

House Bill 388 (AS PASSED HOUSE AND SENATE)

By: Representatives Mills of the 25<sup>th</sup>, Everson of the 106<sup>th</sup>, Keen of the 179<sup>th</sup>, Harbin of the 118<sup>th</sup>, Walker of the 107<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to  
2 adoption, so as to enact the "Option of Adoption Act"; to provide a short title; to define  
3 certain terms; to provide that a legal embryo custodian may relinquish rights to an embryo;  
4 to provide for procedures; to provide that a child born as a result of such relinquished embryo  
5 shall be the legal child of the recipient; to provide for an expedited order of parentage; to  
6 amend the Official Code of Georgia Annotated so as to conform provisions and correct  
7 cross-references; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 This Act shall be known and may be cited as the "Option of Adoption Act."

12 style="text-align:center">**SECTION 2.**

13 Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, is  
14 amended by designating the existing chapter as Article 1 and adding a new article to read as  
15 follows:

16 style="text-align:center">"ARTICLE 2

17 19-8-40.

18 As used in this article, the term:

19 (1) 'Embryo' or 'human embryo' means an individual fertilized ovum of the human  
20 species from the single-cell stage to eight-week development.

21 (2) 'Embryo relinquishment' or 'legal transfer of rights to an embryo' means the  
22 relinquishment of rights and responsibilities by the person or persons who hold the legal

23 rights and responsibilities for an embryo and the acceptance of such rights and  
24 responsibilities by a recipient intended parent.

25 (3) 'Embryo transfer' means the medical procedure of physically placing an embryo into  
26 the uterus of a female.

27 (4) 'Legal embryo custodian' means the person or persons who hold the legal rights and  
28 responsibilities for a human embryo and who relinquishes said embryo to another person  
29 or persons.

30 (5) 'Recipient intended parent' means a person or persons who receive a relinquished  
31 embryo and who accepts full legal rights and responsibilities for such embryo and any  
32 child that may be born as a result of embryo transfer.

33 19-8-41.

34 (a) A legal embryo custodian may relinquish all rights and responsibilities for an embryo  
35 to a recipient intended parent prior to embryo transfer. A written contract shall be entered  
36 into between each legal embryo custodian and each recipient intended parent prior to  
37 embryo transfer for the legal transfer of rights to an embryo and to any child that may result  
38 from the embryo transfer. The contract shall be signed by each legal embryo custodian for  
39 such embryo and by each recipient intended parent in the presence of a notary public and  
40 a witness. Initials or other designations may be used if the parties desire anonymity. The  
41 contract may include a written waiver by the legal embryo custodian of notice and service  
42 in any legal adoption or other parentage proceeding which may follow.

43 (b) If the embryo was created using donor gametes, the sperm or oocyte donors who  
44 irrevocably relinquished their rights in connection with in vitro fertilization shall not be  
45 entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo  
46 relinquishment be required.

47 (c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection  
48 (a) of this Code section, the legal transfer of rights to an embryo shall be considered  
49 complete, and the embryo transfer shall be authorized.

50 (d) A child born to a recipient intended parent as the result of embryo relinquishment  
51 pursuant to subsection (a) of this Code section shall be presumed to be the legal child of  
52 the recipient intended parent; provided that each legal embryo custodian and each recipient  
53 intended parent has entered into a written contract.

54 19-8-42.

55 (a) Prior to the birth of a child or following the birth of a child, a recipient intended parent  
56 may petition the superior court for an expedited order of adoption or parentage. In such

57 cases, the written contract between each legal embryo custodian and each recipient  
 58 intended parent shall be acceptable in lieu of a surrender of rights.

59 (b) All petitions under this article shall be filed in the county in which any petitioner or  
 60 any respondent resides.

61 (c) The court shall give effect to any written waiver of notice and service in the legal  
 62 proceeding for adoption or parentage.

63 (d) In the interest of justice, to promote the stability of embryo transfers, and to promote  
 64 the interests of children who may be born following such embryo transfers, the court in its  
 65 discretion may waive such technical requirements as the court deems just and proper.

66 19-8-43.

67 Upon a filing of a petition for adoption or parentage and the court finding that such petition  
 68 meets the criteria required by this article, an expedited order of adoption or parentage shall  
 69 be issued and shall be a final order. Such order shall terminate any future parental rights  
 70 and responsibilities of any past or present legal embryo custodian or gamete donor in a  
 71 child which results from the embryo transfer and shall vest such rights and responsibilities  
 72 in the recipient intended parent."

73 **SECTION 3.**

74 Code Section 15-11-28 of the Official Code of Georgia Annotated, relating to jurisdiction  
 75 of the juvenile court, is amended by revising subparagraph (a)(2)(C) as follows:

76 "(C) For the termination of the legal parent-child relationship and the rights of the  
 77 biological father who is not the legal father of the child, other than that in connection  
 78 with adoption proceedings under Article 1 of Chapter 8 of Title 19, in which the  
 79 superior courts shall have concurrent jurisdiction to terminate the legal parent-child  
 80 relationship and the rights of the biological father who is not the legal father of the  
 81 child;"

82 **SECTION 4.**

83 Code Section 19-8-26 of the Official Code of Georgia Annotated, relating to how surrender  
 84 of parental rights is executed, is amended by revising subsection (c) as follows:

85 "(c) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection  
 86 (e) of Code Section 19-8-5 shall conform substantially to the following form:

87 **SURRENDER OF RIGHTS**

88 **FINAL RELEASE FOR ADOPTION**

89 **NOTICE TO PARENT OR GUARDIAN:**

90 This is an important legal document and by signing it you are surrendering all of your  
 91 right, title, and claim to the child identified herein, so as to facilitate the child's placement  
 92 for adoption. You are to receive a copy of this document and as explained below have  
 93 the right to withdraw your surrender within ten days from the date you sign it.

94

95 I, the undersigned, being solicitous that my (male) (female) child, born (insert name of  
 96 child), on (insert birthdate of child), should receive the benefits and advantages of a good  
 97 home, to the end that (she) (he) may be fitted for the requirements of life, consent to this  
 98 surrender.

99 I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender  
 100 the child to (insert name, surname not required, of each person to whom surrender is  
 101 made), PROVIDED each such person is named as petitioner in a petition for adoption of  
 102 the child filed in accordance with Article 1 of Chapter 8 of Title 19 of the Official Code  
 103 of Georgia Annotated within 60 days from the date hereof. Furthermore, I promise not  
 104 to interfere in the management of the child in any respect whatever; and, in consideration  
 105 of the benefits guaranteed by (insert name, surname not required, of each person to whom  
 106 surrender is made) in thus providing for the child, I do relinquish all right, title, and claim  
 107 to the child herein named, it being my wish, intent, and purpose to relinquish absolutely  
 108 all parental control over the child.

109 It is also my wish, intent, and purpose that if each such person is not named as petitioner  
 110 in a petition for adoption as provided for above within the 60 day period, other than for  
 111 excusable neglect, or, if said petition for adoption is filed within 60 days but the adoption  
 112 action is dismissed with prejudice or otherwise concluded without an order declaring the  
 113 child to be the adopted child of each such person, then I do hereby surrender the child as  
 114 follows:

115 (Mark one of the following as chosen)

116 \_\_\_\_ I wish the child returned to me, and I expressly acknowledge that this provision  
 117 applies only to the limited circumstance that the child is not adopted by the person or  
 118 persons designated herein and further that this provision does not impair the validity,  
 119 absolute finality, or totality of this surrender under any circumstance other than the  
 120 failure of the designated person or persons to adopt the child and that no other provision  
 121 of this surrender impairs the validity, absolute finality, or totality of this surrender once  
 122 the revocation period has elapsed; or

123 \_\_\_\_ I surrender the child to (insert name of designated licensed child-placing agency),  
 124 a licensed child-placing agency, for placement for adoption; or

125 \_\_\_\_ I surrender the child to the Department of Human Resources, as provided by  
 126 subsection (k) of Code Section 19-8-5, for placement for adoption; and (insert name of

127 designated licensed child-placing agency) or the Department of Human Resources may  
128 petition the superior court for custody of the child in accordance with the terms of this  
129 surrender.

130 Furthermore, I hereby agree that the child is to be adopted either by each person named  
131 above or by any other such person as may be chosen by the (insert name of designated  
132 licensed child-placing agency) or the Department of Human Resources and I do expressly  
133 waive any other notice or service in any of the legal proceedings for the adoption of the  
134 child.

135 Furthermore, I understand that under Georgia law an agent appointed by the court is  
136 required to conduct an investigation and render a report to the court in connection with  
137 the legal proceeding for the legal adoption of the child and I hereby agree to cooperate  
138 fully with such agent in the conduct of this investigation.

139 Furthermore, I hereby certify that I have received a copy of this document and that I  
140 understand I may only withdraw this surrender by giving written notice, delivered in  
141 person or mailed by registered mail or statutory overnight delivery, to (insert name and  
142 address of agent of each person to whom surrender is made) within ten days from the date  
143 hereof; that the ten days shall be counted consecutively beginning with the day  
144 immediately following the date hereof; however, if the tenth day falls on a Saturday,  
145 Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall  
146 be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it  
147 may NOT be withdrawn thereafter.

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

150 Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

151 \_\_\_\_\_(SEAL)  
152 (Parent or guardian)

153 \_\_\_\_\_

154 Unofficial witness

155 Sworn to and subscribed

156 before me this \_\_\_\_\_

157 day of \_\_\_\_\_, \_\_\_\_\_.

158 \_\_\_\_\_

159 Notary public (SEAL)

160 My commission expires \_\_\_\_\_."

161 **SECTION 5.**

162 Code Section 29-2-22 of the Official Code of Georgia Annotated, relating to authority of a  
163 guardian, is amended by revising paragraph (4) of subsection (a) as follows:

164 "(4) Execute a surrender of rights to enable the adoption of the minor pursuant to the  
165 provisions of Article 1 of Chapter 8 of Title 19 or the adoption laws of any other state;  
166 and"

167 **SECTION 6.**

168 Code Section 49-5-12 of the Official Code of Georgia Annotated, relating to licensing and  
169 inspection of child welfare agencies, is amended by revising paragraphs (1) and (2) of  
170 subsection (q) as follows:

171 "(1) Adopt a child or children from receiving or accepting a child or children in the  
172 individual's home in anticipation of filing a petition for adoption under Article 1 of  
173 Chapter 8 of Title 19; or

174 (2) Have that individual's child or children placed for adoption from placing that  
175 individual's child or children in the home of an individual who is not related to the child  
176 or children in anticipation of the individual's initiation of adoption proceedings pursuant  
177 to Article 1 of Chapter 8 of Title 19."

178 **SECTION 7.**

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