

The House Committee on Judiciary offers the following substitute to SB 88:

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 program to provide a subsidy to certain grandparents raising grandchildren under certain
6 circumstances; to provide for an assessment and evaluation of certain aspects of the program;
7 to provide for other related matters; to provide effective dates; 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 parent's incapacity or inability to perform the regular and expected functions
17 to provide such care and support;
- 18 (2) Parents need a means to confer to grandparents or great-grandparents the authority
19 to act on behalf of grandchildren without the time and expense of a court proceeding;
- 20 (3) Grandparents and great-grandparents caring for their grandchildren under these
21 circumstances often do not have sufficient financial resources to provide for such
22 children; and
- 23 (4) Providing both a statutory mechanism for granting authority and limited financial
24 support under certain circumstances to provide for children enhances family preservation
25 and stability.

1 19-9-122.

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

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

8 (1) A parent being unable to provide care due to the death of the other parent;

9 (2) A serious illness or terminal illness of a parent;

10 (3) The physical or mental condition of the parent or the child such that proper care and
11 supervision of the child cannot be provided by the parent;

12 (4) The incarceration of a parent;

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

14 (6) A period of active military duty of a parent exceeding 24 months.

15 (c) Hardship shall not include the granting of a power of attorney for the care of a minor
16 child for the purpose of subverting an investigation of the child's welfare initiated by the
17 Department of Human Resources or other agency responsible for such investigations.

18 19-9-123.

19 Through the power of attorney for the care of a minor child, the parent may authorize the
20 agent grandparent to perform the following functions:

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

22 (2) Enroll the child in any health insurance program offered to the grandparent;

23 (3) Provide access to school records and may disclose the contents to others;

24 (4) Arrange for and consent to medical, dental, and mental health treatment for the child;

25 (5) Provide access to medical, dental, and mental health records and may disclose the
26 contents thereof to others;

27 (6) Provide for the child's food, lodging, housing, recreation, and travel; and

28 (7) Any additional powers as specified by the parent.

29 19-9-124.

30 (a) An agent grandparent under a power of attorney for the care of a minor child shall act
31 in the best interests of the minor child. Such agent grandparent shall not be liable for
32 consenting or refusing to consent to medical, dental, or mental health care for a minor child
33 when such decision is made in good faith and is exercised in the best interests of the minor
34 child.

1 (b)(1) The agent grandparent shall have the right to enroll the minor child in a public
2 school serving the area where the agent grandparent resides and may enroll the minor
3 child in a private school, pre-kindergarten program, or home study program.

4 (2) The public school shall allow such agent grandparent with a properly executed power
5 of attorney for the care of a minor child to enroll the minor child.

6 (3) At the time of enrollment the grandparent shall provide to the school such residency
7 documentation as is customary in that school district.

8 (4) The school may request reasonable evidence of the stated hardship.

9 (5) If a public school denies enrollment of a minor child under this Code section, such
10 denial may be appealed and shall be treated as any other denial of enrollment of a child
11 in that school district, including all of the remedies otherwise available when enrollment
12 is denied to a child.

13 (6) Except where limited by federal law, the agent grandparent shall have the same
14 rights, duties, and responsibilities that would otherwise be exercised by the parent
15 pursuant to the laws of this state.

16 (7) An agent grandparent shall be obligated to comply with any existing court order
17 relative to the child, including, but not limited to, any visitation order.

18 19-9-125.

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

22 19-9-126.

23 Nothing in this part shall preclude a parent or agent grandparent from granting temporary
24 written permission to seek emergency medical treatment or other services for a minor child
25 while in the custody of an adult who is not the parent or agent grandparent and who is
26 temporarily supervising the child at the parent's or agent grandparent's request.

27 19-9-127.

28 (a) Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C.A.
29 Section 6301, et seq. and Section 7801, et seq., a parent executing the power of attorney
30 for the care of a minor child shall certify that such action is not for the primary purpose of
31 enrolling the child in a school for the sole purpose of participating in the academic or
32 interscholastic athletic programs provided by that school or for any other unlawful purpose.
33 Violation of this subsection shall be punishable in accordance with Georgia law and may

1 require, in addition to any other remedies, repayment by such parent or grandparent of all
2 costs incurred by the school as a result of the violation.

3 (b)(1) The instrument providing for the power of attorney for the care of a minor child
4 shall be executed by both parents, if both parents are living and have joint legal custody
5 of the minor child, and shall specify which hardship prevents the parent or parents from
6 caring for the child. If the parents do not have joint legal custody, the parent having sole
7 permanent legal custody shall have authority to grant the power of attorney.

8 (2) The power of attorney for the care of a minor child shall be signed and acknowledged
9 before a notary public by the parent executing the power of attorney. Any noncustodial
10 parent shall be notified in writing of the name and address of the grandparent who has
11 been appointed the agent grandparent under the power of attorney. The executing parent
12 shall send the notification by certified mail or statutory overnight delivery, return receipt
13 requested, to the noncustodial parent at the noncustodial parent's last known address
14 within five days of the execution of the power of attorney. A noncustodial parent who
15 has joint legal custody shall have the same authority to execute a revocation of the power
16 of attorney as granted to the custodial parent.

17 (c) If only one parent has sole permanent legal custody of the minor child, then that parent
18 shall have authority to execute the power of attorney for the care of a minor child and to
19 revoke the power of attorney.

20 19-9-128.

21 (a)(1) The agent grandparent shall have the authority to act on behalf of the minor child
22 until each parent who executed the power of attorney for the care of a minor child
23 revokes the power of attorney in writing and provides notice of the revocation to the
24 agent grandparent as provided in this Code section.

25 (2) The agent grandparent shall have the authority to act on behalf of the child until a
26 copy of the revocation of the power of attorney is received by certified mail or statutory
27 overnight delivery, return receipt requested, and upon receipt of the revocation the agent
28 grandparent shall cease to act as agent.

29 (3) The parent shall send a copy of the revocation of the power of attorney to the agent
30 grandparent within five days of the execution of the revocation by certified mail or
31 statutory overnight delivery, return receipt requested.

32 (4) The revoking parent shall notify the school, health care providers, and others known
33 to the parent to have relied upon such power of attorney.

34 (b) The power of attorney for the care of a minor child may also be terminated by any
35 order of a court of competent jurisdiction.

1 (c)(1) The agent grandparent shall notify the school in which the agent grandparent had
2 enrolled the child whenever a change in circumstances results in a change in residence
3 for such child that is expected to last more than six weeks during a school term and such
4 change in residence is not due to hospitalization, vacation, study abroad, or some reason
5 otherwise acceptable to the school.

6 (2) The agent grandparent may resign by notifying the parent in writing by certified mail
7 or statutory overnight delivery, return receipt requested, and, if the agent grandparent is
8 aware that the parent's hardship still exists, such agent grandparent shall also notify child
9 protective services or such government authority that is charged with assuring proper care
10 of such minor child.

11 (3) Upon the death of the authorizing parent, the agent grandparent shall notify the
12 surviving parent as soon as practicable. With consent of the surviving parent or if the
13 whereabouts of the surviving parent are unknown, the power of attorney for the care of
14 a minor child may continue for up to six months so that the child may receive consistent
15 care until more permanent custody arrangements are made.

16 (d) The authority to designate an agent to act on behalf of a minor child is in addition to
17 any other lawful action a parent may take for the benefit of such minor child, and the parent
18 shall continue to have the right to medical, dental, mental health, and school records
19 pertaining to the minor child.

20 19-9-129.

21 (a) The statutory power of attorney for the care of a minor child form contained in this
22 Code section may be used to grant an agent grandparent powers over the minor child's
23 enrollment in school, medical, dental, and mental health care, food, lodging, recreation,
24 travel, and any additional powers as specified by the parent. This power of attorney is not
25 intended to be exclusive. No provision of this part shall be construed to bar use by the
26 parent of any other or different form of power of attorney for the care of a minor child
27 which complies with this part. A power of attorney for the care of a minor child in
28 substantially the form set forth in this Code section shall have the same meaning and effect
29 as prescribed in this part. Substantially similar forms may include forms from other states.

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

1 'GEORGIA POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

2 NOTICE:

3 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
4 GRANDPARENT THAT YOU DESIGNATE (THE AGENT GRANDPARENT)
5 POWERS TO CARE FOR YOUR MINOR CHILD, INCLUDING THE POWER TO:
6 ENROLL THE CHILD IN SCHOOL AND IN EXTRACURRICULAR SCHOOL
7 ACTIVITIES; HAVE ACCESS TO SCHOOL RECORDS AND DISCLOSE THE
8 CONTENTS TO OTHERS; ARRANGE FOR AND CONSENT TO MEDICAL,
9 DENTAL, AND MENTAL HEALTH TREATMENT FOR THE CHILD; HAVE
10 ACCESS TO SUCH RECORDS RELATED TO TREATMENT OF THE CHILD AND
11 DISCLOSE THE CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR
12 THE CHILD'S FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
13 ADDITIONAL POWERS AS SPECIFIED BY THE PARENT.

14 (2) THE AGENT GRANDPARENT IS REQUIRED TO EXERCISE DUE CARE TO
15 ACT IN THE CHILD'S BEST INTEREST AND IN ACCORDANCE WITH THE
16 GRANT OF AUTHORITY SPECIFIED IN THIS FORM.

17 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
18 THE AGENT GRANDPARENT IF IT FINDS THAT THE AGENT GRANDPARENT
19 IS NOT ACTING PROPERLY.

20 (4) THE AGENT GRANDPARENT MAY EXERCISE THE POWERS GIVEN IN
21 THIS POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD
22 THROUGHOUT THE CHILD'S MINORITY UNLESS THE PARENT REVOKES
23 THIS POWER OF ATTORNEY AND PROVIDES NOTICE OF THE REVOCATION
24 TO THE AGENT GRANDPARENT OR UNTIL A COURT OF COMPETENT
25 JURISDICTION TERMINATES THIS POWER.

26 (5) THE AGENT GRANDPARENT MAY RESIGN AS AGENT AND MUST
27 IMMEDIATELY COMMUNICATE SUCH RESIGNATION TO THE PARENT, AND
28 IF COMMUNICATION WITH SUCH PARENT IS NOT POSSIBLE, THE AGENT
29 GRANDPARENT SHALL NOTIFY CHILD PROTECTIVE SERVICES OR SUCH
30 GOVERNMENT AUTHORITY THAT IS CHARGED WITH ASSURING PROPER
31 CARE OF SUCH MINOR CHILD.

32 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING BY ANY
33 AUTHORIZING PARENT. IF THE POWER OF ATTORNEY IS REVOKED, THE
34 REVOKING PARENT SHALL NOTIFY THE AGENT GRANDPARENT, SCHOOL,
35 HEALTH CARE PROVIDERS, AND OTHERS KNOWN TO THE PARENT TO
36 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

1 (7) IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT
2 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

3 POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

4 made this ____ day of _____, ____.

5 (1)(A) I, _____ (insert name and address of parent or
6 parents), hereby appoint _____
7 (insert name and address of grandparent to be named as agent) as attorney in fact (the
8 agent grandparent) for my child _____
9 (insert name of child) to act for me and in my name in any way that I could act in
10 person.

11 (B) I hereby certify that the agent grandparent named herein is the (place a check mark
12 beside the appropriate description):

13 ____ Biological grandparent;

14 ____ Stepgrandparent;

15 ____ Biological great-grandparent; or

16 ____ Stepgreat-grandparent.

17 (2) The agent grandparent may:

18 (A) Enroll the child in school and in extracurricular activities, have access to school
19 records, and may disclose the contents to others;

20 (B) Arrange for and consent to medical, dental, and mental health treatment of the
21 child, have access to such records related to treatment of the child, and disclose the
22 contents of such records to others;

23 (C) Provide for the child’s food, lodging, recreation, and travel; and

24 (D) Carry out any additional powers specified by the parent as follows:

25 _____

26 _____

27 _____

28 (3) The powers granted above shall not include the following powers or shall be subject
29 to the following rules or limitations (here you may include any specific limitations that
30 you deem appropriate):

31 _____

32 _____

33 _____

1 (4) This power of attorney for the care of a minor child is being executed because of the
2 following hardship (initial all that apply):

- 3 ____ (A) The death, serious illness, or terminal illness of a parent;
- 4 ____ (B) The physical or mental condition of the parent or the child such that proper
5 care and supervision of the child cannot be provided by the parent;
- 6 ____ (C) The loss or uninhabitability of the child’s home as the result of a natural
7 disaster;
- 8 ____ (D) The incarceration of a parent; or
- 9 ____ (E) A period of active military duty of a parent.

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

13 (6) I am fully informed as to all of the contents of this form and I understand the full
14 import of this grant of powers to the agent grandparent.

15 (7) I certify that the minor child is not emancipated, and, if the minor child becomes
16 emancipated, this power of attorney shall no longer be valid.

17 (8) Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C.A.
18 Section 6301, et seq. and Section 7801, et seq., I hereby certify that this power of attorney
19 is not executed for the primary purpose of unlawfully enrolling the child in a school so
20 that the child may participate in the academic or interscholastic athletic programs
21 provided by that school.

22 (9) I certify that, to my knowledge, the minor child’s welfare is not the subject of an
23 investigation by the Department of Human Resources.

24 (10) I declare under penalty of perjury under the laws of the State of Georgia that the
25 foregoing is true and correct.

26 Parent Signature: _____
27 Printed name: _____

28 Parent Signature: _____
29 Printed name: _____

30 Signed and sealed in the presence of: _____
31 Notary public
32 My commission expires _____'

1 (c) The following notice shall be attached to the power of attorney:

2 'ADDITIONAL INFORMATION:

3 To the grandparent designated as attorney in fact:

4 (1) If a change in circumstances results in the child not living with you for more than six
5 weeks during a school term and such change is not due to hospitalization, vacation, study
6 abroad, or some reason otherwise acceptable to the school, you should notify in writing
7 the school in which you have enrolled the child and to which you have given this power
8 of attorney form.

9 (2) You have the authority to act on behalf of the minor child until each parent who
10 executed the power of attorney for the care of the minor child revokes the power of
11 attorney in writing and provides notice of revocation to you as provided in O.C.G.A.
12 Section 19-9-128.

13 (3) If you are made aware of the death of the parent who executed the power of attorney,
14 you must notify the surviving parent as soon as practicable. With the consent of the
15 surviving parent, or if the whereabouts of the surviving parent are unknown, the power
16 of attorney may continue for up to six months so that the child may receive consistent
17 care until more permanent custody arrangements are made.

18 (4) You may resign as agent by notifying each parent in writing by certified mail or
19 statutory overnight delivery, return receipt requested, and if you become unable to care
20 for the child, you shall cause such resignation to be communicated to the parent. If
21 communication with such parent is not possible, you must notify child protective services
22 or such government authority that is charged with assuring proper care of such minor
23 child.

24 To school officials:

25 (1) Except as provided in the policies and regulations of the county school board and the
26 federal No Child Left Behind Act, 20 U.S.C.A. Section 6301, et seq. and Section 7801,
27 et seq., this power of attorney, properly completed and notarized, authorizes the agent
28 grandparent named herein to enroll the child named herein in school in the district in
29 which the agent grandparent resides. That agent grandparent is authorized to provide
30 consent in all school related matters and to obtain from the school district educational and
31 behavioral information about the child. Furthermore, this power of attorney shall not
32 prohibit the parent of the child from having access to all school records pertinent to the
33 child.

34 (2) The school district may require such residency documentation as is customary in that
35 school district.

1 (3) No school official who acts in good faith reliance on a power of attorney for the care
 2 of a minor child shall be subject to criminal or civil liability or professional disciplinary
 3 action for such reliance.

4 To health care providers:

5 (1) No health care provider who acts in good faith reliance on a power of attorney for the
 6 care of a minor child shall be subject to criminal or civil liability or professional
 7 disciplinary action for such reliance.

8 (2) The parent continues to have the right to all medical, dental, and mental health records
 9 pertaining to the minor child.'

10 Part 2

11 19-9-140.

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

13 19-9-141.

14 As used in this part, the term:

15 (1) 'Area agency on aging' shall have the same meaning as provided in paragraph (2) of
 16 Code Section 49-6-72.

17 (2) 'Department' means the Department of Human Resources.

18 (3) 'Division' means the Division of Aging Services of the Department of Human
 19 Resources.

20 (4) 'Electronic funds transfer card' means a process of providing financial support
 21 through the use of a card to which funds may be regularly added by electronic means and
 22 for which restrictions on the use of such funds apply.

23 (5) 'Grandchild caregiver subsidy' means the aid provided on behalf of children under
 24 the terms of this part.

25 (6) 'Grandparent' shall have the same meaning as provided in subsection (a) of Code
 26 Section 19-7-3 and shall also mean the biological great-grandparent or
 27 stepgreat-grandparent who is the parent or stepparent of a grandparent of a minor child.

28 (7) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

29 19-9-142.

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

1 (b) Upon funds being appropriated by the General Assembly, the grandchild caregiver
2 subsidy shall be provided on behalf of any minor child:

3 (1) Who is in the legal custody or under temporary or permanent guardianship of a
4 grandparent who resides in Georgia;

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

8 (3) Whose grandparent giving care has experienced hardship as defined in subsection (b)
9 of Code Section 19-9-122; and

10 (4) Whose grandparent is participating in a grandparent raising grandchildren support
11 program sponsored by the area agency on aging for the regional area in which that
12 grandparent resides.

13 (c) A grandparent meeting the criteria in subsection (b) of this Code section shall receive
14 a monthly grandchild caregiver subsidy equal to 80 percent of the state-wide average foster
15 care rate for each minor grandchild who is in the legal custody or under temporary or
16 permanent guardianship of such grandparent. Such grandparent shall remain eligible for
17 the grandchild caregiver subsidy for each month that such grandchild or great-grandchild
18 continues to live with the grandparent, provided that the other criteria under this part are
19 met.

20 (d) Any grandchild caregiver subsidy shall be provided to a grandparent for the benefit of
21 the grandchild or great-grandchild through use of an electronic funds transfer card or such
22 other means as the department shall determine appropriate if the electronic funds transfer
23 card is not a viable option for a grandparent and shall not affect the eligibility of the
24 grandchild or great-grandchild to receive Medicaid or PeachCare for Kids benefits or
25 benefits from any other state or federal program for which the grandchild or
26 great-grandchild would otherwise be eligible.

27 (e)(1) Grandparents in every area agency on aging region in this state may request
28 participation in this program.

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

31 (A) No more than 1,500 families at any given time shall be participating in the
32 program;

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

36 (C) Each area agency on aging confirms that the grandparent and grandchild are
37 continuing to participate in the grandparent support program;

1 (D) A periodic verification of eligibility to remain in the program shall be completed
2 at least annually for each family participating in the program;

3 (E) Each grandparent receiving the subsidy periodically affirms that the grandchild
4 caregiver subsidy funds are being used for the following permitted purposes:

5 (i) The purchase of goods, including clothing, food, toiletries, diapers, school
6 supplies, and other educational materials such as books and other supplements, car
7 seats, prescription drugs and over the counter medicines, and such other items as the
8 department may determine appropriate; and

9 (ii) The purchase of services, including medical copayments, dental care, child care,
10 school expenses, and activities fees, rent or housing related expenses, transportation
11 expenses such as public transportation fares, car repairs, gasoline, or other
12 transportation costs, and such other services as the department may determine
13 appropriate; and

14 (F) The grandchild caregiver subsidy funds shall not be used for the purchase of
15 tobacco products, liquor, beer, wine, lottery tickets, firearms, or any item or substance
16 which is illegal for a minor to possess, receive, or consume.

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

25 (g) A yearly status report shall be submitted from each area agency on aging grandparent
26 support program to the department's division.

27 (h) The department shall provide for evaluation of the grandchild caregiver subsidy
28 program during the first two years of the program if sufficient funding is appropriated for
29 that purpose as a part of the grandchild caregiver subsidy program. The results of such
30 evaluation shall be published to the General Assembly during the session following the
31 second year of the evaluation.

32 (i) For each case in which a grandparent is receiving a grandchild caregiver subsidy, the
33 department shall pursue child support from both parents and the grandparents shall
34 cooperate with all efforts to collect child support."

SECTION 4.

1

2 Part 1 of Article 4 of Chapter 9 of Title 19 enacted by Section 3 of this Act shall become
3 effective upon its approval by the Governor or its becoming law without such approval. The
4 remaining provisions of this Act shall become effective July 1, 2008.

SECTION 5.

5

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