

The Senate Committee on Health and Human Services offered the following substitute to HB 887:

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 Articles 3 and 4 of Chapter 11 of Title 15 of the Official Code of
7 Georgia Annotated, relating to dependency proceedings and termination of parental rights,
8 respectively, so as to prioritize the placement of a child with an adult who is a relative or
9 fictive kin when such individual is qualified to care for such child and it is in the best
10 interests of the child; to provide for legislative findings; to provide for related matters; to
11 repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

15 The General Assembly finds that:

- 16 (1) From time to time, parents experience short-term difficulties that impair their ability
17 to perform the regular and expected functions to provide care and support to their
18 children;
- 19 (2) Parents need a means to confer to a relative or individual with whom a child has a
20 significant relationship the temporary authority to act on behalf of a child without the
21 time and expense of a court proceeding or the involvement of the Division of Family and
22 Children Services of the Department of Human Services; and
- 23 (3) Providing a statutory mechanism for granting such authority enhances family
24 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' means a person who is known to a child as a relative, but who is not, in fact, related by blood or marriage to such child, and with whom such child has resided or had significant contact.
- (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

56 deprive a parent, guardian, or legal custodian of a child of any parental or legal rights,
57 obligations, or authority regarding the custody, visitation, or support of such child.

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

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

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

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

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

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

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

84 19-9-143.

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

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

92 objection being filed, the court shall hold an expedited hearing and determine whether the
93 power of attorney is in the best interest of the child. The power of attorney shall not
94 become effective until the court finds it to be in the best interest of the child.

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

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

101 19-9-144.

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

107 19-9-145.

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

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

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

125 19-9-146.

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

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

137 19-9-147.

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

143 19-9-148.

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

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

151 19-9-149.

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

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

161 19-9-150.

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

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

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

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

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

175 _____
 176 (Full name of child) (Date of birth)

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

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

180 _____
 181 (home and work phone numbers of attorney-in-fact)

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

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

192 OR

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

195 _____

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

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

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

203 OR

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

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

215 By: _____
216 (Parent, guardian, or legal custodian signature)

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

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

224 _____
225 (Attorney-in-fact signature)

226 State of Georgia
227 County of _____

228 ACKNOWLEDGMENT

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

236 _____
237 (Notary public signature)
238 (Seal)
239 My commission expires: _____"

240 **PART II**
241 **SECTION 2-1.**

242 Article 3 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
243 dependency proceedings, is amended by revising subsection (e) of Code Section 15-11-135,
244 relating to placement in eligible foster care, as follows:

245 "(e) In any case in which a child is taken into protective custody of DFCS, such child shall
246 be placed together:
247 (1) DFCS shall give preference for placement to an adult who is a relative or fictive kin
248 over a nonrelated caregiver, provided that the such relative or fictive kin has met all
249 requirements for a DFCS relative or fictive kin placement and such placement is in the
250 best interests of the child; and

251 (2) Such child shall be placed together with his or her siblings who are also in protective
 252 custody or DFCS shall include a statement in its report and case plan of continuing efforts
 253 to place the siblings together or document why such joint placement would be contrary
 254 to the safety or well-being of any of the siblings. If siblings are not placed together,
 255 DFCS shall provide for frequent visitation or other ongoing interaction between siblings,
 256 unless DFCS documents that such frequent visitation or other ongoing interaction would
 257 be contrary to the safety or well-being of any of the siblings."

258 **SECTION 2-2.**

259 Said article is further amended by revising paragraph (3) of subsection (b) of Code
 260 Section 15-11-146, relating to preliminary protective hearing and findings, as follows:

261 "(3) On finding that the complainant has met the burden prescribed in subsection (a) of
 262 this Code section, may place the child before the court in the temporary custody of DFCS
 263 pending the hearing on the dependency petition. DFCS shall prioritize temporary
 264 placement with an adult who is a relative or fictive kin, provided that such individual has
 265 met DFCS's requirements for relative placement and such temporary placement is in the
 266 best interests of such child."

267 **SECTION 2-3.**

268 Said article is further amended by revising subparagraph (a)(2)(A) of Code
 269 Section 15-11-212, relating to disposition of a dependent child, as follows:

270 "(A) Any individual, including a biological parent, who, after study by the probation
 271 officer or other person or agency designated by the court, is found by the court to be
 272 qualified to receive and care for such child, provided that priority for placement is given
 273 to an adult who is a relative or fictive kin;"

274 **SECTION 2-4.**

275 Article 4 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 276 termination of parental rights, is amended by revising subsection (a) of Code
 277 Section 15-11-321, relating to custody of child following termination proceedings or
 278 surrender of parental rights, as follows:

279 "(a) When a court enters an order terminating the parental rights of a parent or accepts a
 280 parent's voluntary surrender of parental rights, or a petition for termination of parental
 281 rights is withdrawn because a parent has executed an act of surrender in favor of the
 282 department, a placement may be made only if the court finds that such placement is in the
 283 best interests of the child and in accordance with such child's court approved permanency
 284 plan created pursuant to Code Sections 15-11-231 and 15-11-232. In determining which

285 placement is in a child's best interests, the court shall initially attempt to place the child
286 with an adult who is a relative or fictive kin, if such individual is willing and found by the
287 court to be qualified to receive and care for such child. In determining which placement
288 is in a child's best interests, the court shall enter findings of fact reflecting its consideration
289 of the following:

- 290 (1) Such child's need for a placement that offers the greatest degree of legal permanence
291 and security;
- 292 (2) The least disruptive placement for such child;
- 293 (3) Such child's sense of attachment and need for continuity of relationships;
- 294 (4) The value of biological and familial connections; and
- 295 (5) Any other factors the court deems relevant to its determination."

296

PART III

297

SECTION 3-1.

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