

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:

SECTION 1.

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

SECTION 2.

12 The General Assembly finds that:

- 13 (1) An increasing number of relatives in Georgia, including grandparents and
14 great-grandparents, are providing care to children who cannot reside with their parents
15 due to the parents' incapacity or inability to perform the regular and expected functions
16 in the care and support of the children;
17 (2) Parents need a means to allow grandparents and great-grandparents to have authority
18 to act on behalf of grandchildren and great-grandchildren without legal intervention;
19 (3) Grandparents and great-grandparents caring for their grandchildren and
20 great-grandchildren under these circumstances often do not have sufficient financial
21 resources to provide for such children; and
22 (4) Providing both a statutory mechanism for granting authority and limited financial
23 support under certain circumstances for these grandparents and great-grandparents caring
24

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 Minor Child Act.'

11 19-9-121.

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

13 (1) 'School' means:

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

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

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

18 (D) Pre-kindergarten programs; or

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

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

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

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

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

33 (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

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

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

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

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

30 POWER OF ATTORNEY FOR CARE OF A MINOR CHILD

31 made this ____ day of _____, _____.

32 1. I, _____ (insert name and address of parent or
 33 parents), hereby appoint _____ (insert name and
 34 address of grandparent or great-grandparent to be named as agent) as attorney in fact
 35 (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.

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

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

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

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

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

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

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

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

25 **SECTION 4.**

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