

The House Committee on Rules 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 other related
5 matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

9 **SECTION 2.**

10 The General Assembly finds that:

- 11 (1) An increasing number of relatives in Georgia, including grandparents and
12 great-grandparents, are providing care to children who cannot reside with their parents
13 due to the parent's incapacity or inability to perform the regular and expected functions
14 to provide such care and support;
- 15 (2) Parents need a means to confer to grandparents or great-grandparents the authority
16 to act on behalf of grandchildren without the time and expense of a court proceeding; and
- 17 (3) Providing a statutory mechanism for granting such authority enhances family
18 preservation and stability.

19 **SECTION 3.**

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

"ARTICLE 4

19-9-120.

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

19-9-121.

As used in this article, the term:

(1) 'Grandchild' means the minor child of a grandparent.

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

(3) 'Parent' shall have the same meaning as provided in Code Section 19-3-37. Such term used in the singular shall mean both parents if both parents share joint legal custody of the child, unless otherwise clearly indicated.

(4) 'Reasonable evidence' means evidence that a reasonable person would find sufficient to determine whether one conclusion is more likely than another.

(5) '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.

(6) 'School term' means the part of the year in which school is in session.

(7) '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.

(8) 'Terminal illness' has the same meaning as the term 'terminal condition' as provided in paragraph (14) of Code Section 31-32-2.

19-9-122.

(a) A parent of a minor child may delegate to any grandparent residing in this state caregiving authority regarding the minor child when hardship prevents the parent from caring for the child. This authority may be delegated without the approval of a court by

1 executing in writing a power of attorney for the care of a minor child in a form
2 substantially complying with the provisions of this article.

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

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

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

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

8 (4) The incarceration of a parent;

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

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

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

14 19-9-123.

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

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

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

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

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

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

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

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

25 19-9-124.

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

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

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

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

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

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

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

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

13 19-9-125.

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

17 19-9-126.

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

22 19-9-127.

23 (a) Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C.A.
24 Section 6301, et seq. and Section 7801, et seq., a parent executing the power of attorney
25 for the care of a minor child shall certify that such action is not for the primary purpose of
26 enrolling the child in a school for the sole purpose of participating in the academic or
27 interscholastic athletic programs provided by that school or for any other unlawful purpose.
28 Violation of this subsection shall be punishable in accordance with Georgia law and may
29 require, in addition to any other remedies, repayment by such parent or grandparent of all
30 costs incurred by the school as a result of the violation.

31 (b)(1) The instrument providing for the power of attorney for the care of a minor child
32 shall be executed by both parents, if both parents are living and have joint legal custody
33 of the minor child, and shall specify which hardship prevents the parent or parents from

1 caring for the child. If the parents do not have joint legal custody, the parent having sole
2 permanent legal custody shall have authority to grant the power of attorney.

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

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

15 19-9-128.

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

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

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

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

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

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

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

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

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

15 19-9-129.

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

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

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

29 NOTICE:

30 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
 31 GRANDPARENT THAT YOU DESIGNATE (THE AGENT GRANDPARENT)
 32 POWERS TO CARE FOR YOUR MINOR CHILD, INCLUDING THE POWER TO:
 33 ENROLL THE CHILD IN SCHOOL AND IN EXTRACURRICULAR SCHOOL
 34 ACTIVITIES; HAVE ACCESS TO SCHOOL RECORDS AND DISCLOSE THE

1 CONTENTS TO OTHERS; ARRANGE FOR AND CONSENT TO MEDICAL,
 2 DENTAL, AND MENTAL HEALTH TREATMENT FOR THE CHILD; HAVE
 3 ACCESS TO SUCH RECORDS RELATED TO TREATMENT OF THE CHILD AND
 4 DISCLOSE THE CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR
 5 THE CHILD'S FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
 6 ADDITIONAL POWERS AS SPECIFIED BY THE PARENT.

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

10 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
 11 THE AGENT GRANDPARENT IF IT FINDS THAT THE AGENT GRANDPARENT
 12 IS NOT ACTING PROPERLY.

13 (4) THE AGENT GRANDPARENT MAY EXERCISE THE POWERS GIVEN IN
 14 THIS POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD
 15 THROUGHOUT THE CHILD'S MINORITY UNLESS THE PARENT REVOKES
 16 THIS POWER OF ATTORNEY AND PROVIDES NOTICE OF THE REVOCATION
 17 TO THE AGENT GRANDPARENT OR UNTIL A COURT OF COMPETENT
 18 JURISDICTION TERMINATES THIS POWER.

19 (5) THE AGENT GRANDPARENT MAY RESIGN AS AGENT AND MUST
 20 IMMEDIATELY COMMUNICATE SUCH RESIGNATION TO THE PARENT, AND
 21 IF COMMUNICATION WITH SUCH PARENT IS NOT POSSIBLE, THE AGENT
 22 GRANDPARENT SHALL NOTIFY CHILD PROTECTIVE SERVICES OR SUCH
 23 GOVERNMENT AUTHORITY THAT IS CHARGED WITH ASSURING PROPER
 24 CARE OF SUCH MINOR CHILD.

25 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING BY ANY
 26 AUTHORIZING PARENT. IF THE POWER OF ATTORNEY IS REVOKED, THE
 27 REVOKING PARENT SHALL NOTIFY THE AGENT GRANDPARENT, SCHOOL,
 28 HEALTH CARE PROVIDERS, AND OTHERS KNOWN TO THE PARENT TO
 29 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

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

32 POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

33 made this ____ day of _____, ____.

34 (1)(A) I, _____ (insert name and address of parent or
 35 parents), hereby appoint _____

1 (insert name and address of grandparent to be named as agent) as attorney in fact (the
 2 agent grandparent) for my child _____
 3 (insert name of child) to act for me and in my name in any way that I could act in
 4 person.

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

- 7 Biological grandparent;
- 8 Stepgrandparent;
- 9 Biological great-grandparent; or
- 10 Stepgreat-grandparent.

11 (2) The agent grandparent may:

- 12 (A) Enroll the child in school and in extracurricular activities, have access to school
 13 records, and may disclose the contents to others;
- 14 (B) Arrange for and consent to medical, dental, and mental health treatment of the
 15 child, have access to such records related to treatment of the child, and disclose the
 16 contents of such records to others;
- 17 (C) Provide for the child’s food, lodging, recreation, and travel; and
- 18 (D) Carry out any additional powers specified by the parent as follows:

19 _____
 20 _____
 21 _____

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

25 _____
 26 _____
 27 _____

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

- 30 (A) The death, serious illness, or terminal illness of a parent;
- 31 (B) The physical or mental condition of the parent or the child such that proper
 32 care and supervision of the child cannot be provided by the parent;
- 33 (C) The loss or uninhabitability of the child’s home as the result of a natural
 34 disaster;
- 35 (D) The incarceration of a parent; or
- 36 (E) A period of active military duty of a parent.

1 (5) (Optional) If a guardian of my minor child is to be appointed, I nominate the
2 following person to serve as such guardian: _____

3 (insert name and address of person nominated to be guardian of the minor child).

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

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

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

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

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

17 Parent Signature: _____

18 Printed name: _____

19 Parent Signature: _____

20 Printed name: _____

21 Signed and sealed in the presence of: _____

22 Notary public

23 My commission expires _____'

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

25 'ADDITIONAL INFORMATION:

26 To the grandparent designated as attorney in fact:

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

32 (2) You have the authority to act on behalf of the minor child until each parent who
33 executed the power of attorney for the care of the minor child revokes the power of

1 attorney in writing and provides notice of revocation to you as provided in O.C.G.A.
2 Section 19-9-128.

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

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

14 To school officials:

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

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

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

29 To health care providers:

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

33 (2) The parent continues to have the right to all medical, dental, and mental health records
34 pertaining to the minor child."

1 **SECTION 4.**

2 This Act shall become effective July 1, 2008.

3 **SECTION 5.**

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