

ADOPTED

Representative Efstration of the 104th offers the following amendment:

1 *Amend the Senate substitute to HB 887 (LC 37 2191ERS) by replacing lines 1 through 298*
 2 *with the following:*

3 To provide for the placement of children under certain circumstances; to amend Articles 3
 4 and 4 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 5 dependency proceedings and termination of parental rights, respectively, so as to prioritize
 6 the placement of a child with an adult who is a relative or fictive kin when such individual
 7 is qualified to care for such child and it is in the best interests of the child; to amend Title 19
 8 of the Official Code of Georgia Annotated, relating to domestic relations, so as to provide
 9 for the creation, authorization, procedure, revocation, rescission, and termination of a power
 10 of attorney from a parent, guardian, or legal custodian of a child to a kinship caregiver for
 11 the temporary delegation of certain power and authority for the care and custody of a child;
 12 to provide a short title; to provide for and correct a definition; to provide for procedure; to
 13 provide for legislative findings; to provide for related matters; to repeal conflicting laws; and
 14 for other purposes.

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

16 **PART I**

17 **SECTION 1-1.**

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

21 ~~"(e) In any case in which a child is taken into protective custody of DFCS, such child shall~~
 22 ~~be placed together;~~

23 (1) DFCS shall give preference for placement to an adult who is a relative or fictive kin
 24 over a nonrelated caregiver, provided that the such relative or fictive kin has met all
 25 requirements for a DFCS relative or fictive kin placement and such placement is in the
 26 best interests of the child; and

27 (2) Such child shall be placed together with his or her siblings who are also in protective
 28 custody or DFCS shall include a statement in its report and case plan of continuing efforts
 29 to place the siblings together or document why such joint placement would be contrary
 30 to the safety or well-being of any of the siblings. If siblings are not placed together,

31 DFCS shall provide for frequent visitation or other ongoing interaction between siblings,
 32 unless DFCS documents that such frequent visitation or other ongoing interaction would
 33 be contrary to the safety or well-being of any of the siblings."

34 **SECTION 1-2.**

35 Said article is further amended by revising paragraph (3) of subsection (b) of Code Section
 36 15-11-146, relating to preliminary protective hearing and findings, as follows:

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

43 **SECTION 1-3.**

44 Said article is further amended by revising subparagraph (a)(2)(A) of Code Section
 45 15-11-212, relating to disposition of a dependent child, as follows:

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

50 **SECTION 1-4.**

51 Article 4 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 52 termination of parental rights, is amended by revising subsection (a) of Code Section
 53 15-11-321, relating to custody of child following termination proceedings or surrender of
 54 parental rights, as follows:

55 "(a) When a court enters an order terminating the parental rights of a parent or accepts a
 56 parent's voluntary surrender of parental rights, or a petition for termination of parental
 57 rights is withdrawn because a parent has executed an act of surrender in favor of the
 58 department, a placement may be made only if the court finds that such placement is in the
 59 best interests of the child and in accordance with such child's court approved permanency
 60 plan created pursuant to Code Sections 15-11-231 and 15-11-232. In determining which
 61 placement is in a child's best interests, the court shall initially attempt to place the child
 62 with an adult who is a relative or fictive kin, if such individual is willing and found by the
 63 court to be qualified to receive and care for such child. In determining which placement

64 is in a child's best interests, the court shall enter findings of fact reflecting its consideration
65 of the following:

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

72 **PART II**
73 **SECTION 2-1.**

74 The General Assembly finds that:

- 75 (1) From time to time, parents experience short-term difficulties that impair their ability
76 to perform the regular and expected functions to provide care and support to their
77 children;
- 78 (2) Parents need a means to confer to a relative or fictive kin the temporary authority to
79 act on behalf of a child without the time and expense of a court proceeding or the
80 involvement of the Division of Family and Children Services of the Department of
81 Human Services; and
- 82 (3) Providing a statutory mechanism for granting such authority enhances family
83 preservation and stability.

84 **SECTION 2-2.**

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

88 "ARTICLE 5

89 19-9-140.

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

92 19-9-141.

93 As used in this article, the term:

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

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

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

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

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

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

102 19-9-142.

103 (a) A parent, guardian, or legal custodian of a child may delegate caregiving authority
 104 regarding such child to a kinship caregiver for a period not to exceed one year, except as
 105 provided in Code Section 19-9-150, by executing a power of attorney that substantially
 106 complies with this article. A parent, guardian, or legal custodian of a child may delegate
 107 to an agent in such power of attorney any power and authority regarding the care and
 108 custody of such child, except the power to consent to the marriage or adoption of such
 109 child, the performance or inducement of an abortion on or for such child, or the termination
 110 of parental rights to such child. Such power and authority may be delegated without the
 111 approval of a court, provided that such delegation of power and authority shall not operate
 112 to change or modify any parental or legal rights, obligations, or authority established by an
 113 existing court order, including a standing order, or deprive a parent, guardian, or legal
 114 custodian of a child of any parental or legal rights, obligations, or authority regarding the
 115 custody, visitation, or support of such child. Such delegation of power and authority shall
 116 not deprive or limit any support for a child that should be received by such child pursuant
 117 to a court order or for any other reason. When support is being collected for the child by
 118 the Child Support Enforcement Agency of the Department of Human Services, such agency
 119 shall be authorized to redirect support payments to the agent until such time as the child
 120 returns to the individual executing a power of attorney under this article. No power of
 121 attorney shall be executed during the pendency of a divorce or custody action.

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

126 (c) An agent shall acknowledge in writing his or her acceptance of the responsibility for
 127 caring for a child for the duration of the power of attorney. An agent shall certify that he
 128 or she is not currently on the state sexual offender registry of this state or the sexual
 129 offender registry for any other state, a United States territory, the District of Columbia, or
 130 any Indian Tribe nor has he or she ever been required to register for any such registry.

131 Such certification shall include a criminal background check if requested by the individual
 132 executing the power of attorney.

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

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

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

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

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

148 19-9-143.

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

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

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

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

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

167 19-9-144.

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

173 19-9-145.

174 (a) Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
 175 an individual executing a power of attorney under this article shall swear or affirm under
 176 penalty of law that such action is not being taken for the purpose of enrolling the child in
 177 a school to participate in the academic or interscholastic athletic programs provided by that
 178 school or for any other unlawful purpose. Violation of this subsection shall be punishable
 179 in accordance with state law and may require, in addition to any other remedies, repayment
 180 by such parent, guardian, or legal custodian of all costs incurred by the school as a result
 181 of the violation.

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

188 19-9-146.

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

192 19-9-147.

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

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

204 (3) The individual revoking the power of attorney shall send a copy of the revocation of
205 the power of attorney to the agent within five days of the execution of the revocation by
206 certified mail or statutory overnight delivery, return receipt requested. If an individual
207 revokes the power of attorney, the child shall be returned to the custody of the individual
208 who granted the power of attorney as soon as reasonably possible.

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

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

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

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

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

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

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

224 19-9-148.

225 The execution of a power of attorney under this article shall not constitute abandonment
226 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
227 19-7-5 unless the individual who executed such power of attorney fails to take custody of
228 the child or execute a new power of attorney under this article after the expiration or
229 revocation of the power of attorney.

230 19-9-149.

231 (a) A child subject to a power of attorney executed under this article shall not be
232 considered placed in foster care under Chapter 5 of Title 49, and the parties to the power
233 of attorney shall not be subject to any of the requirements or licensing regulations for foster
234 care or other regulations relating to community care for children.

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

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

241 19-9-150.

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

252 19-9-151.

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

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

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

262 FORM FOR POWER OF ATTORNEY TO DELEGATE
 263 PARENTAL, GUARDIAN, OR LEGAL CUSTODIAN
 264 POWER AND AUTHORITY FOR THE CARE OF A MINOR CHILD

265 NOTICE:

266 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
 267 INDIVIDUAL WHO YOU DESIGNATE (THE AGENT) POWERS TO CARE FOR

268 YOUR MINOR CHILD, INCLUDING THE POWER TO: ENROLL THE CHILD IN
 269 SCHOOL AND IN EXTRACURRICULAR SCHOOL ACTIVITIES; HAVE ACCESS
 270 TO SCHOOL RECORDS AND DISCLOSE THE CONTENTS TO OTHERS;
 271 ARRANGE FOR AND CONSENT TO MEDICAL, DENTAL, AND MENTAL
 272 HEALTH TREATMENT FOR THE CHILD; HAVE ACCESS TO RECORDS
 273 RELATED TO SUCH TREATMENT OF THE CHILD AND DISCLOSE THE
 274 CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR THE CHILD'S
 275 FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
 276 ADDITIONAL POWERS AS SPECIFIED BY THE INDIVIDUAL EXECUTING THIS
 277 POWER OF ATTORNEY.

278 (2) THE AGENT IS REQUIRED TO EXERCISE DUE CARE TO ACT IN THE
 279 CHILD'S BEST INTERESTS AND IN ACCORDANCE WITH THE GRANT OF
 280 AUTHORITY SPECIFIED IN THIS FORM.

281 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
 282 THE AGENT IF IT FINDS THAT THE AGENT IS NOT ACTING PROPERLY.

283 (4) THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF
 284 ATTORNEY FOR THE CARE OF A MINOR CHILD FOR THE PERIOD SET FORTH
 285 IN THIS FORM UNLESS THE PARENT REVOKES THIS POWER OF ATTORNEY
 286 AND PROVIDES NOTICE OF THE REVOCATION TO THE AGENT OR UNTIL A
 287 COURT OF COMPETENT JURISDICTION TERMINATES THIS POWER OF
 288 ATTORNEY.

289 (5) THE AGENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY
 290 COMMUNICATE SUCH RESIGNATION TO THE INDIVIDUAL EXECUTING THIS
 291 POWER OF ATTORNEY.

292 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING. IF THIS
 293 POWER OF ATTORNEY IS REVOKED, THE REVOKING INDIVIDUAL SHALL
 294 NOTIFY THE AGENT, SCHOOL, HEALTH CARE PROVIDERS, AND OTHERS
 295 KNOWN TO THE INDIVIDUAL EXECUTING THIS POWER OF ATTORNEY TO
 296 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

297 (7) IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT
 298 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

299 POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

300 made this _____ day of _____, 20_____.

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

302 _____
303 (Full name of child) (Date of birth)

304 2. I designate _____,
305 (Full name of agent)

306 _____
307 (Street address, city, state, and ZIP Code of agent)

308 _____
309 (Home and work phone numbers of agent)

310 as the agent of the child named above.

311 3. Sign by the statement you wish to choose (you may only choose one):

312 (A) _____ (Signature) I delegate to the agent all my power
313 and authority regarding the care and custody of the child named above, including but
314 not limited to the right to enroll the child in school, inspect and obtain copies of
315 education records and other records concerning the child, attend school activities and
316 other functions concerning the child, and give or withhold any consent or waiver with
317 respect to school activities, medical and dental treatment, and any other activity,
318 function, or treatment that may concern the child. This delegation shall not include the
319 power or authority to consent to the marriage or adoption of the child, the performance
320 or inducement of an abortion on or for the child, or the termination of parental rights
321 to the child.

322 OR

323 (B) _____ (Signature) I delegate to the agent the following
324 specific powers and responsibilities (write in):
325 _____

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

329 4. Initial by the statement you wish to choose (you may only choose one) and complete
330 the information in the paragraph:

331 (A) _____ (Initials) This power of attorney is effective for a period not to exceed
332 one year, beginning _____, 20____, and ending _____, 20____. I
333 reserve the right to revoke this power and authority at any time.

334 OR

335 (B) _____ (Initials) I am a parent as described in O.C.G.A. § 19-9-150. My
336 deployment is scheduled to begin on _____, 20____, and is estimated to end
337 on _____, 20____. I acknowledge that in no event shall this delegation of
338 power and authority last more than one year or the term of my deployment plus 30
339 days, whichever is longer. I reserve the right to revoke this power and authority at any
340 time.

341 5. Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
342 I hereby swear or affirm under penalty of law that this power of attorney is not being
343 executed for the purpose of enrolling a child in a school so that the child may participate
344 in the academic or interscholastic athletic programs provided by that school or for any
345 other unlawful purpose.

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

348 By: _____
349 (Parent, guardian, or legal custodian signature)

350 _____
351 (Relationship to child)

352 _____
353 (Printed name)

354 7. I hereby accept my designation as agent for the child specified in this power of
355 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
356 such child for the duration of this power of attorney. Furthermore, I hereby certify that:
357 (A) I am not currently on the state sexual offender registry of this state or the sexual
358 offender registry for any other state, a United States territory, the District of Columbia,
359 or any Indian Tribe nor have I ever been required to register for any such registry;

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

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

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

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

371 _____
372 (Agent signature)

373 _____
374 (Printed name)

375 State of Georgia
376 County of _____

377 ACKNOWLEDGMENT

378 Before me, the undersigned, a Notary Public, in and for said County and State on this
379 _____ day of _____, 20____, personally appeared _____
380 (name of parent, guardian, or legal custodian) and _____ (name of
381 agent), to me known to be the identical persons who executed this instrument and
382 acknowledged to me that each executed the same as his or her free and voluntary act and
383 deed for the uses and purposes set forth in the instrument.

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

385 _____
386 (Notary Public signature)

387 (Seal)

388 My commission expires: _____"

389

PART III

390

SECTION 3-1.

391

Said title is further amended by revising subparagraph (a)(2)(B) of Code Section 19-3-37,

392

relating to parental consent to marriage of underage applicants, as follows:

393

"(B) The ~~parent~~ parent individual who has ~~legal~~ sole custody if the parents are divorced,

394

separated, or widowed; or"

395

PART IV

396

SECTION 4-1.

397

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