

Senate Bill 3

By: Senators Unterman of the 45th, Shafer of the 48th, Cowsert of the 46th, Ligon, Jr. of the 3rd, Gooch of the 51st and others

AS PASSED SENATE

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 another person for the temporary
4 delegation of certain power and authority for the care of a minor child; to provide a short
5 title; to provide for definitions; to provide for legislative findings; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 The General Assembly finds that:

- 10 (1) From time to time, parents experience short-term difficulties that impair their ability
11 to perform the regular and expected functions to provide care and support to their minor
12 children;
- 13 (2) Parents need a means to confer to another person the temporary authority to act on
14 behalf of children without the time and expense of a court proceeding or the involvement
15 of the Division of Family and Children Services of the Department of Human Services; and
- 16 (3) Providing a statutory mechanism for granting such authority enhances family
17 preservation and stability.

18 **SECTION 2.**

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

21 "ARTICLE 522 19-9-140.23 This article shall be known and may be cited as the 'Supporting and Strengthening Families
24 Act.'25 19-9-141.26 As used in this article, the term:27 (1) 'Child' means the minor child of a parent.28 (2) 'Legal custodian' shall have the same meaning as provided in paragraph (2) of Code
29 Section 19-9-22.30 (3) 'Parent' shall have the same meaning as provided in paragraph (2) of subsection (a)
31 of Code Section 19-3-37. Such term used in the singular shall mean both parents if both
32 parents share joint legal custody of the child, unless otherwise clearly indicated.33 (4) 'School' means:34 (A) Any county or independent school system as defined in Code Section 20-1-9;35 (B) Any private school as such term is defined in subsection (b) of Code Section
36 20-2-690;37 (C) A home study program meeting the requirements set forth in subsection (c) of
38 Code Section 20-2-690;39 (D) Pre-kindergarten programs; or40 (E) Early care and education programs as such term is defined in paragraph (5) of Code
41 Section 20-1A-2.42 19-9-142.43 (a) A parent or legal custodian of a child, by a properly executed power of attorney
44 provided in Code Section 19-9-149, may delegate to any adult residing in this state
45 caregiving authority regarding the child for a period not to exceed one year, except as
46 provided in Code Section 19-9-148. The parent or legal custodian may delegate to the
47 attorney-in-fact any power and authority regarding the care and custody of the child, except
48 the power to consent to the marriage or adoption of the child, the performance or
49 inducement of an abortion on or for the child, or the termination of parental rights to the
50 child. Such power and authority may be delegated without the approval of a court by
51 executing in writing a power of attorney for the care of a child in a form substantially
52 complying with the provisions of this article. A delegation of power and authority under
53 this Code section shall not operate to change or modify any parental or legal rights,
54 obligations, or authority established by an existing court order or deprive the parent or legal

55 custodian of any parental or legal rights, obligations, or authority regarding the custody,
56 visitation, or support of the child.

57 (b) Except where limited by federal law, this Code section, or the wishes of the parent as
58 expressed in the power of attorney, the attorney-in-fact shall have the same rights, duties,
59 and responsibilities that would otherwise be exercised by the parent pursuant to the laws
60 of this state.

61 (c) The attorney-in-fact under a power of attorney for the care of a child shall act in the
62 best interest of the child. Such attorney-in-fact shall not be liable for consenting or
63 refusing to consent to medical, dental, or mental health care for a child when such decision
64 is made in good faith and is exercised in the best interest of the child.

65 (d)(1) The attorney-in-fact shall have the right to enroll the child in a public school
66 serving the area where the attorney-in-fact resides and may enroll the child in a private
67 school, pre-kindergarten program, or home study program.

68 (2) The public school shall allow such attorney-in-fact with a properly executed power
69 of attorney for the care of a child to enroll the child.

70 (3) At the time of enrollment, the attorney-in-fact shall provide to the school such
71 residency documentation as is customary in that school district.

72 (4) A public school shall not unreasonably deny enrollment of a child. If a public school
73 denies enrollment of a child under this Code section, such denial may be appealed and
74 shall be treated as any other denial of enrollment of a child in that school district,
75 including all of the remedies otherwise available when enrollment is denied to a child.

76 19-9-142.1.

77 (a) In the event a child under this article has a parent who is not a legal custodian of such
78 child, such parent shall be placed on written notice by the legal custodian 30 days prior to
79 the execution of a power of attorney under this article and such notice shall be sent by
80 certified mail.

81 (b) In addition to the notice provided in subsection (a) of this Code section, a legal
82 custodian executing a power of attorney under this article shall comply with any applicable
83 relocation notice requirements under subsection (f) of Code Section 19-9-3.

84 (c) In the event of an emergency, the written requirement provisions of this Code section
85 may be waived, but in no event shall this provision be interpreted as a means to violate a
86 court order pursuant to subsection (f) of Code Section 19-9-3.

87 19-9-143.

88 Nothing in this article shall preclude a parent or attorney-in-fact from granting temporary
89 written permission to seek emergency medical treatment or other services for a child while
90 in the custody of an adult who is not the parent or attorney-in-fact and who is temporarily
91 supervising the child at the request of the parent or attorney-in-fact.

92 19-9-144.

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

101 (b) A parent shall not execute a power of attorney for the care of a minor child for the
102 purpose of subverting an investigation of the child's welfare initiated by the Division of
103 Family and Children Services of the Department of Human Services and shall not execute
104 such power of attorney so long as the Division of Family and Children Services has an
105 open child welfare and youth services case with regard to the parent, the child, or another
106 child of the parent.

107 (c) The power of attorney for the care of a child shall be signed and acknowledged before
108 a notary public by the parent executing the power of attorney.

109 19-9-145.

110 (a) The parent or legal custodian of the child shall have the authority to revoke or
111 withdraw the power of attorney authorized by Code Section 19-9-142 at any time. Except
112 as provided in Code Section 19-9-148, if the delegation of power and authority lasts longer
113 than one year, the parent or legal custodian of the child shall execute a new power of
114 attorney for each additional year that the delegation exists. If a parent withdraws or
115 revokes the power of attorney, the child shall be returned to the custody of the parent as
116 soon as reasonably possible.

117 (b) Unless the authority is revoked or withdrawn by the parent, the attorney-in-fact shall
118 exercise parental or legal authority on a continuous basis without compensation for the
119 duration of the power of attorney authorized by Code Section 19-9-142 and shall not be
120 subject to any provision concerning the licensing or regulation of foster care homes.

121 19-9-146.

122 The execution of a power of attorney by a parent or legal custodian, as authorized in Code
123 Section 19-9-142, shall not constitute abandonment under Code Section 19-10-1 nor
124 constitute abuse or neglect under Code Section 19-7-5 unless the parent or legal custodian
125 fails to take custody of the child or execute a new power of attorney after the one-year time
126 limit under Code Section 19-9-142 has elapsed.

127 19-9-147.

128 (a) Under a delegation of power and authority as authorized by Code Section 19-9-142,
129 the child subject to the power of attorney shall not be considered placed in foster care as
130 defined in any other provision, and the parties to the power of attorney shall not be subject
131 to any of the requirements or licensing regulations for foster care or other regulations
132 relating to community care for children.

133 (b) Any attorney-in-fact who has been delegated power and authority under Code Section
134 19-9-142 by a parent or legal custodian shall not be subject to the requirements of any other
135 child care facility or foster care licensing provisions, and such delegation shall not
136 constitute an out-of-home child placement under this title.

137 19-9-148.

138 A parent who is a member of the armed forces of the United States, including any reserve
139 component thereof, or the commissioned corps of the National Oceanic and Atmospheric
140 Administration or the Public Health Service of the United States Department of Health and
141 Human Services detailed by proper authority for duty with the armed forces of the United
142 States, or who is required to enter or serve in the active military service of the United States
143 under a call or order of the President of the United States or to serve on state active duty,
144 may delegate the power and authority authorized by Code Section 19-9-142 for a period
145 longer than one year if such parent is on active duty service. The term of delegation,
146 however, may not exceed the term of active duty service plus 30 days.

147 19-9-149.

148 (a) The statutory power of attorney contained in this Code section may be used for the
149 temporary delegation of parental power and authority to an attorney-in-fact. This power
150 of attorney is not intended to be exclusive. No provision of this article shall be construed
151 to bar use by the parent of any other or different form of power of attorney for the care of
152 a child that substantially complies with this article.

153 (b) A power of attorney shall be legally sufficient under this Code section if the wording
154 of the form complies substantially with the provisions of this Code section, the form is
155 properly completed, and the signatures of the parties are acknowledged.

156 (c) The power of attorney for the care of a child shall be in substantially the following
157 form:

158 'Statutory Form for Power of Attorney to Delegate Parental or Legal Custodian Power and
159 Authority

160 1. I certify that I am the parent or legal custodian of:

161 _____

162 (Full name of minor child) (Date of birth)

163

164 2. I designate _____ (full name of attorney-in-fact),

165

166 (street address, city, state, and ZIP Code of attorney-in-fact)

167

168 (home and work phone numbers of attorney-in-fact)

169 as the attorney-in-fact of the minor child named above.

170 3. I delegate to the attorney-in-fact all my power and authority regarding the care, custody,
171 and property of the minor child named above, including but not limited to the right to enroll
172 the child in school, inspect and obtain copies of education records and other records
173 concerning the child, attend school activities and other functions concerning the child, and
174 give or withhold any consent or waiver with respect to school activities, medical and dental
175 treatment, and any other activity, function, or treatment that may concern the child. This
176 delegation shall not include the power or authority to consent to the marriage or adoption
177 of the child, the performance or inducement of an abortion on or for the child, or the
178 termination of parental rights to the child.

179 OR

180 4. I delegate to the attorney-in-fact the following specific powers and responsibilities
181 (write in):

182 _____

183 *In the event section 4 is completed, section 3 does not apply.*

184 This delegation shall not include the power or authority to consent to the marriage or
 185 adoption of the child, the performance or inducement of an abortion on or for the child, or
 186 the termination of parental rights to the child.

187 5. This power of attorney is effective for a period not to exceed one year, beginning
 188 _____ , 20__ , and ending _____ , 20__ . I reserve the right to revoke
 189 this power and authority at any time.

190 OR

191 6. I am a serving parent as defined by Code Section 19-9-148 of the Official Code of
 192 Georgia Annotated. My active duty service is scheduled to begin on _____ ,
 193 20__ , and is estimated to end on _____ , 20__ . I acknowledge that in no event
 194 shall this delegation of power and authority last more than one year or the term of my
 195 active duty plus 30 days, whichever is longer. I reserve the right to revoke this power and
 196 authority at any time.

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

202 By: _____
 203 (Parent or legal custodian signature)

204 8. I hereby accept my designation as attorney-in-fact for the minor child specified in this
 205 power of attorney.

206 _____
 207 (Attorney-in-fact signature)

208 State of Georgia
 209 County of _____

210 ACKNOWLEDGMENT

211 Before me, the undersigned, a Notary Public, in and for said County and State on this
212 _____ day of _____, 20____, personally appeared _____ (name
213 of parent or legal custodian) and _____ (name of attorney-in-fact), to
214 me known to be the identical persons who executed this instrument and acknowledged to
215 me that each executed the same as his or her free and voluntary act and deed for the uses
216 and purposes set forth in the instrument.

217 Witness my hand and official seal the day and year above written.

218 _____
219 (Notary public signature)

220 (Seal)

221 My commission expires: _____"

222 **SECTION 3.**

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