

The Senate Committee on Health and Human Services offered the following substitute to HB 229:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations,
2 so as to change provisions relating to a grandparent's right to intervention in certain domestic
3 relation cases; to allow for intervention by great-grandparents and siblings of parents; to
4 provide for definitions; to provide for an evidentiary standard; to conform cross-references
5 relating to adoption; to provide for the creation, authorization, procedure, revocation,
6 rescission, and termination of a power of attorney from a parent, guardian, or legal custodian
7 of a child to a kinship caregiver for the temporary delegation of certain power and authority
8 for the care and custody of a child; to provide a short title; to provide for and correct a
9 definition; to provide for procedure; to provide for legislative findings; to provide for related
10 matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

14 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
15 amended by revising Code Section 19-7-3, relating to grandparent visitation rights and
16 intervention, as follows:

17 "19-7-3.

18 (a) As used in this Code section, the term '~~grandparent~~':

19 (1) 'Family member' means a grandparent, great-grandparent, or sibling.

20 (2) 'Grandparent' means the parent of a parent of a minor child, the parent of a minor
21 child's parent who has died, and the parent of a minor child's parent whose parental rights
22 have been terminated.

23 (3) 'Great-grandparent' means the parent of the parent of a parent of a minor child, the
24 parent of the parent of a minor child's parent who has died, and the parent of the parent
25 of a minor child's parent whose parental rights have been terminated.

26 (4) 'Sibling' means the brother or sister of a parent of a minor child, the brother or sister
 27 of a minor child's parent who has died, and the brother or sister of a minor child's parent
 28 whose parental rights have been terminated.

29 (b)(1) Except as otherwise provided in paragraph (2) of this subsection, ~~any~~:

30 (A) Any grandparent shall have the right to file an original action for visitation rights
 31 to a minor child ~~or~~; and

32 (B) Any family member shall have the right to intervene in and seek to obtain
 33 visitation rights in any action in which any court in this state shall have before it any
 34 question concerning the custody of a minor child, a divorce of the parents or a parent
 35 of such minor child, a termination of the parental rights of either parent of such minor
 36 child, or visitation rights concerning such minor child or whenever there has been an
 37 adoption in which the adopted child has been adopted by the child's blood relative or
 38 by a stepparent, notwithstanding the provisions of Code Section 19-8-19.

39 (2) This subsection shall not authorize an original action ~~where~~ when the parents of the
 40 minor child are not separated and the child is living with both parents.

41 (c)(1) Upon the filing of an original action or upon intervention in an existing proceeding
 42 under subsection (b) of this Code section, the court may grant any ~~grandparent~~ family
 43 member of the child reasonable visitation rights if the court finds by clear and convincing
 44 evidence that the health or welfare of the child would be harmed unless such visitation
 45 is granted and if the best interests of the child would be served by such visitation. The
 46 mere absence of an opportunity for a child to develop a relationship with a family
 47 member shall not be considered as harming the health or welfare of the child when there
 48 is no substantial preexisting relationship between the child and such family member. In
 49 considering whether the health or welfare of the child would be harmed without such
 50 visitation, the court shall consider and may find that harm to the child is reasonably likely
 51 to result ~~where~~ when, prior to the original action or intervention:

52 (A) The minor child resided with the ~~grandparent~~ family member for six months or
 53 more;

54 (B) The ~~grandparent~~ family member provided financial support for the basic needs of
 55 the child for at least one year;

56 (C) There was an established pattern of regular visitation or child care by the
 57 ~~grandparent~~ family member with the child; or

58 (D) Any other circumstance exists indicating that emotional or physical harm would
 59 be reasonably likely to result if such visitation is not granted.

60 The court shall make specific written findings of fact in support of its rulings.

61 (2) An original action requesting visitation rights shall not be filed by any grandparent
 62 more than once during any two-year period and shall not be filed during any year in

63 which another custody action has been filed concerning the child. After visitation rights
 64 have been granted to any grandparent, the legal custodian, guardian of the person, or
 65 parent of the child may petition the court for revocation or amendment of such visitation
 66 rights, for good cause shown, which the court, in its discretion, may grant or deny; but
 67 such a petition shall not be filed more than once in any two-year period.

68 (3) While a parent's decision regarding grandparent family member visitation shall be
 69 given deference by the court, the parent's decision shall not be conclusive when failure
 70 to provide grandparent family member contact would result in emotional harm to the
 71 child. A court may presume that a child who is denied any contact with his or her
 72 grandparent family member or who is not provided some minimal opportunity for contact
 73 with his or her grandparent family member when there is a preexisting relationship
 74 between the child and such family member may suffer emotional injury that is harmful
 75 to such child's health. Such presumption shall be a rebuttable presumption.

76 (4) In no case shall the granting of visitation rights to a grandparent family member
 77 interfere with a child's school or regularly scheduled extracurricular activities.

78 (5) Visitation time awarded to a grandparent family member shall not be less than 24
 79 hours in any one-month period; provided, however, that when more than one individual
 80 seeks visitation under this Code section, the court shall determine the amount of time to
 81 award to each petitioner which shall not be less than 24 hours in any one-month period
 82 in the aggregate.

83 (d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one
 84 of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award
 85 the parent of the deceased, incapacitated, or incarcerated parent of such minor child
 86 reasonable visitation to such child during his or her minority if the court in its discretion
 87 finds that such visitation would be in the best interests of the child. The custodial parent's
 88 judgment as to the best interests of the child regarding visitation shall be given deference
 89 by the court but shall not be conclusive.

90 (e) If the court finds that the grandparent or grandparents family member can bear the cost
 91 without unreasonable financial hardship, the court, at the sole expense of the petitioning
 92 grandparent or grandparents family member, may:

93 (1) Appoint a guardian ad litem for the minor child; and

94 (2) Assign the issue of visitation rights of a grandparent family member for mediation.

95 (f) In the event that the court does not order mediation or upon failure of the parties to
 96 reach an agreement through mediation, the court shall fix a time for the hearing of the issue
 97 of visitation rights of the grandparent or grandparents family member.

98 (g) Whether or not visitation is awarded to a grandparent family member, the court may
 99 direct a custodial parent, by court order, to notify such grandparent family member of every

100 performance of the minor child to which the public is admitted, including, but not limited
 101 to, musical concerts, graduations, recitals, and sporting events or games.

102 (h) When more than one family member files an action pursuant to this Code section, the
 103 court shall determine the priority of such actions."

104 **SECTION 1-2.**

105 Said title is further amended by revising subsection (f) of Code Section 19-8-13, relating to
 106 the petition for adoption, filing, and contents, as follows:

107 "(f)(1) As used in this subsection, the term 'family member' shall have the same meaning
 108 as set forth in Code Section 19-7-3.

109 (2) Whenever a petitioner is a blood relative of the child to be adopted and a ~~grandparent~~
 110 family member other than the petitioner has visitation rights to the child granted pursuant
 111 to Code Section 19-7-3, the petitioner shall cause a copy of the petition for adoption to
 112 be served upon the ~~grandparent~~ family member with the visitation rights or upon such
 113 person's counsel of record."

114 **SECTION 1-3.**

115 Said title is further amended by revising Code Section 19-8-15, relating to when objections
 116 may be filed by relatives to petition for adoption, as follows:

117 "19-8-15.

118 (1) As used in this Code section, the term 'family member' shall have the same meaning
 119 as set forth in Code Section 19-7-3.

120 (2) If the child sought to be adopted has no legal father or legal mother living, it shall be
 121 the privilege of any person related by blood to the child to file objections to the petition
 122 for adoption. A ~~grandparent~~ family member with visitation rights to a child granted
 123 pursuant to Code Section 19-7-3 shall have the privilege to file objections to the petition
 124 of adoption if neither parent has any further rights to the child and if the petition for
 125 adoption has been filed by a blood relative of the child. The court, after hearing such
 126 objections, shall determine, in its discretion, whether or not the same constitute a good
 127 reason for denying the petition and the court shall have the authority to grant or continue
 128 such visitation rights of the ~~grandparent~~ to family member of the child in the adoption
 129 order in the event the adoption by the blood relative is approved by the court."

130

PART II

131

SECTION 2-1.

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The General Assembly finds that:

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(1) From time to time, parents experience short-term difficulties that impair their ability to perform the regular and expected functions to provide care and support to their children;

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(2) Parents need a means to confer to a relative or fictive kin the temporary authority to act on behalf of a child without the time and expense of a court proceeding or the involvement of the Division of Family and Children Services of the Department of Human Services; and

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(3) Providing a statutory mechanism for granting such authority enhances family preservation and stability.

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SECTION 2-2.

143

Said title is further amended by adding a new article to Chapter 9, relating to child custody proceedings, to read as follows:

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145

"ARTICLE 5

146

19-9-140.

147

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

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149

19-9-141.

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As used in this article, the term:

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(1) 'Child' means an unemancipated individual who is under 18 years of age.

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(2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.

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(3) 'Guardian' means an individual appointed pursuant to a court order establishing a permanent guardianship for a child.

154

155

(4) 'Kinship caregiver' means a grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling of a child or a fictive kin who resides in this state.

156

157

(5) 'Legal custodian' shall have the same meaning as provided in Code Section 15-11-2.

158

(6) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

159 19-9-142.

160 (a) A parent, guardian, or legal custodian of a child may delegate caregiving authority
161 regarding his or her child to a kinship caregiver for a period not to exceed one year, except
162 as provided in Code Section 19-9-150, by executing a power of attorney that substantially
163 complies with this article. A parent, guardian, or legal custodian of a child may delegate
164 to an agent in such power of attorney any power and authority regarding the care and
165 custody of such child, except the power to consent to the marriage or adoption of such
166 child, the performance or inducement of an abortion on or for such child, or the termination
167 of parental rights to such child. Such power and authority may be delegated without the
168 approval of a court, provided that such delegation of power and authority shall not operate
169 to change or modify any parental or legal rights, obligations, or authority established by an
170 existing court order, including a standing order, or deprive a parent, guardian, or legal
171 custodian of a child of any parental or legal rights, obligations, or authority regarding the
172 custody, visitation, or support of such child. Furthermore, such delegation of power and
173 authority shall not deprive or limit any support for a child that should be received by such
174 child pursuant to a court order or for any other reason. No such power of attorney shall be
175 executed during the pendency of a divorce or custody action.

176 (b) Except as limited by federal law, this article, or the direction of a parent, guardian, or
177 legal custodian of a child as expressed in the power of attorney, an agent shall have the
178 same rights, duties, and responsibilities that would otherwise be exercised by such parent,
179 guardian, or legal custodian of a child pursuant to the laws of this state.

180 (c) An agent shall acknowledge in writing his or her acceptance of the responsibility for
181 caring for a child for the duration of the power of attorney. An agent shall certify that he
182 or she is not currently on the state sexual offender registry of this state or the sexual
183 offender registry for any other state, a United States territory, the District of Columbia, or
184 any Indian Tribe nor has he or she ever been required to register for any such registry.
185 Such certification shall include a criminal background check if requested by the party
186 executing the power of attorney.

187 (d) The agent under a power of attorney shall act in the best interests of the child. Such
188 agent shall not be liable for consenting or refusing to consent to medical, dental, or mental
189 health care for a child when such decision is made in good faith and is exercised in the best
190 interests of the child.

191 (e)(1) The agent under a power of attorney shall have the right to enroll the child in a
192 public school serving the area where the agent resides and may enroll the child in a
193 private school, pre-kindergarten program, or home study program.

194 (2) A public school shall allow such agent with a power of attorney executed under this
195 article to enroll a child.

196 (3) At the time of enrollment, the agent shall provide to such public school such
 197 residency documentation as is customary in that school system.

198 (4) A public school shall not unreasonably deny enrollment of a child. If a public school
 199 denies enrollment of a child by an agent, such denial may be appealed and shall be treated
 200 as any other denial of enrollment of a child in that school system, including all of the
 201 remedies otherwise available when enrollment is denied to a child.

202 19-9-143.

203 (a) At least 30 days prior to executing a power of attorney under this article:

204 (1) An individual with sole custody of a child who intends to execute such power of
 205 attorney shall provide written notice of such intention to the noncustodial parent by
 206 certified mail or statutory overnight delivery, return receipt requested. Such notice shall
 207 constitute a change in material conditions or circumstances for the purpose of a child
 208 custody modification proceeding; and

209 (2) An individual who is a guardian or legal custodian of a child who intends to execute
 210 such power of attorney shall provide written notice to the child's parents by certified mail
 211 or statutory overnight delivery, return receipt requested.

212 (b) An individual receiving the notice set forth in subsection (a) of this Code section may
 213 object to the execution of such power of attorney within 21 days of the delivery of such
 214 notice and shall serve his or her objection on the individual intending to execute such
 215 power of attorney by certified mail or statutory overnight delivery, return receipt requested.
 216 An objection shall prohibit the execution of a power of attorney under this article.

217 (c) In addition to the notice provided in subsection (a) of this Code section, a parent with
 218 sole custody of a child who executes a power of attorney under this article shall comply
 219 with any applicable relocation notice requirements under subsection (f) of Code
 220 Section 19-9-3.

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

224 19-9-144.

225 Nothing in this article shall preclude a parent, guardian, legal custodian, or agent from
 226 granting temporary written permission to seek emergency medical treatment or other
 227 services for a child while such child is in the custody of an adult who is not the parent,
 228 guardian, legal custodian, or agent and who is temporarily supervising the child at the
 229 request of such parent, guardian, legal custodian, or agent.

230 19-9-145.

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

239 (b) An individual shall not execute a power of attorney under this article for the purpose
240 of subverting an investigation of the child's welfare initiated by the Division of Family and
241 Children Services of the Department of Human Services and shall not execute such power
242 of attorney so long as the Division of Family and Children Services of the Department of
243 Human Services has an open child welfare and youth services case with regard to the
244 parent, guardian, or legal custodian, the child, or another child of the parent.

245 19-9-146.

246 A power of attorney executed under this article shall be signed and acknowledged before
247 a notary public by the parent, guardian, or legal custodian executing such power of attorney
248 and by the agent accepting such delegation.

249 19-9-147.

250 (a)(1) An agent shall have the authority to act on behalf of the minor child on a
251 continuous basis, without compensation, and shall not be subject to any provision
252 concerning the licensing or regulation of foster care homes for the duration of the power
253 of attorney so long as the duration does not exceed the length of time authorized in Code
254 Sections 19-9-142 and 19-9-150 or until the individual who executed the power of
255 attorney revokes the power of attorney in writing and provides notice of the revocation
256 to the agent as provided in this Code section.

257 (2) An agent shall have the authority to act on behalf of the child until a copy of the
258 revocation of the power of attorney is received by certified mail or statutory overnight
259 delivery, return receipt requested, and upon receipt of the revocation, the agent shall
260 cease to act as agent.

261 (3) The individual revoking the power of attorney shall send a copy of the revocation of
262 the power of attorney to the agent within five days of the execution of the revocation by
263 certified mail or statutory overnight delivery, return receipt requested. If an individual

264 revokes the power of attorney, the child shall be returned to the custody of the individual
265 who granted the power of attorney as soon as reasonably possible.

266 (4) The revoking individual shall notify the school, health care providers, and others
267 known to the revoking individual to have relied upon such power of attorney.

268 (b) The power of attorney executed under this article may also be terminated by any order
269 of a court of competent jurisdiction.

270 (c) The agent shall notify the school, health care providers, and others known to the agent
271 to have relied upon such power of attorney.

272 (d) An agent may resign by notifying the individual who appointed the agent in writing by
273 certified mail or statutory overnight delivery, return receipt requested.

274 (e) Upon the death of the authorizing individual, the agent shall notify the parents of the
275 child, if possible, as soon as practicable.

276 (f) The authority to designate an agent to act on behalf of a minor child is in addition to
277 any other lawful action an individual may take for the benefit of such minor child.

278 (g) A parent shall continue to have the right to medical, dental, mental health, and school
279 records pertaining to the minor child, even when a power of attorney has been executed
280 under this article.

281 19-9-148.

282 The execution of a power of attorney under this article shall not constitute abandonment
283 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
284 19-7-5 unless the individual who executed such power of attorney fails to take custody of
285 the child or execute a new power of attorney under this article after the expiration or
286 revocation of the power of attorney.

287 19-9-149.

288 (a) A child subject to a power of attorney executed under this article shall not be
289 considered placed in foster care as defined in any other provision of law, and the parties
290 to the power of attorney shall not be subject to any of the requirements or licensing
291 regulations for foster care or other regulations relating to community care for children.

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

295 (c) This article shall not be construed to exempt a person from the requirements of
296 Chapter 5 of Title 49 regarding the licensing and inspection of child welfare agencies if
297 such person fails to have evidence of a power of attorney executed under this article.

298 19-9-150.

299 Except as limited by or in conflict with federal law regarding the armed forces of the
 300 United States, a parent who is a member of the armed forces of the United States, including
 301 any reserve component thereof, or the commissioned corps of the National Oceanic and
 302 Atmospheric Administration or the Public Health Service of the United States Department
 303 of Health and Human Services detailed by proper authority for duty with the armed forces
 304 of the United States, or who is required to enter or serve in the active military service of
 305 the United States under a call or order of the President of the United States or to serve on
 306 state active duty, may delegate caregiving authority for a period longer than one year if
 307 such parent is deployed as defined in Code Section 19-9-6. Such term of delegation,
 308 however, shall not exceed the term of deployment plus 30 days.

309 19-9-151.

310 (a) The power of attorney contained in this Code section may be used for the temporary
 311 delegation of caregiving authority to an agent. The form contained in this Code section
 312 shall be sufficient for the purpose of creating a power of attorney under this article,
 313 provided that nothing in this Code section shall be construed to require the use of this
 314 particular form.

315 (b) A power of attorney shall be legally sufficient if the form is properly completed and
 316 the signatures of the parties are notarized.

317 (c) The power of attorney delegating caregiving authority of a child shall be in
 318 substantially the following form:

319 'STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL,
 320 GUARDIAN, OR LEGAL CUSTODIAN POWER AND AUTHORITY

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

322 _____
 323 (Full name of child) (Date of birth)

324 2. I designate _____ (full name of agent),

325 _____
 326 (street address, city, state, and ZIP Code of agent)

327 _____,
 328 (home and work phone numbers of agent)

329 as the agent of the child named above.

330 3. I delegate to the agent all my power and authority regarding the care and custody of
 331 the child named above, including but not limited to the right to enroll the child in school,

332 inspect and obtain copies of education records and other records concerning the child,
 333 attend school activities and other functions concerning the child, and give or withhold any
 334 consent or waiver with respect to school activities, medical and dental treatment, and any
 335 other activity, function, or treatment that may concern the child. This delegation shall not
 336 include the power or authority to consent to the marriage or adoption of the child, the
 337 performance or inducement of an abortion on or for the child, or the termination of
 338 parental rights to the child.

339 OR

340 4. I delegate to the agent the following specific powers and responsibilities (write in):
 341 _____
 342 *In the event section 4 is completed, section 3 does not apply.*

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

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

349 OR

350 6. I am a parent as described in O.C.G.A. § 19-9-150. My active duty service is
 351 scheduled to begin on _____, 20____, and is estimated to end on
 352 _____, 20____. I acknowledge that in no event shall this delegation of power
 353 and authority last more than one year or the term of my active duty plus 30 days,
 354 whichever is longer. I reserve the right to revoke this power and authority at any time.

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

360 8. I hereby swear or affirm under penalty of law that I provided the notice required by
361 O.C.G.A. § 19-9-143 and received no objection in the required time period.

362 By: _____
363 (Parent, guardian, or legal custodian signature)

364 Relationship to child: _____

365 _____
366 (Printed name)

367 9. I hereby accept my designation as agent for the child specified in this power of
368 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
369 such child for the duration of this power of attorney. Furthermore, I hereby certify that:

370 (A) I am not currently on the state sexual offender registry of this state or the sexual
371 offender registry for any other state, a United States territory, the District of Columbia,
372 or any Indian Tribe nor have I ever been required to register for any such registry;

373 (B) I have provided a criminal background check to the individual designating me as
374 an agent, if it was requested;

375 (C) I understand that I have the authority to act on behalf of the minor child for the
376 period set forth in this form or until the power of attorney is revoked in writing and
377 notice is provided to me as provided in O.C.G.A. § 19-9-147;

378 (D) I understand that if I am made aware of the death of the individual who executed
379 the power of attorney, I must notify the parent of the child, if known, as soon as
380 practicable; and

381 (E) I may resign as agent by notifying the individual who executed the power of
382 attorney in writing by certified mail or statutory overnight delivery, return receipt
383 requested.

384 _____
385 (Agent signature)

386 _____
387 (Printed name)

388 State of Georgia
389 County of _____

390 ACKNOWLEDGMENT

391 Before me, the undersigned, a Notary Public, in and for said County and State on this
 392 day of _____, 20____, personally appeared _____
 393 (name of parent, guardian, or legal custodian) and _____ (name of
 394 agent), to me known to be the identical persons who executed this instrument and
 395 acknowledged to me that each executed the same as his or her free and voluntary act and
 396 deed for the uses and purposes set forth in the instrument.
 397 Witness my hand and official seal the day and year above written.

398 _____
 399 (Notary public signature)
 400 (Seal)
 401 My commission expires: _____"

402 **PART III**
 403 **SECTION 3-1.**

404 Said title is further amended by revising subparagraph (a)(2)(B) of Code Section 19-3-37,
 405 relating to parental consent to marriage of underage applicants, as follows:
 406 "(B) The ~~parent~~ individual who has ~~legal~~ sole custody if the parents are divorced,
 407 separated, or widowed; or"

408 **PART IV**
 409 **SECTION 4-1.**

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