

SENATE SUBSTITUTE TO HB962

AS PASSED SENATE

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 amend
 9 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
 10 medical assistance generally, so as to require the Department of Community Health to
 11 provide that certain dependents of a military service member shall maintain eligibility and
 12 priority for certain medical assistance and developmental disability services under certain
 13 conditions; to require the department to request a waiver if necessary to implement such
 14 provision; to provide that such provision shall only apply to the fullest extent permissible to
 15 remain in compliance with certain federal laws, rules, and regulations; to provide for
 16 definitions; to provide for legislative findings; to provide for related matters; to repeal
 17 conflicting laws; and for other purposes.

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

19 **PART I**
 20 **SECTION 1-1.**

21 The General Assembly finds that:

- 22 (1) From time to time, parents experience short-term difficulties that impair their ability
- 23 to perform the regular and expected functions to provide care and support to their
- 24 children;
- 25 (2) Parents need a means to confer to a relative or individual with whom a child has a
- 26 significant relationship the temporary authority to act on behalf of a child without the

27 time and expense of a court proceeding or the involvement of the Division of Family and
 28 Children Services of the Department of Human Services; and
 29 (3) Providing a statutory mechanism for granting such authority enhances family
 30 preservation and stability.

31 **SECTION 1-2.**

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

34 "ARTICLE 5

35 19-9-140.

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

38 19-9-141.

39 As used in this article, the term:

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

47 19-9-142.

48 (a) A parent, guardian, or legal custodian of a child, by a properly executed power of
 49 attorney provided in Code Section 19-9-150, may delegate to a kinship caregiver residing
 50 in this state caregiving authority regarding his or her child for a period not to exceed one
 51 year, except as provided in Code Section 19-9-149. A parent, guardian, or legal custodian
 52 of a child may delegate to such attorney-in-fact any power and authority regarding the care
 53 and custody of such child, except the power to consent to the marriage or adoption of such
 54 child, the performance or inducement of an abortion on or for such child, or the termination
 55 of parental rights to such child. Such power and authority may be delegated without the
 56 approval of a court by executing in writing a power of attorney for the care and custody of
 57 a child in a form substantially complying with the provisions of this article. A delegation

58 of power and authority under this Code section shall not operate to change or modify any
59 parental or legal rights, obligations, or authority established by an existing court order or
60 deprive a parent, guardian, or legal custodian of a child of any parental or legal rights,
61 obligations, or authority regarding the custody, visitation, or support of such child.

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

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

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

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

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

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

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

88 19-9-143.

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

92 (b) The parent receiving the notice set forth in subsection (a) of this Code section may
93 object to the execution of a power of attorney within 21 days of the delivery of such notice.

94 Such objection shall be filed in the superior court of circuit where the child resides and
95 shall be served by certified mail or statutory overnight delivery. Within 30 days of the
96 objection being filed, the court shall hold an expedited hearing and determine whether the
97 power of attorney is in the best interest of the child. The power of attorney shall not
98 become effective until the court finds it to be in the best interest of the child.

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

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

105 19-9-144.

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

111 19-9-145.

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

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

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

129 19-9-146.

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

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

141 19-9-147.

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

147 19-9-148.

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

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

155 19-9-149.

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

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

165 19-9-150.

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

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

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

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

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

179 _____
 180 (Full name of child) (Date of birth)

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

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

184 _____
 185 (home and work phone numbers of attorney-in-fact)

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

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

196 OR

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

199 _____
 200 In the event section 4 is completed, section 3 does not apply.

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

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

207 OR

208 6. I am a serving parent as defined by Code Section 19-9-149 of the Official Code of
 209 Georgia Annotated. My active duty service is scheduled to begin on _____,
 210 20____, and is estimated to end on _____, 20____. I acknowledge that in no
 211 event shall this delegation of power and authority last more than one year or the term of
 212 my active duty plus 30 days, whichever is longer. I reserve the right to revoke this power
 213 and authority at any time.

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

219 By: _____
 220 (Parent, guardian, or legal custodian signature)

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

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

228 _____
229 (Attorney-in-fact signature)

230 State of Georgia
231 County of _____

232 ACKNOWLEDGMENT

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

240 _____
241 (Notary public signature)
242 (Seal)
243 My commission expires: _____"

244 **PART II**
245 **SECTION 2-1.**

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

- 251 "(c)(1) As used in this subsection, the term:
252 (A) 'Fictive kin' shall have the same meaning as set forth in Code Section 15-11-2.
253 (B) 'Kinship caregiver' means a grandparent, aunt, uncle, great aunt, great uncle,
254 cousin, or sibling of a child under the age of 18 or fictive kin who has assumed

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

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

265 **PART III**

266 **SECTION 3-1.**

267 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
 268 medical assistance generally, is amended by adding a new Code section to read as follows:

269 "49-4-158.

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

271 (1) 'Dependent' means a spouse, birth child, adopted child, or stepchild of a military
 272 service member.

273 (2) 'Legal resident' means a person who maintains Georgia as his or her principal
 274 establishment, home of record, or permanent home and to where, whenever absent due
 275 to military obligation, he or she intends to return.

276 (3) 'Military service' means service in the armed forces or armed forces reserves of the
 277 United States, or membership in the Georgia National Guard.

278 (4) 'Military service member' means a person who is currently in military service or who
 279 has separated from military service in the previous 18 months through either retirement
 280 or military separation.

281 (b) The department shall allow legal residents who are dependents of a military service
 282 member and who are absent from this state due to the member's military service to be
 283 added to a data base to indicate the need for medical assistance upon return to this state.
 284 Should a dependent in such a situation be selected from a data base to receive medical
 285 assistance, the dependent shall have six months from the date of the selection notification
 286 to apply for such assistance and another six months to commence using such assistance.
 287 In the event a dependent is receiving medical assistance funded by the department and the
 288 medical assistance is disrupted due to the military service member's need for the dependent
 289 to leave Georgia because of such military service member's military service, the medical
 290 assistance shall be resumed upon the dependent's return to Georgia if the dependent is

291 otherwise eligible. In no case shall payment be made for home and community based
292 services provided outside this state. A dependent of a military service member shall be
293 required to provide the department with:

294 (1) A copy of the military service member's DD-214 or other equivalent discharge
295 paperwork; and

296 (2) Proof of the military service member's legal residence in this state, as prescribed by
297 the department.

298 (c) A dependent who is a legal resident of this state, having previously been determined
299 to be eligible for developmental disability services provided by the department, including
300 waiver services provided under the home and community based services programs
301 authorized under Section 1915(c) of the Social Security Act, shall retain eligibility for
302 those developmental disability services as long as he or she remains a legal resident of this
303 state, regardless of having left this state due to the military service member's military
304 assignment outside this state, as long as he or she is otherwise eligible for such services.

305 (d) The department shall permit a dependent who resides outside this state to be placed on
306 a waiting list for developmental disabilities services if the dependent left this state due to
307 the military service member's military assignment outside this state, is otherwise eligible
308 for those services, and furnishes:

309 (1) A copy of the military service member's DD-214 or other equivalent discharge
310 paperwork; and

311 (2) Proof of the military service member's legal residence in this state, as prescribed by
312 the department.

313 (e) For dependents who received developmental disability services and who left this state
314 due to the military service member's military assignment outside this state, upon the
315 dependent's return to this state and when a request for services is made, the department
316 shall:

317 (1) Determine the dependent's eligibility for services, which may include a request for
318 waiver services provided under the home and community based services programs
319 authorized under Section 1915(c) of the Social Security Act;

320 (2) Provide to the dependent notification of the determination of eligibility for services,
321 which includes notification of a denial of services if applicable;

322 (3) Provide the dependent an opportunity to contest the department's determination
323 through the appeals processes established by the department; and

324 (4) Resume services if the dependent remains eligible.

325 (f) As a condition of continued eligibility for services under subsection (e) of this Code
326 section, a dependent must inform the department of his or her current address and provide
327 updates as requested by the department.

328 (g) No payment pursuant to this Code section shall be made for developmental disability
329 services authorized under this chapter and provided outside this state unless those services
330 satisfy the conditions specified in 42 CFR 431.52. No payment pursuant to this Code
331 section shall be made for home and community based services provided outside this state.

332 (h) The department shall request a waiver from the appropriate federal agency if a waiver
333 is necessary to implement the provisions of this Code section.

334 (i) The department may adopt rules and regulations necessary to implement the provisions
335 of this Code section.

336 (j) This Code section shall only apply to the fullest extent permissible for Georgia to
337 remain in compliance with all federal laws, rules, and regulations associated with the
338 services provided in this chapter."

339

PART IV

340

SECTION 4-1.

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