

Senate Bill 64

By: Senators Hufstetler of the 52nd and Jones of the 10th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 15-11-2, Title 19, and Chapter 10 of Title 31 of the Official Code
 2 of Georgia Annotated, relating to definitions for the Juvenile Code, domestic relations, and
 3 vital records, respectively, so as to repeal voluntary acknowledgments of legitimation; to
 4 provide for conforming cross-references relating to the elimination of administrative
 5 legitimation; to provide for and revise definitions; to clarify provisions relating to judicial
 6 petitions for legitimation; to provide for witnesses to the signing of acknowledgments of
 7 paternity; to provide for access to signed acknowledgments of paternity and voluntary
 8 acknowledgments of legitimation; to change provisions relating to hospital programs for
 9 establishing paternity; to provide for a savings clause; to provide for related matters; to repeal
 10 conflicting laws; and for other purposes.

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

12 **SECTION 1.**

13 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions for
 14 the Juvenile Code, is amended by revising paragraph (43) as follows:

15 "(43) 'Legal father' means a male who has not surrendered or had terminated his rights
 16 to a child and who:

17 (A) Has legally adopted a such child;

18 (B) Was married to the biological mother of a such child at the time such child was
 19 ~~conceived~~ ~~or~~ was born or within the usual period of gestation, unless paternity was
 20 disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

21 (C) Married the legal mother of a such child after such child was born and recognized
 22 such child as his own, unless paternity was disproved by a final order pursuant to
 23 Article 3 of Chapter 7 of Title 19; or

24 ~~(D) Has been determined to be the father of a child by a final paternity order pursuant~~
 25 ~~to Article 3 of Chapter 7 of Title 19;~~

26 ~~(E)~~(D) Has legitimated a such child by a final order pursuant to Code Section 19-7-22;

27 ~~or~~

28 ~~(F) Has legitimated a child pursuant to Code Section 19-7-21.1."~~

29 **SECTION 2.**

30 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
31 amended by repealing in its entirety Code Section 19-7-21.1, relating to acknowledgment of
32 legitimation.

33 **SECTION 3.**

34 Said title is further amended by revising Code Section 19-7-22, relating to the petition for
35 legitimation of a child, requirements therefor, the effect of such, claims for custody or
36 visitation, and third-party actions for legitimation, as follows:

37 "19-7-22.

38 (a) As used in this Code section, the term:

39 (1) 'Biological father' means the male who impregnated the biological mother resulting
40 in the birth of a child.

41 (2) 'Legal father' means a male who has not surrendered or had terminated his rights to
42 a child and who:

43 (A) Has legally adopted such child;

44 (B) Was married to the biological mother of such child at the time such child was born
45 or within the usual period of gestation, unless paternity was disproved by a final order
46 pursuant to Article 3 of this chapter;

47 (C) Married the legal mother of such child after such child was born and recognized
48 such child as his own, unless paternity was disproved by a final order pursuant to
49 Article 3 of this chapter; or

50 (D) Has legitimated such child pursuant to this Code section.

51 ~~(a)~~(b) The biological ~~A~~ father of a child born out of wedlock may render his relationship
52 with the child legitimate by petitioning the superior court of the county of the residence of
53 the child's mother or other party having legal custody or guardianship of the child;
54 provided, however, that if the mother or other party having legal custody or guardianship
55 of the child resides outside ~~the~~ this state or cannot, after due diligence, be found within ~~the~~
56 this state, the petition may be filed in the county of the biological father's residence or the
57 county of the child's residence. If a petition for the adoption of the child is pending, the
58 biological father shall file the petition for legitimation in the county in which the adoption
59 petition is filed.

60 ~~(b)~~(c) A legitimation ~~The~~ petition shall set forth the name, age, and sex of the child, the
61 name of the mother, and, if the biological father desires the name of the child to be
62 changed, the new name. If the mother is alive, she shall be named as a party and shall be

63 served and provided an opportunity to be heard as in other civil actions under Chapter 11
 64 of Title 9, the 'Georgia Civil Practice Act.' If there is a legal father who is not the
 65 biological father, he shall be named as a party and shall be served and provided an
 66 opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia
 67 Civil Practice Act.'

68 ~~(c)~~(d) Upon the presentation and filing of ~~the~~ a legitimation petition, and after a hearing
 69 for which notice was provided to all interested parties, the court may ~~pass issue~~ an order
 70 declaring the biological father's relationship with the child to be legitimate, and that the
 71 provided that such order is in the best interests of the child. If such order is issued, the
 72 biological father and child shall be capable of inheriting from each other in the same
 73 manner as if born in lawful wedlock ~~and specifying.~~ Such order shall specify the name by
 74 which the child shall be known.

75 ~~(d)~~(e) A legitimation petition may be filed, pursuant to Code Section 15-11-11, in the
 76 juvenile court of the county in which a dependency proceeding regarding the child is
 77 pending; provided, however, that if either parent has demanded a jury trial as to support,
 78 that issue of the case shall be transferred to superior court for a jury trial. Such petition
 79 shall contain the same information and require the same service and opportunity to be
 80 heard as set forth in subsection (c) of this Code section. After a hearing, the juvenile court
 81 may issue the same orders as set forth in subsection (d) of this Code section.

82 ~~(e)~~(f) A superior ~~Except as provided by subsection (f) of this Code section, the court shall~~
 83 ~~upon notice to the mother further establish such duty as the father may have to support the~~
 84 ~~child, considering the facts and circumstances of the mother's obligation of support and the~~
 85 ~~needs of the child, after notice and hearing, enter an order establishing the obligation to~~
 86 support a child as provided under Code Section 19-6-15.

87 ~~(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has~~
 88 ~~been properly filed by either parent, then the case shall be transferred from juvenile court~~
 89 ~~to superior court for such jury trial.~~

90 ~~(f.1)~~(g) A ~~The~~ petition for legitimation ~~petition~~ may also include claims for visitation,
 91 parenting time, or custody. If such claims are raised in the legitimation action, the court
 92 may order, in addition to legitimation, visitation, parenting time, or custody based on the
 93 best interests of the child standard. In a case involving allegations of family violence, the
 94 provisions of paragraph (4) of subsection (a) of Code Section 19-9-3 shall also apply.

95 ~~(g)~~~~(1)~~(h) In any petition to establish paternity pursuant to paragraph (4) of subsection (a)
 96 of Code Section 19-7-43, the alleged biological father's response may assert a third-party
 97 action for the legitimation of the child born out of wedlock if the alleged biological father
 98 is, in fact, the biological father. Upon the determination of paternity or if a voluntary
 99 acknowledgment of paternity has been made and has not been rescinded pursuant to Code

100 Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions
 101 of Code Section 19-7-51 may enter an order or decree legitimating a child born out of
 102 wedlock, provided that such is in the best interest interests of the child. In determining the
 103 best interests of the child, the court should insure that the petitioning alleged biological
 104 father is, in fact, the biological father and may order the mother, the alleged father, and the
 105 child to submit to genetic testing in accordance with Code Section 19-7-45. Whenever a
 106 petition to establish the paternity of a child is brought by the Department of Human
 107 Services, issues of name change, visitation, and custody shall not be determined by the
 108 court until such time as a separate petition is filed by one of the parents or by the legal
 109 guardian of the child, in accordance with Code Section 19-11-8; if the petition to establish
 110 paternity is brought by a party other than the Department of Human Services or if the
 111 alleged biological father seeks legitimation, the court may determine issues of name
 112 change, visitation, and custody in accordance with subsections ~~(b) and (f.1)~~ (c) and (g) of
 113 this Code section. Custody of the child shall remain in the mother unless or until a court
 114 order is entered addressing the issue of custody.

115 ~~(2) In any voluntary acknowledgment of paternity which has been made and has not been~~
 116 ~~rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely~~
 117 ~~agree and consent, the child may be legitimated by the inclusion of a statement indicating~~
 118 ~~a voluntary acknowledgment of legitimation."~~

119 SECTION 4.

120 Said title is further amended by revising Code Section 19-7-25, relating to in whom parental
 121 power over a child born out of wedlock lies, as follows:

122 "19-7-25.

123 Only the mother of a child born out of wedlock is entitled to custody of the child, unless
 124 the father legitimates the child as provided in Code Section ~~19-7-21.1~~ or 19-7-22.
 125 Otherwise, the mother may exercise all parental power over the child."

126 SECTION 5.

127 Said title is further amended by revising Code Section 19-7-27, relating to hospital program
 128 for establishing paternity, as follows:

129 "19-7-27.

130 (a) Except in the event of a medical emergency, prior to ~~Upon~~ the birth of a child to an
 131 unmarried woman in a public or private hospital, the hospital that provides perinatal labor
 132 and delivery services shall:

- 133 ~~(1) Provide the child's mother and alleged father if he is present at the hospital the~~
 134 ~~opportunity to acknowledge paternity consistent with the requirements of Code Section~~
 135 ~~19-7-46.1, and~~
- 136 ~~(2) Provide~~ provide to the mother and alleged father:
- 137 ~~(A)(1)~~ Written materials about administratively establishing paternity establishment;
 138 ~~(B)(2)~~ The forms necessary to voluntarily acknowledge paternity;
 139 ~~(C)(3)~~ A written description of the rights and responsibilities of voluntarily
 140 acknowledging paternity, the differences between paternity and legitimation, and the duty
 141 to support a child upon acknowledgment of paternity; and
 142 ~~(D)(4)~~ The opportunity, prior to discharge from the hospital, to speak with staff, either
 143 by telephone or in person, who are trained to clarify information and answer questions
 144 about administratively establishing paternity establishment and the availability of judicial
 145 determinations of paternity.
- 146 (b) Providing the written materials describing rights and responsibilities shall not
 147 constitute the unlawful practice of law.
- 148 (c) After the birth of a child to an unmarried woman in a public or private hospital, the
 149 hospital that provides labor and delivery services shall:
- 150 (1) Provide the child's mother and alleged father if he is present at the hospital the
 151 opportunity to execute a voluntary acknowledgment of paternity consistent with the
 152 requirements of Code Section 19-7-46.1;
- 153 (2) File the signed voluntary acknowledgment of paternity with the State Office of Vital
 154 Records within 30 days of its execution; and
- 155 (3) Provide to the child's mother and alleged father copies of the signed voluntary
 156 acknowledgment of paternity."

157 **SECTION 6.**

158 Said title is further amended by revising subsection (d) of Code Section 19-7-43, relating to
 159 petition to establish paternity and genetic testing, as follows:

- 160 "(d) In any case in which the paternity of a child or children has not been established, ~~any~~
 161 ~~party may make a motion for the court to~~ the court, either on its own motion or on the
 162 motion of any party, may order the mother, the alleged father, and the child or children to
 163 submit to genetic tests as specified in Code Section 19-7-45. Such motion, if made by a
 164 party, shall be supported by a sworn statement ~~(1)~~ (1) alleging paternity and setting forth facts
 165 establishing a reasonable possibility of the requisite sexual contact between the parties; or
 166 ~~(2)~~ (2) denying paternity and setting forth facts establishing a reasonable possibility of the
 167 nonexistence of sexual contact between the parties. Appropriate orders shall be issued ~~in~~
 168 ~~accordance with the provisions of this article~~ by the court. The court shall grant ~~the a~~

169 party's motion unless it finds ~~good cause as defined by the federal Social Security Act or~~
 170 ~~if other~~ a good excuse for noncooperation is established."

171 **SECTION 7.**

172 Said title is further amended by revising Code Section 19-7-46.1, relating to name or social
 173 security number on birth certificate or other record as evidence of paternity and signed
 174 voluntary acknowledgment of paternity, as follows:

175 "19-7-46.1.

176 (a) The appearance of the name or social security account number of the father, entered
 177 with his written consent, on the certificate of birth or a certified copy of such certificate or
 178 records on which the name of the alleged father was entered with his written consent from
 179 the vital records department of another state or the registration of the father, entered with
 180 his written consent, in the putative father registry of this state, pursuant to subsection (d)
 181 of Code Section 19-11-9, shall constitute a prima-facie case of establishment of paternity
 182 and the burden of proof shall shift to the putative father to rebut such in a proceeding for
 183 the determination of paternity.

184 (b) When both the mother and father have signed a voluntary acknowledgment of paternity
 185 in the presence of a notary public or other witness and such acknowledgment is filed with
 186 the State Office of Vital Records within 30 days of its execution and ~~the acknowledgment~~
 187 is recorded in the putative father registry established by subsection (d) of Code Section
 188 19-11-9, the acknowledgment shall constitute a legal determination of paternity, subject
 189 to the right of any signatory to rescind the acknowledgment prior to the date of the support
 190 order, any other order adjudicating paternity, or 60 days from the signing of the agreement,
 191 whichever is earlier. Recording such information in the putative father registry shall
 192 constitute a legal determination of paternity for purposes of establishing a future order for
 193 support, ~~visitation privileges,~~ and other matters under Code Section 19-7-51.
 194 Acknowledgment of paternity shall establish the identity of a biological father, as such
 195 term is defined in Code Section 19-7-22, but shall not constitute a legal determination of
 196 legitimation pursuant to Code Section ~~19-7-21.1~~ or 19-7-22.

197 (c) After the 60 day rescission period specified in subsection (b) of this Code section, the
 198 signed voluntary acknowledgment of paternity may be challenged in court only on the basis
 199 of fraud, duress, or material mistake of fact, with the burden of proof on the person
 200 challenging the acknowledgment. The legal responsibilities of any signatory, including
 201 child support obligations, arising from the acknowledgment may not be suspended during
 202 the challenge, except for good cause shown.

203 (d) A copy of a signed voluntary acknowledgment of paternity shall be provided to any
 204 signatory upon request.

- 205 (e)(1) As used in this subsection, the term:
- 206 (A) 'Child-placing agency' means an agency licensed as such pursuant to Chapter 5 of
- 207 Title 49.
- 208 (B) 'Legal custodian' shall have the same meaning as set forth in Code Section 15-11-2.
- 209 (C) 'Local custodian' shall have the same meaning as set forth in Code Section 31-10-1.
- 210 (D) 'State registrar' shall have the same meaning as set forth in Code Section 31-10-1.
- 211 (2) The state registrar or local custodian, upon receipt of a written application, shall issue
- 212 a certified copy of voluntary acknowledgment of paternity in that state registrar's or local
- 213 custodian's custody to:
- 214 (A) The person who signed such acknowledgment and his or her guardian or temporary
- 215 guardian;
- 216 (B) The person whose paternity was acknowledged, if he or she is at least 18 years of
- 217 age;
- 218 (C) The guardian, temporary guardian, or legal custodian of the person whose paternity
- 219 was acknowledged;
- 220 (D) The living legal spouse or next of kin, the legal representative, or the person who
- 221 in good faith has applied and produced a record of such application to become the legal
- 222 representative of the person whose paternity is registered;
- 223 (E) A court of competent jurisdiction upon its order or subpoena;
- 224 (F) Any governmental agency, state or federal, provided that such certificate shall be
- 225 needed for official purposes;
- 226 (G) A member in good standing of the State Bar of Georgia, provided that such
- 227 certificate shall be needed for official purposes; and
- 228 (H) A child-placing agency, provided that such certificate shall be needed for official
- 229 purposes."

230 **SECTION 8.**

231 Said title is further amended by revising Code Section 19-7-51, relating to order of support,

232 visitation privileges, and other provisions, as follows:

233 "19-7-51.

234 The decree or order establishing paternity may contain any other provisions concerning the

235 duty to support the child by periodic or lump sum payments, ~~visitation privileges with the~~

236 ~~child~~ as provided in Code Section 19-6-15, or any other matter in the best interest interests

237 of the child."

238 **SECTION 9.**

239 Said title is further amended by revising paragraph (6) of Code Section 19-8-1, relating to
 240 definitions relating to adoption, as follows:

241 "(6) 'Legal father' means a male who has not surrendered or had terminated his rights to
 242 a child and who:

243 (A) Has legally adopted a such child;

244 (B) Was married to the biological mother of ~~that~~ such child at the time ~~that~~ such child
 245 ~~was conceived or was born or within the usual period of gestation~~, unless ~~such~~ paternity
 246 was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

247 (C) Married the legal mother of ~~the~~ such child after ~~the~~ such child was born and
 248 recognized ~~the~~ such child as his own, unless ~~such~~ paternity was disproved by a final
 249 order pursuant to Article 3 of Chapter 7 of this title; or

250 (D) Has legitimated ~~the~~ such child by a final order pursuant to Code Section 19-7-22;

251 or

252 ~~(E) Has legitimated the child pursuant to Code Section 19-7-21.1~~

253 ~~and who has not surrendered or had terminated his rights to the child."~~

254 **SECTION 10.**

255 Said title is further amended by revising subparagraph (e)(3)(D) of Code Section 19-8-4,
 256 relating to when surrender or termination of parental or guardian's rights is required, as
 257 follows:

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

263 **SECTION 11.**

264 Said title is further amended by revising subparagraph (e)(3)(D) of Code Section 19-8-5,
 265 relating to surrender or termination of parental or guardian's rights when child to be adopted
 266 by a third party, as follows:

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

272 **SECTION 12.**

273 Said title is further amended by revising subparagraph (e)(3)(D) of Code Section 19-8-7,
 274 relating to surrender or termination of parental or guardian's rights when child to be adopted
 275 by a relative, as follows:

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

281 **SECTION 13.**

282 Said title is further amended by revising subsection (c) of Code Section 19-8-9, relating to
 283 surrender of parental rights when legal mother puts up for adoption a child that she
 284 previously adopted herself, as follows:

285 "(c) If a legal mother has voluntarily and in writing surrendered all of her parental rights
 286 pursuant to the provisions of subsection (a) of Code Section 19-8-4, 19-8-5, 19-8-6, or
 287 19-8-7 and has not withdrawn her surrender within the ten-day period after signing as
 288 permitted by the provisions of subsection (b) of this Code section, she shall have no right
 289 or authority to sign ~~either a voluntary acknowledgment of legitimation pursuant to the~~
 290 ~~provisions of paragraph (2) of subsection (g) of Code Section 19-7-22 or a voluntary~~
 291 acknowledgment of paternity pursuant to the provisions of Code Section 19-7-46.1
 292 regarding the same child."

293 **SECTION 14.**

294 Said title is further amended by revising subsection (e) of Code Section 19-8-12, relating to
 295 notice to biological father, as follows:

296 "(e) When notice is to be given pursuant to subsection (b) of this Code section, it shall
 297 advise such biological father who is not the legal father that he loses all rights to the child
 298 and will neither receive notice nor be entitled to object to the adoption of the child unless,
 299 within 30 days of receipt of such notice, he files:

300 (1) A petition to legitimate the child pursuant to Code Section 19-7-22 ~~or an~~
 301 ~~acknowledgment of legitimation pursuant to Code Section 19-7-21.1;~~ and

302 (2) Notice of the filing of the petition to legitimate ~~or acknowledgment of legitimation~~
 303 with the court in which the action under this Code section, if any, is pending and to the
 304 person who provided such notice to such biological father."

305 **SECTION 15.**

306 Chapter 10 of Title 31 of the Official Code of Georgia Annotated, relating to vital records,
 307 is amended by revising subsections (a) and (d) of Code Section 31-10-25, relating to
 308 disclosure of information contained in vital records, as follows:

309 "(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the
 310 efficient and proper administration of the system of vital records, it shall be unlawful for
 311 any person to permit inspection of, or to disclose information contained in vital records or
 312 to copy or issue a copy of all or part of any such record except as authorized by this
 313 chapter, Code Section 19-7-46.1, and by regulation or by order of a court of competent
 314 jurisdiction. Regulations adopted under this Code section shall provide for adequate
 315 standards of security and confidentiality of vital records. The provisions of this subsection
 316 shall not apply to court records or indexes of marriage licenses, divorces, and annulments
 317 of marriages filed as provided by law."

318 "(d) Information in vital records indicating that a birth occurred out of wedlock shall not
 319 be disclosed except as ~~provided by regulation or upon the~~ authorized by this chapter, Code
 320 Section 19-7-46.1, and regulation or by order of a court of competent jurisdiction."

321 **SECTION 16.**

322 Said chapter is further amended by revising subsection (a) of Code Section 31-10-26, relating
 323 to certified copies of vital records, issuance, and use for statistical purposes, as follows:

324 "(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant
 325 thereto:

326 (1) The state registrar or local custodian, ~~of vital records appointed by the state registrar~~
 327 ~~to issue certified copies~~ upon receipt of a written application, shall issue:

328 (A) A a certified copy of a vital record in that registrar's or custodian's custody or
 329 abstract thereof to any applicant having a direct and tangible interest in the vital record;
 330 ~~except that certified;~~

331 (B) Certified copies of voluntary acknowledgments of paternity as provided in
 332 subsection (e) of Code Section 19-7-46.1;

333 (C) Certified copies of voluntary acknowledgments of legitimation executed on or
 334 before June 30, 2015, to the same individuals and entities specified in subsection (e) of
 335 Code Section 19-7-46.1; and

336 (D) Certified copies of certificates shall only be issued to:

337 (A)(i) The person whose record of birth is registered;

338 (B)(ii) Either parent, guardian, or temporary guardian of the person whose record of
 339 birth or death is registered;

340 ~~(C)~~(iii) The living legal spouse or next of kin, or the legal representative, or the
 341 person who in good faith has applied and produced a record of such application to
 342 become the legal representative of the person whose record of birth or death is
 343 registered;

344 ~~(D)~~(iv) A The court of competent jurisdiction upon its order or subpoena; or

345 ~~(E)~~(v) Any governmental agency, state or federal, provided that such certificate shall
 346 be needed for official purposes; and

347 (2) Each certified copy issued shall show the date of registration and duplicates issued
 348 from records marked 'delayed' or 'amended' shall be similarly marked and show the
 349 effective date. The documentary evidence used to establish a delayed certificate of birth
 350 shall be shown on all duplicates issued. All forms and procedures used in the issuance
 351 of certified copies of vital records in this state shall be provided or approved by the state
 352 registrar."

353

SECTION 17.

354 This Act shall not be construed to affect a voluntary acknowledgment of legitimation that
 355 was valid under the former provisions of Code Section 19-7-21.1, nor any of the rights or
 356 responsibilities flowing therefrom, if it was executed on or before June 30, 2015.

357

SECTION 18.

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