

House Bill 497 (AS PASSED HOUSE AND SENATE)

By: Representatives Sheldon of the 105th, Cox of the 102nd, Cooper of the 41st, Coan of the 101st, Roberts of the 154th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, so as to provide for pre-birth surrender of rights for a biological father to a child being placed for adoption; to provide for the dissolution of surrender rights signed by the birth mother if the biological father legitimates the child and the adoption is not granted; to clarify the authority of a birth mother to sign either a voluntary acknowledgment of legitimation or of paternity following her execution of a surrender of parental rights in support of an adoption of the same child; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, is amended in Code Section 19-8-4, relating to the surrender of rights to the department or a child-placing agency, by revising subsection (c) as follows:

"(c) The surrender to the department or to a child-placing agency specified in paragraphs (1) and (2) of subsection (e) of this Code section shall be executed; following the birth of the child, and the pre-birth surrender to the department or to a child-placing agency specified in paragraph (3) of subsection (e) of this Code section shall be executed prior to the birth of the child. Each surrender shall be executed in the presence of a representative of the department or the agency and a notary. A copy shall be delivered to the individual signing the surrender at the time of the execution thereof."

SECTION 2.

Said chapter is further amended in said Code section by adding a new paragraph to subsection (e) as follows:

"(3)(A) The biological father who is not the legal father of a child may execute a surrender of his rights to the child prior to the birth of the child for the purpose of an

1 adoption pursuant to this Code section. A pre-birth surrender, when signed under oath
2 by the alleged biological father, shall serve to relinquish the alleged biological father's
3 rights to the child and to waive the alleged biological father's right to notice of any
4 proceeding with respect to the child's adoption, custody, or guardianship. The court in
5 any adoption proceeding shall have jurisdiction to enter a final order of adoption of the
6 child based upon the pre-birth surrender and in other proceedings to determine the
7 child's legal custody or guardianship shall have jurisdiction to enter an order for those
8 purposes.

9 (B) The responsibilities of an alleged biological father are permanently terminated only
10 upon the entry of a final order of adoption. A person executing a pre-birth surrender
11 pursuant to this Code section shall have the right to withdraw the surrender within ten
12 days from the date of execution thereof, notwithstanding the date of birth of the child.

13 (C) If a final order of adoption is not entered after the execution of a pre-birth
14 surrender and paternity is established by acknowledgment, by administrative order, or
15 by judicial order, then the alleged biological father shall be responsible for child
16 support or other financial obligations to the child or to the child's mother, or to both.

17 (D) The pre-birth surrender shall not be valid for use by a legal father as defined under
18 paragraph (6) of Code Section 19-8-1 or for any man who has executed either a
19 voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2)
20 of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity
21 pursuant to the provisions of Code Section 19-7-46.1.

22 (E) The pre-birth surrender may be executed at any time after the biological mother
23 executes a sworn statement identifying such person as an alleged biological father of
24 the biological mother's unborn child.

25 (F) The pre-birth surrender shall meet the requirements of subsection (f) of Code
26 Section 19-8-26."

27 SECTION 3.

28 Said chapter is further amended in Code Section 19-8-5, relating to the surrender rights when
29 the child is to be adopted by a third party, by revising subsection (c) as follows:

30 "(c) The surrender specified in paragraphs (1) and (2) of subsection (e) of this Code section
31 shall be executed; following the birth of the child, and the pre-birth surrender specified in
32 paragraph (3) of subsection (e) of this Code section shall be executed prior to the birth of
33 the child. Each surrender shall be executed in the presence of a notary. The name and
34 address of each person to whom the child is surrendered may be omitted to protect
35 confidentiality, provided the surrender sets forth the name and address of his agent for
36 purposes of notice of withdrawal as provided for in subsection (d) of this Code section. A

1 copy shall be delivered to the individual signing the surrender at the time of the execution
2 thereof."

3 **SECTION 4.**

4 Said chapter is further amended in said Code section by adding a new paragraph to
5 subsection (e) as follows:

6 "(3)(A) The biological father who is not the legal father of a child may execute a
7 surrender of his rights to the child prior to the birth of the child for the purpose of an
8 adoption pursuant to this Code section. A pre-birth surrender, when signed under oath
9 by the alleged biological father, shall serve to relinquish the alleged biological father's
10 rights to the child and to waive the alleged biological father's right to notice of any
11 proceeding with respect to the child's adoption, custody, or guardianship. The court in
12 any adoption proceeding shall have jurisdiction to enter a final order of adoption of the
13 child based upon the pre-birth surrender and in other proceedings to determine the
14 child's legal custody or guardianship shall have jurisdiction to enter an order for those
15 purposes.

16 (B) The responsibilities of an alleged biological father are permanently terminated only
17 upon the entry of a final order of adoption. A person executing a pre-birth surrender
18 pursuant to this Code section shall have the right to withdraw the surrender within ten
19 days from the date of execution thereof, notwithstanding the date of birth of the child.

20 (C) If a final order of adoption is not entered after the execution of a pre-birth
21 surrender and paternity is established by acknowledgment, by administrative order, or
22 by judicial order, then the alleged biological father shall be responsible for child
23 support or other financial obligations to the child or to the child's mother, or to both.

24 (D) The pre-birth surrender shall not be valid for use by a legal father as defined under
25 paragraph (6) of Code Section 19-8-1 or for any man who has executed either a
26 voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2)
27 of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity
28 pursuant to the provisions of Code Section 19-7-46.1.

29 (E) The pre-birth surrender may be executed at any time after the biological mother
30 executes a sworn statement identifying such person as an alleged biological father of
31 the biological mother's unborn child.

32 (F) The pre-birth surrender shall meet the requirements of subsection (f) of Code
33 Section 19-8-26."

SECTION 5.

Said chapter is further amended in Code Section 19-8-7, relating to the surrender of rights when the child is adopted by a relative, by revising subsection (c) as follows:

"(c) The surrender specified in paragraphs (1) and (2) of subsection (e) of this Code section shall be executed; following the birth of the child, and the pre-birth surrender specified in paragraph (3) of subsection (e) of this Code section shall be executed prior to the birth of the child. Each surrender shall be executed in the presence of a notary. A copy shall be delivered to the individual signing the surrender at the time of the execution thereof."

SECTION 6.

Said chapter is further amended in said Code section by adding a new paragraph to subsection (e) as follows:

"(3)(A) The biological father who is not the legal father of a child may execute a surrender of his rights to the child prior to the birth of the child for the purpose of an adoption pursuant to this Code section. A pre-birth surrender, when signed under oath by the alleged biological father, shall serve to relinquish the alleged biological father's rights to the child and to waive the alleged biological father's right to notice of any proceeding with respect to the child's adoption, custody, or guardianship. The court in any adoption proceeding shall have jurisdiction to enter a final order of adoption of the child based upon the pre-birth surrender and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes.

(B) The responsibilities of an alleged biological father are permanently terminated only upon the entry of a final order of adoption. A person executing a pre-birth surrender pursuant to this Code section shall have the right to withdraw the surrender within ten days from the date of execution thereof, notwithstanding the date of birth of the child.

(C) If a final order of adoption is not entered after the execution of a pre-birth surrender and paternity is established by acknowledgment, by administrative order, or by judicial order, then the alleged biological father shall be responsible for child support or other financial obligations to the child or to the child's mother, or to both.

(D) The pre-birth surrender shall not be valid for use by a legal father as defined under paragraph (6) of Code Section 19-8-1 or for any man who has executed either a voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2) of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity pursuant to the provisions of Code Section 19-7-46.1.

(E) The pre-birth surrender may be executed at any time after the biological mother executes a sworn statement identifying such person as an alleged biological father of the biological mother's unborn child.

(F) The pre-birth surrender shall meet the requirements of subsection (f) of Code Section 19-8-26."

SECTION 7.

Said chapter is further amended in Code Section 19-8-9, relating to surrender of parental rights where legal mother puts up child for adoption, by adding a new subsection as follows:

"(c) If a legal mother has voluntarily and in writing surrendered all of her parental rights pursuant to the provisions of subsection (a) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 and has not withdrawn her surrender within the ten-day period after signing as permitted by the provisions of subsection (b) of this Code section, she shall have no right or authority to sign either a voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2) of subsection (g) of Code Section 19-7-22 or a voluntary acknowledgment of paternity pursuant to the provisions of Code Section 19-7-46.1 regarding the same child."

SECTION 8.

Said chapter is further amended in Code Section 19-8-12, relating to notice to an alleged biological father, procedure when identity or location of an alleged biological father is unknown, and when rights of the biological father are terminated, by adding a new subsection as follows:

"(h) If the child is legitimated by his or her biological father and in the subsequent adoption proceeding the petition for adoption is either withdrawn with prejudice or denied by the court, then a surrender of parental rights final release for adoption executed by the legal mother pursuant to the provisions of subsection (a) of Code Section 19-8-4, 19-8-5, or 19-8-7 shall be dissolved by operation of law and her parental rights shall be restored to her. The fact that the legal mother executed a surrender of parental rights final release for adoption, now dissolved, shall not be admissible evidence in any proceedings against the legal mother."

SECTION 9.

Said chapter is further amended in Code Section 19-8-26, relating to surrender of rights forms, by revising subsection (f) as follows:

"(f) The pre-birth surrender of rights by a biological father who is not the legal father of the child pursuant to paragraph (3) of subsection (e) of Code Section 19-8-4, 19-8-5, or 19-8-7 shall conform substantially to the following form:

'PRE-BIRTH SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO ALLEGED BIOLOGICAL FATHER

This is an important legal document and by signing it you are surrendering any and all of your right, title, and claim to the child identified herein, so as to facilitate the child's placement for adoption. You have the right to wait to execute a Surrender of Rights Final Release for Adoption after the child is born, but by signing this document you are electing to surrender your rights prior to the birth of this child. You are to receive a copy of this document and as explained below have the right to withdraw your pre-birth surrender within ten days from the date you sign it.

I, the undersigned, understand that I have been named by _____, the mother of the child expected to be born in _____(city) _____(county) _____(state) on or about the _____day of _____(month), _____(year), as the biological father or possible biological father of her child. I further understand that the mother wishes to place this child for adoption.

To the best of my knowledge and belief, the child has not been born as of the date I am signing this pre-birth surrender; however, if in fact the child has been born, this surrender shall have the same effect as if it were a surrender executed following the birth of the child.

I understand that by signing this document I am not admitting that I am the biological father of this child, but if I am, I hereby agree that adoption is in this child's best interest. I consent to adoption of this child by any person chosen by the child's mother or by any public or private child-placing agency without further notice to me. I expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

I understand that I have the option to wait until after the child is born to execute a surrender of my rights (with a corresponding ten-day right of withdrawal) and, further, that by executing this document I am electing instead to surrender my rights before the child's birth.

I further understand that execution of this document does not fully and finally terminate my responsibilities until a final order of adoption is entered. I understand that if the child is not adopted, legal proceedings can be brought to establish paternity, and I may become liable for financial obligations related to the birth and support of this child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand that I may only withdraw this pre-birth surrender by giving written notice, delivered in person or by statutory overnight delivery or registered mail, return receipt requested, to _____ within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; that, however, if the tenth day falls on a Saturday, Sunday, or legal holiday, then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and that it may NOT be withdrawn thereafter.

If prior to my signing this pre-birth surrender I have registered on Georgia's putative father registry then if I do not withdraw this surrender within the time permitted, I waive the notice I would be entitled to receive pursuant to the provisions of Code Section 19-8-12 of the Official Code of Georgia Annotated because of my registration on the putative father registry.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this document and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, _____.

_____(SEAL)

Alleged biological father

Unofficial Witness

Sworn to and subscribed

before me on this _____ day of

_____, _____.

Notary Public

Seal

My commission expires: _____"

SECTION 10.

This Act shall become effective July 1, 2007, and shall apply to proceedings under this chapter on or after the effective date of this Act.

SECTION 11.

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