

The Senate Committee on Health and Human Services offered the following substitute to HB 1070:

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 permit the department to use certain information in the department's records
3 concerning the adopted child's biological parents; to provide for the creation, authorization,
4 procedure, revocation, rescission, and termination of a power of attorney from a parent,
5 guardian, or legal custodian of a child to a kinship caregiver for the temporary delegation of
6 certain power and authority for the care and custody of a child; to provide a short title; to
7 provide for and correct a definition; to provide for procedure; to provide for legislative
8 findings; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 PART I
11 SECTION 1-1.

12 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
13 amended in Code Section 19-8-23, relating to where records of adoption are kept,
14 examination by parties and attorneys, and use of information by agency and department, by
15 adding a new subsection to read as follows:

16 "(b.1) The department may, in its sole discretion, make use of any information contained
17 in the records of the department concerning an adopted child and the adopted child's
18 biological parents in connection with the placement of another child in the home of the
19 adoptive parents of the child or in connection with the investigation of a report of child
20 abuse or neglect made concerning the adopted child's biological parents."

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PART II
SECTION 2-1.

The General Assembly finds that:

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

SECTION 2-2.

Said title is further amended by adding a new article to Chapter 9, relating to child custody proceedings, 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 unemancipated individual who is under 18 years of age.
- (2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.
- (3) 'Guardian' means an individual appointed pursuant to a court order establishing a permanent guardianship for a child.
- (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.
- (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 19-3-37.

50 19-9-142.

51 (a) A parent, guardian, or legal custodian of a child may delegate caregiving authority
52 regarding his or her child to a kinship caregiver for a period not to exceed one year, except
53 as provided in Code Section 19-9-150, by executing a power of attorney that substantially
54 complies with this article. A parent, guardian, or legal custodian of a child may delegate
55 to an agent in such power of attorney any power and authority regarding the care and
56 custody of such child, except the power to consent to the marriage or adoption of such
57 child, the performance or inducement of an abortion on or for such child, or the termination
58 of parental rights to such child. Such power and authority may be delegated without the
59 approval of a court, provided that such delegation of power and authority shall not operate
60 to change or modify any parental or legal rights, obligations, or authority established by an
61 existing court order, including a standing order, or deprive a parent, guardian, or legal
62 custodian of a child of any parental or legal rights, obligations, or authority regarding the
63 custody, visitation, or support of such child. Furthermore, such delegation of power and
64 authority shall not deprive or limit any support for a child that should be received by such
65 child pursuant to a court order or for any other reason. No such power of attorney shall be
66 executed during the pendency of a divorce or custody action.

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

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

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

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

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

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

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

93 19-9-143.

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

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

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

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

108 (c) In addition to the notice provided in subsection (a) of this Code section, a parent with
 109 sole custody of a child who executes a power of attorney under this article shall comply
 110 with any applicable relocation notice requirements under subsection (f) of Code Section
 111 19-9-3.

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

115 19-9-144.

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

121 19-9-145.

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

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

136 19-9-146.

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

140 19-9-147.

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

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

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

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

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

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

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

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

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

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

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

172 19-9-148.

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

178 19-9-149.

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

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

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

189 19-9-150.

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

200 19-9-151.

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

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

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

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

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

213 _____
 214 (Full name of child) (Date of birth)

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

216 _____
 217 (street address, city, state, and ZIP Code of agent)

218 _____
 219 (home and work phone numbers of agent)

220 as the agent of the child named above.

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

223 inspect and obtain copies of education records and other records concerning the child,
 224 attend school activities and other functions concerning the child, and give or withhold any
 225 consent or waiver with respect to school activities, medical and dental treatment, and any
 226 other activity, function, or treatment that may concern the child. This delegation shall not
 227 include the power or authority to consent to the marriage or adoption of the child, the
 228 performance or inducement of an abortion on or for the child, or the termination of
 229 parental rights to the child.

230 OR

231 4. I delegate to the agent the following specific powers and responsibilities (write in):
 232 _____

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

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

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

240 OR

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

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

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

253 By: _____
254 (Parent, guardian, or legal custodian signature)

255 Relationship to child: _____

256 _____
257 (Printed name)

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

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

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

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

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

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

275 _____
276 (Agent signature)

277 _____
278 (Printed name)

279 State of Georgia
280 County of _____

281 ACKNOWLEDGMENT

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

289 _____
 290 (Notary public signature)
 291 (Seal)
 292 My commission expires: _____"

293 **PART III**
 294 **SECTION 3-1.**

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

299 **PART IV**
 300 **SECTION 4-1.**

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