in this part. Substantially similar forms may include forms from other states.

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

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

NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE GRANDPARENT OR GREAT-GRANDPARENT THAT YOU DESIGNATE (THE AGENT) BROAD POWERS TO CARE FOR YOUR MINOR CHILD INCLUDING REGISTERING THE CHILD FOR SCHOOL; MAKING MEDICAL, DENTAL, AND MENTAL HEALTH CARE DECISIONS FOR THE CHILD, INCLUDING THE POWER TO REQUIRE, CONSENT TO, REFUSE, OR WITHDRAW ANY TYPE OF PERSONAL CARE OR MEDICAL TREATMENT FOR ANY PHYSICAL OR MENTAL CONDITION AND TO ADMIT THE CHILD TO OR DISCHARGE THE CHILD FROM ANY HOSPITAL, HOME, OR OTHER INSTITUTION; AND PROVIDING FOR THE CHILD'S FOOD, LODGING, HOUSING, RECREATION, AND TRAVEL. THE AGENT IS REQUIRED TO EXERCISE DUE CARE TO ACT FOR THE CHILD'S BENEFIT AND IN ACCORDANCE WITH THIS FORM. A COURT CAN TAKE AWAY THE POWERS OF THE AGENT IF IT FINDS THAT THE AGENT IS NOT ACTING PROPERLY. UNTIL YOU REVOKE THIS POWER OR A COURT TERMINATES THE POWER, THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF ATTORNEY FOR CARE OF A MINOR CHILD THROUGHOUT THE CHILD'S MINORITY. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

## POWER OF ATTORNEY FOR CARE OF A MINOR CHILD

made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

1. I, \_\_\_\_\_ (insert name and address of parent or parents), hereby appoint \_\_\_\_\_ (insert name and address of grandparent or great-grandparent to be named as agent) as attorney in fact (the agent) for my child \_\_\_\_\_ (insert name of child) to act

1 for me and in my name in any way that I could act in person to register my child for  
2 school; seek medical, dental, and mental health treatment; provide for the child's food,  
3 lodging, housing, recreation, and travel; and otherwise make any and all decisions for  
4 my child's well-being. The agent shall have the same access to school, medical, dental,  
5 and mental health records or any other records relating to my minor child that I have  
6 including the right to disclose the contents thereof to others.

7 THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS  
8 POSSIBLE SO THAT THE AGENT WILL HAVE THE AUTHORITY TO MAKE  
9 ANY DECISION THAT I COULD MAKE ON BEHALF OF MY MINOR CHILD  
10 SUBJECT TO THE LIMITATIONS, IF ANY, CONTAINED IN PARAGRAPH 2  
11 BELOW.

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

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_

18 THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED IN WRITING  
19 BY THE PARENT OR PARENTS AT ANY TIME. IN THE ABSENCE OF AN  
20 AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS  
21 POWER OF ATTORNEY FOR CARE OF A MINOR CHILD SHALL BECOME  
22 EFFECTIVE AT THE TIME THIS POWER OF ATTORNEY IS SIGNED AND  
23 WILL CONTINUE UNTIL REVOKED IN WRITING OR THE MINOR CHILD  
24 REACHES THE AGE OF MAJORITY OR IS EMANCIPATED UNLESS A  
25 LIMITATION ON THE BEGINNING DATE OR DURATION IS MADE BY  
26 INITIALING AND COMPLETING EITHER OR BOTH OF PARAGRAPHS (3) AND  
27 (4) BELOW:

- 28 3. ( ) This power of attorney for care of a minor child shall become effective on  
29 \_\_\_\_\_ (insert a future date on which you desire this power of  
30 attorney for care of a minor child to take effect).  
31 4. ( ) This power of attorney for care of a minor child shall terminate on  
32 \_\_\_\_\_ (insert a future date or event on which you want this power  
33 of attorney for care of a minor child to terminate prior to the minor child reaching the  
34 age of majority).  
35 5. This power of attorney for care of a minor child is being executed because of the  
36 following hardship:  
37 \_\_\_\_\_ (A) The death, serious illness, terminal 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) Active military duty of one or both parents.

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.
  8. I certify that the minor child is not emancipated and, if the minor child becomes emancipated, this power of attorney shall no longer be valid.
  9. I hereby certify that this power of attorney is not executed for the primary purpose of enrolling the child in a school so that the child may participate in the academic or interscholastic athletic programs provided by that school.
  10. I declare under penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct.

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.'

1       19-9-141.

2       As used in this part, the term:

- 3           (1) 'Department' means the Department of Human Resources.
- 4           (2) 'Grandchild subsidy' means the aid provided on behalf of children in the pilot
- 5           program under the terms of this part.
- 6           (3) 'Grandparent' means any grandparent as defined in Code Section 19-7-3.
- 7           (4) 'Great-grandparent' means any parent of a grandparent.
- 8           (5) 'Parent' means any parent with legal custody of a minor child.

9       19-9-142.

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

12      (b) Upon funds being appropriated by the General Assembly, the grandchild subsidy under  
13      the pilot program shall be provided under this part on behalf of any minor child:

- 14           (1) Who is in the legal custody or guardianship of a grandparent or great-grandparent;  
15           and
- 16           (2) Whose grandparent or great-grandparent has an annual income less than 200 percent  
17           of the federal poverty level for the number of dependents including grandchildren and  
18           great-grandchildren living in the household.

19      (c) Such grandparent or great-grandparent meeting the criteria in subsection (b) of this  
20      Code section shall receive a special monthly grandchild subsidy benefit equal to 80 percent  
21      of the state-wide average foster care rate. Such grandparent or great-grandparent shall  
22      remain eligible for the grandchild subsidy for each month that the grandchild or  
23      great-grandchild continues to live with the grandparent or great-grandparent, provided that  
24      the other criteria under this part are met.

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

- 29      (e)(1) The department shall request participation in this pilot program established  
30      pursuant to this part from current grandparent raising grandchildren programs including,  
31      but not limited to: Kinship Resource Center in Clayton County, St. Joseph's Mercy Care  
32      Center for Grandparents Raising Grandchildren in Rome, Project Healthy Grandparents  
33      at Athens Community Council on Aging in Athens, Grandparents Raising Grandchildren  
34      Project in Augusta, and Project Healthy Grandparents at Georgia State University in  
35      Atlanta.

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

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

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

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

(f) Any grandparent or great-grandparent participating in the pilot program who knowingly fails to comply with the requirements of the pilot program or who knowingly fails to notify the department when the grandparent or great-grandparent no longer meets the eligibility requirements for the grandchild subsidy under subsection (c) of this Code section shall be punished in accordance with Georgia law and shall, in addition to all other remedies, repay all subsidy amounts paid during the period of ineligibility and all costs associated with any action taken by the department in connection with the ineligibility.

(g) A yearly status report shall be submitted to the department's Division of Aging Services.

(h) The department shall provide for an evaluation of this pilot program to be prepared and delivered to the General Assembly after the second, fourth, and fifth year of implementation of the pilot program.

(i) The pilot program provided in this Code section shall expire five years from the date of the implementation of the pilot program unless extended by action of the General Assembly."

## **SECTION 4.**

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