

The Senate Committee on Health and Human Services offered the following substitute to HB 962:

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, guardian, or legal custodian of a child
4 to a kinship caregiver for the temporary delegation of certain power and authority for the care
5 and custody of a child; to provide a short title; to provide for definitions; to provide for
6 procedure; to amend Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia
7 Annotated, relating to the Department of Human Services generally, so as to provide for the
8 creation, appointment, and duties of a kinship care enforcement administrator; to provide for
9 definitions; to provide for legislative findings; 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 PART I
13 SECTION 1-1.

14 The General Assembly finds that:

- 15 (1) From time to time, parents experience short-term difficulties that impair their ability
- 16 to perform the regular and expected functions to provide care and support to their
- 17 children;
- 18 (2) Parents need a means to confer to a relative or individual with whom a child has a
- 19 significant relationship the temporary authority to act on behalf of a child without the
- 20 time and expense of a court proceeding or the involvement of the Division of Family and
- 21 Children Services of the Department of Human Services; and
- 22 (3) Providing a statutory mechanism for granting such authority enhances family
- 23 preservation and stability.

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SECTION 1-2.

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

"ARTICLE 5

19-9-140.

This article shall be known and may be cited as the 'Supporting and Strengthening Families Act.'

19-9-141.

As used in this article, the term:

- (1) 'Child' means an individual who is under the age of 18 years.
- (2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.
- (3) 'Guardian' means an individual appointed pursuant to Title 29 or by a court of law.
- (4) 'Kinship caregiver' means a grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling of a child or a fictive kin.
- (5) 'Legal custodian' shall have the same meaning as provided in Code Section 15-11-2.
- (6) 'Parent' shall have the same meaning as provided in Code Section 15-11-2.

19-9-142.

(a) A parent, guardian, or legal custodian of a child, by a properly executed power of attorney provided in Code Section 19-9-150, may delegate to a kinship caregiver residing in this state caregiving authority regarding his or her child for a period not to exceed one year, except as provided in Code Section 19-9-149. A parent, guardian, or legal custodian of a child may delegate to such attorney-in-fact any power and authority regarding the care and custody of such child, except the power to consent to the marriage or adoption of such child, the performance or inducement of an abortion on or for such child, or the termination of parental rights to such child. Such power and authority may be delegated without the approval of a court by executing in writing a power of attorney for the care and custody of a child in a form substantially complying with the provisions of this article. A delegation of power and authority under this Code section shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent, guardian, or legal custodian of a child of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of such child.

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

60 (c) An attorney-in-fact shall acknowledge in writing his or her acceptance of the
61 responsibility for caring for a child for the duration of the power of attorney. An
62 attorney-in-fact shall certify that he or she is not currently on the state sexual offender
63 registry of this state or the sexual offender registration for any other state, a United States
64 territory, the District of Columbia, or any Indian Tribe nor has he or she ever been required
65 to register for any such registry.

66 (d) The attorney-in-fact under a power of attorney for the care and custody of a child shall
67 act in the best interest of the child. Such attorney-in-fact shall not be liable for consenting
68 or refusing to consent to medical, dental, or mental health care for a child when such
69 decision is made in good faith and is exercised in the best interest of the child.

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

73 (2) A public school shall allow such attorney-in-fact with a properly executed power of
74 attorney for the care and custody of a child to enroll such child.

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

77 (4) A public school shall not unreasonably deny enrollment of a child. If a public school
78 denies enrollment of a child by an attorney-in-fact, such denial may be appealed and shall
79 be treated as any other denial of enrollment of a child in that school district, including all
80 of the remedies otherwise available when enrollment is denied to a child.

81 19-9-143.

82 (a) When only one parent has legal custody of a child, he or she shall provide written
83 notice to the other parent, by certified mail or statutory overnight delivery, 30 days prior
84 to the executing of a power of attorney under this article.

85 (b) The parent receiving the notice set forth in subsection (a) of this Code section may
86 object to the execution of a power of attorney within 21 days of the delivery of such notice.
87 Such objection shall be filed in the superior court of circuit where the child resides and
88 shall be served by certified mail or statutory overnight delivery. Within 30 days of the
89 objection being filed, the court shall hold an expedited hearing and determine whether the

90 power of attorney is in the best interest of the child. The power of attorney shall not
91 become effective until the court finds it to be in the best interest of the child.

92 (c) In addition to the notice provided in subsection (a) of this Code section, a parent
93 executing a power of attorney under this article shall comply with any applicable relocation
94 notice requirements under subsection (f) of Code Section 19-9-3.

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

98 19-9-144.

99 Nothing in this article shall preclude a parent, guardian, legal custodian, or attorney-in-fact
100 from granting temporary written permission to seek emergency medical treatment or other
101 services for a child while in the custody of an adult who is not the parent, guardian, legal
102 custodian, or attorney-in-fact and who is temporarily supervising the child at the request
103 of the parent, guardian, legal custodian, or attorney-in-fact.

104 19-9-145.

105 (a) Except as may be permitted by the federal No Child Left Behind Act (P.L. 107-110),
106 a parent, guardian, or legal custodian executing the power of attorney for the care and
107 custody of a child shall swear or affirm under penalty of law that such action is not being
108 taken for the purpose of enrolling the child in a school to participate in the academic or
109 interscholastic athletic programs provided by that school or for any other unlawful purpose.
110 Violation of this subsection shall be punishable in accordance with state law and may
111 require, in addition to any other remedies, repayment by such parent, guardian, or legal
112 custodian of all costs incurred by the school as a result of the violation.

113 (b) A parent, guardian, or legal custodian shall not execute a power of attorney for the care
114 and custody of a child for the purpose of subverting an investigation of the child's welfare
115 initiated by the Division of Family and Children Services of the Department of Human
116 Services and shall not execute such power of attorney so long as the Division of Family
117 and Children Services has an open child welfare and youth services case with regard to the
118 parent, guardian, or legal custodian, the child, or another child of the parent.

119 (c) The power of attorney for the care and custody of a child shall be signed and
120 acknowledged before a notary public by the parent, guardian, or legal custodian executing
121 the power of attorney.

122 19-9-146.

123 (a) The parent, guardian, or legal custodian of a child shall have the authority to revoke
124 or withdraw the power of attorney authorized by Code Section 19-9-142 at any time. If a
125 parent, guardian, or legal custodian withdraws or revokes the power of attorney, the child
126 shall be returned to the custody of the parent, guardian, or legal custodian as soon as
127 reasonably possible.

128 (b) Unless the authority is revoked or withdrawn by the parent, guardian, or legal
129 custodian, the attorney-in-fact shall exercise parental or legal authority on a continuous
130 basis without compensation for the duration of the power of attorney authorized in such
131 power of attorney so long as it does not exceed the length of time authorized in Code
132 Sections 19-9-142 and 19-9-149 and shall not be subject to any provision concerning the
133 licensing or regulation of foster care homes.

134 19-9-147.

135 The execution of a power of attorney by a parent, guardian, or legal custodian, as
136 authorized by this article, shall not constitute abandonment under Code Section 19-10-1
137 nor be reportable as child abuse or neglect under Code Section 19-7-5 unless the parent,
138 guardian, or legal custodian fails to take custody of the child or execute a new power of
139 attorney after the expiration of the power of attorney.

140 19-9-148.

141 (a) A child subject to the power of attorney authorized by this article shall not be
142 considered placed in foster care as defined in any other provision of law, and the parties
143 to the power of attorney shall not be subject to any of the requirements or licensing
144 regulations for foster care or other regulations relating to community care for children.

145 (b) An attorney-in-fact who has been delegated caregiving authority under this article shall
146 not be subject to the requirements of any other child care facility or foster care licensing
147 provisions, and such delegation shall not constitute an out-of-home child placement.

148 19-9-149.

149 A parent who is a member of the armed forces of the United States, including any reserve
150 component thereof, or the commissioned corps of the National Oceanic and Atmospheric
151 Administration or the Public Health Service of the United States Department of Health and
152 Human Services detailed by proper authority for duty with the armed forces of the United
153 States, or who is required to enter or serve in the active military service of the United States
154 under a call or order of the President of the United States or to serve on state active duty,
155 may delegate caregiving authority for a period longer than one year if such parent is on

156 active duty service. Such term of delegation, however, shall not exceed the term of active
 157 duty service plus 30 days.

158 19-9-150.

159 (a) The statutory power of attorney contained in this Code section may be used for the
 160 temporary delegation of parental caregiving authority to an attorney-in-fact. This power
 161 of attorney is not intended to be exclusive. No provision of this article shall be construed
 162 to bar use by a parent, guardian, or legal custodian of any other or different form of power
 163 of attorney for the care and custody of a child that substantially complies with this article.

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

167 (c) The power of attorney for the care and custody of a child shall be in substantially the
 168 following form:

169 'Statutory Form for Power of Attorney to Delegate Parental, Guardian, or Legal
 170 Custodian Power and Authority

171 1. I certify that I am the parent, guardian, or legal custodian of:

172 _____
 173 (Full name of child) (Date of birth)

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

175 _____
 176 (street address, city, state, and ZIP Code of attorney-in-fact)

177 _____
 178 (home and work phone numbers of attorney-in-fact)

179 as the attorney-in-fact of the child named above.

180 3. I delegate to the attorney-in-fact all my power and authority regarding the care and
 181 custody the child named above, including but not limited to the right to enroll the child
 182 in school, inspect and obtain copies of education records and other records concerning
 183 the child, attend school activities and other functions concerning the child, and give or
 184 withhold any consent or waiver with respect to school activities, medical and dental
 185 treatment, and any other activity, function, or treatment that may concern the child. This
 186 delegation shall not include the power or authority to consent to the marriage or adoption
 187 of the child, the performance or inducement of an abortion on or for the child, or the
 188 termination of parental rights to the child.

189 OR

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

192 _____

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

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

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

200 OR

201 6. I am a serving parent as defined by Code Section 19-9-149 of the Official Code of
 202 Georgia Annotated. My active duty service is scheduled to begin on _____,
 203 20____, and is estimated to end on _____, 20____. I acknowledge that in no
 204 event shall this delegation of power and authority last more than one year or the term of
 205 my active duty plus 30 days, whichever is longer. I reserve the right to revoke this power
 206 and authority at any time.

207 7. Except as may be permitted by the federal No Child Left Behind Act (P.L. 107-110),
 208 I hereby swear or affirm under penalty of law that this power of attorney is not being
 209 executed for the purpose of enrolling a child in a school so that the child may participate
 210 in the academic or interscholastic athletic programs provided by that school or for any
 211 other unlawful purpose.

212 By: _____
 213 (Parent, guardian, or legal custodian signature)

214 8. I hereby accept my designation as attorney-in-fact for the child specified in this power
 215 of attorney and by doing so acknowledge my acceptance of the responsibility for caring
 216 for such child for the duration of this power of attorney. Furthermore, I hereby certify
 217 that I am not currently on the state sexual offender registry of this state or the sexual

218 offender registration for any other state, a United States territory, the District of
 219 Columbia, or any Indian Tribe nor have I ever been required to register for any such
 220 registry.

221 _____
 222 (Attorney-in-fact signature)

223 State of Georgia
 224 County of _____

225 ACKNOWLEDGMENT

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

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

233 _____
 234 (Notary public signature)

235 (Seal)

236 My commission expires: _____"

237 **PART II**
 238 **SECTION 2-1.**

239 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to the
 240 Department of Human Services generally, is amended by adding a new subsection to Code
 241 Section 49-2-1, relating to department created, transfer of powers, functions, and duties of
 242 Department of Human Resources to Department of Human Services, creation, appointment,
 243 removal, and duties of commissioner of human services, to read as follows:

244 "(c)(1) As used in this subsection, the term:

245 (A) 'Fictive kin' shall have the same meaning as set forth in Code Section 15-11-2.

246 (B) 'Kinship caregiver' means a grandparent, aunt, uncle, great aunt, great uncle,
 247 cousin, or sibling of a child under the age of 18 or fictive kin who has assumed

248 responsibility for raising such child in an informal, noncustodial, or guardianship
249 capacity upon the legal parents of such child losing or abdicating the ability to care for
250 or provide basic necessities for such child.

251 (2) There is created the position of kinship care enforcement administrator within the
252 Department of Human Services who shall be appointed by and serve at the discretion of
253 the commissioner of human services. The kinship care enforcement administrator shall
254 account for, monitor, facilitate, and ensure compliance with all laws, rules, and
255 regulations of the federal government and this state which relate to any programs,
256 including, but not limited to, any pilot programs, subsidies, or benefits, available to
257 kinship caregivers or the children within their care."

258

PART III

259

SECTION 3-1.

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