

House Bill 359

By: Representatives Fleming of the 121st, Quick of the 117th, Duncan of the 26th, Kelley of the 16th, Hanson of the 80th, and others

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 provide for the creation, authorization, procedure, revocation, rescision, and
3 termination of a power of attorney from a parent to an agent for the temporary delegation of
4 certain power and authority for the care and custody of his or her child; to repeal the "Power
5 of Attorney for the Care of a Minor Child Act"; to provide for definitions; to provide for
6 procedure; to grandfather certain provisions relating to a power of attorney given to a
7 grandparent; to provide a short title; to provide for legislative findings; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 The General Assembly finds that:

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

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

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

21 style="text-align:center">**SECTION 2.**

22 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
23 amended by repealing Article 4 of Chapter 9, relating to the power of attorney for the care
24 of a minor child, and enacting a new Article 4 to read as follows:

25 "ARTICLE 4

26 19-9-120.

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

29 19-9-121.

30 As used in this article, the term:

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

32 (2) 'Fictive kin' means an individual who is known to a child as a relative but is not, in
33 fact, related by blood or marriage to such child and with whom such child has resided or
34 had significant contact.

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

36 19-9-122.

37 (a) A parent of a child may delegate caregiving authority regarding such child to an
38 individual who resides in this state and is the grandparent, step-grandparent, aunt, uncle,
39 great aunt, great uncle, cousin, or sibling of such child or a fictive kin for a period not to
40 exceed one year, except as provided in Code Section 19-9-130, by executing a power of
41 attorney that substantially complies with this article. A parent of a child may delegate to
42 an agent in such power of attorney any power and authority regarding the care and custody
43 of such child, except the power to consent to the marriage or adoption of such child, the
44 performance or inducement of an abortion on or for such child, or the termination of
45 parental rights to such child. Such power and authority may be delegated without the
46 approval of a court, provided that such delegation of power and authority shall not operate
47 to change or modify any parental or legal rights, obligations, or authority established by an
48 existing court order, including a standing order, or deprive a parent of a child of any
49 parental or legal rights, obligations, or authority regarding the custody, visitation, or
50 support of such child. Such delegation of power and authority shall not deprive or limit
51 any support for a child that should be received by such child pursuant to a court order or
52 for any other reason. When support is being collected for the child by the Child Support
53 Enforcement Agency of the Department of Human Services, such agency shall be
54 authorized to redirect support payments to the agent for the duration of the power of
55 attorney or until the power of attorney is revoked or superseded by a court order. A power
56 of attorney executed under this article during the pendency of a divorce or custody action
57 shall be void ab initio.

58 (b) Except as limited by federal law, this article, or the direction of a parent of a child as
59 expressed in the power of attorney, an agent shall have the same rights, duties, and
60 responsibilities that would otherwise be exercised by such parent of a child pursuant to the
61 laws of this state.

62 (c) An agent shall acknowledge in writing his or her acceptance of the responsibility for
63 caring for a child for the duration of the power of attorney. An agent shall certify that he
64 or she is not currently on the state sexual offender registry of this state or the sexual
65 offender registry for any other state, a United States territory, the District of Columbia, or
66 any Indian Tribe nor has he or she ever been required to register for any such registry. The
67 individual executing a power of attorney may require an agent to provide him or her with
68 a criminal background check.

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

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

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

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

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

84 19-9-123.

85 (a) At least 30 days prior to executing a power of attorney authorized under this article, an
86 individual with sole custody of a child who intends to execute such power of attorney shall
87 provide written notice of such intention to the noncustodial parent by certified mail, return
88 receipt requested, or statutory overnight delivery. Such notice shall constitute a change in
89 material conditions or circumstances for the purpose of a child custody modification
90 proceeding.

91 (b) An individual receiving the notice as set forth in subsection (a) of this Code section
92 may object to the execution of such power of attorney within 21 days of the delivery of
93 such notice and shall serve his or her objection on the individual intending to execute such

94 power of attorney by certified mail, return receipt requested, or statutory overnight
95 delivery. An objection shall prohibit the execution of a power of attorney under this article.
96 (c) In addition to the notice provided for in subsection (a) of this Code section, an
97 individual with sole custody of a child who executes a power of attorney under this article
98 shall comply with any applicable relocation notice requirements under subsection (f) of
99 Code Section 19-9-3.

100 19-9-124.

101 Nothing in this article shall preclude a parent or agent from granting temporary written
102 permission to seek emergency medical treatment or other services for a child while such
103 child is in the custody of an adult who is not the parent or agent and who is temporarily
104 supervising the child at the request of such parent or agent.

105 19-9-125.

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

113 (b) An individual shall not execute a power of attorney under this article for the purpose
114 of subverting an investigation of the child's welfare initiated by the Division of Family and
115 Children Services of the Department of Human Services and shall not execute such power
116 of attorney so long as the Division of Family and Children Services of the Department of
117 Human Services has an open child welfare and youth services case with regard to the child,
118 his or her parent, or another child of the parent.

119 19-9-126.

120 A power of attorney executed under this article shall be signed under oath and
121 acknowledged before a notary public by the individual executing such power of attorney
122 and by the agent accepting such delegation.

123 19-9-127.

124 (a)(1) An agent shall have the authority to act on behalf of the child on a continuous
125 basis, without compensation:

126 (A) For the duration of the power of attorney so long as the duration does not exceed
127 one year or the time period authorized in Code Section 19-9-130; or

128 (B) Until the individual who executed the power of attorney revokes the power of
129 attorney in writing and provides notice of the revocation to the agent by certified mail,
130 return receipt requested, or statutory overnight delivery. Upon receipt of such
131 revocation, the agent shall cease to act as agent.

132 (2) The individual revoking the power of attorney shall send a copy of the revocation of
133 the power of attorney to the agent within five days of executing such revocation. If an
134 individual revokes a power of attorney, the child shall be returned to the custody of the
135 individual who executed the power of attorney as soon as reasonably possible.

136 (3) The revoking individual shall notify schools, health care providers, and others known
137 to the revoking individual to have relied upon such power of attorney as soon as
138 reasonably possible.

139 (b) A power of attorney executed under this article may be terminated by an order of a
140 court of competent jurisdiction.

141 (c) Upon receipt of a revocation of a power of attorney, an agent shall notify schools,
142 health care providers, and others known to the agent to have relied upon such power of
143 attorney as soon as reasonably possible.

144 (d) An agent may resign by notifying the individual who appointed the agent in writing by
145 certified mail, return receipt requested, or statutory overnight delivery and he or she shall
146 notify schools, health care providers, and others known to the agent to have relied upon
147 such power of attorney as soon as reasonably possible.

148 (e) Upon the death of an individual who executed a power of attorney, the agent shall
149 notify the parents of the child, if known, as soon as practicable.

150 (f) The authority to designate an agent to act on behalf of a child shall be in addition to any
151 other lawful action an individual may take for the benefit of such child.

152 (g) A parent shall continue to have the right to receive medical, dental, mental health, and
153 educational records pertaining to his or her child, even when a power of attorney has been
154 executed under this article.

155 19-9-128.

156 The execution of a power of attorney under this article shall not constitute abandonment
157 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
158 19-7-5 unless the individual who executed such power of attorney fails to take custody of
159 the child or execute a new power of attorney under this article after the expiration or
160 revocation of the power of attorney.

161 19-9-129.

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

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

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

172 19-9-130.

173 (a) When a power of attorney delegates caregiving authority to a grandparent of a child,
174 it may have an unlimited duration.

175 (b) Except as limited by or in conflict with federal law regarding the armed forces of the
176 United States, a parent who is a member of the armed forces of the United States, including
177 any reserve component thereof, or the commissioned corps of the National Oceanic and
178 Atmospheric Administration or the Public Health Service of the United States Department
179 of Health and Human Services detailed by proper authority for duty with the armed forces
180 of the United States, or who is required to enter or serve in the active military service of
181 the United States under a call or order of the President of the United States or to serve on
182 state active duty, may delegate caregiving authority for a period longer than one year if
183 such parent is deployed as defined in Code Section 19-9-6. Such term of delegation,
184 however, shall not exceed the term of deployment plus 30 days.

185 19-9-131.

186 The provisions of this article shall not affect a power of attorney given to a grandparent
187 prior to July 1, 2017, to which the provisions of former Code Sections 19-9-120 through
188 19-9-129, as such existed on June 30, 2017, shall continue to apply.

189 19-9-132.

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

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

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

199 FORM FOR POWER OF ATTORNEY TO DELEGATE
 200 THE POWER AND AUTHORITY FOR THE CARE OF A CHILD

201 NOTICE:

202 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
 203 INDIVIDUAL WHOM YOU DESIGNATE (THE AGENT) POWERS TO CARE FOR
 204 YOUR CHILD, INCLUDING THE POWER TO: ENROLL THE CHILD IN SCHOOL
 205 AND IN EXTRACURRICULAR SCHOOL ACTIVITIES; HAVE ACCESS TO
 206 EDUCATIONAL RECORDS AND DISCLOSE THE CONTENTS TO OTHERS;
 207 ARRANGE FOR AND CONSENT TO MEDICAL, DENTAL, AND MENTAL
 208 HEALTH TREATMENT FOR THE CHILD; HAVE ACCESS TO RECORDS
 209 RELATED TO SUCH TREATMENT OF THE CHILD AND DISCLOSE THE
 210 CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR THE CHILD'S
 211 FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
 212 ADDITIONAL POWERS AS SPECIFIED BY THE INDIVIDUAL EXECUTING THIS
 213 POWER OF ATTORNEY.

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

217 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
 218 THE AGENT.

219 (4) THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF
 220 ATTORNEY FOR THE CARE OF A CHILD FOR THE PERIOD SET FORTH IN
 221 THIS FORM UNLESS THE INDIVIDUAL EXECUTING THIS POWER OF
 222 ATTORNEY REVOKES THIS POWER OF ATTORNEY AND PROVIDES NOTICE
 223 OF THE REVOCATION TO THE AGENT OR A COURT OF COMPETENT
 224 JURISDICTION TERMINATES THIS POWER OF ATTORNEY.

225 (5) THE AGENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY
 226 COMMUNICATE SUCH RESIGNATION TO THE INDIVIDUAL EXECUTING THIS
 227 POWER OF ATTORNEY AND TO SCHOOLS, HEALTH CARE PROVIDERS, AND
 228 OTHERS KNOWN TO THE AGENT TO HAVE RELIED UPON SUCH POWER OF
 229 ATTORNEY.

230 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING. IF THIS
 231 POWER OF ATTORNEY IS REVOKED, THE REVOKING INDIVIDUAL SHALL
 232 NOTIFY THE AGENT, SCHOOLS, HEALTH CARE PROVIDERS, AND OTHERS
 233 KNOWN TO THE INDIVIDUAL EXECUTING THIS POWER OF ATTORNEY TO
 234 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

235 (7) IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT
 236 UNDERSTAND, YOU SHOULD ASK AN ATTORNEY TO EXPLAIN IT TO YOU.

237 STATE OF GEORGIA
 238 COUNTY OF _____

239 Personally appeared before me, the undersigned officer duly authorized to administer
 240 oaths, _____ (name of parent) who, after having been sworn, deposes
 241 and says as follows:

242 1. I certify that I am the parent of:

243 _____
 244 (Full name of child) (Date of birth)

245 2. I designate: _____,
 246 (Full name of agent)

247 _____
 248 (Street address, city, state, and ZIP Code of agent)

249 _____
 250 (Personal and work telephone numbers of agent)

251 as the agent of the child named above.

252 3. The agent named above is related or known to me as follows (write in your
 253 relationship to the agent; for example, aunt of the child, maternal grandparent of the
 254 child, sibling of the child, godparent of the child, neighborhood friend of the child, etc.):

255 _____

256 4. Sign by the statement you wish to choose (you may only choose one):

257 (A) _____ (Signature) I delegate to the agent all my power
 258 and authority regarding the care and custody of the child named above, including but
 259 not limited to the right to enroll the child in school, inspect and obtain copies of
 260 educational records and other records concerning the child, attend school activities and
 261 other functions concerning the child, and give or withhold any consent or waiver with
 262 respect to school activities, medical and dental treatment, and any other activity,
 263 function, or treatment that may concern the child. This delegation shall not include the
 264 power or authority to consent to the marriage or adoption of the child, the performance
 265 or inducement of an abortion on or for the child, or the termination of parental rights
 266 to the child.

267 **OR**

268 (B) _____ (Signature) I delegate to the agent the following
 269 specific powers and responsibilities (write in):
 270 _____

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

274 5. Initial by the statement you wish to choose (you may only choose one of the three
 275 options) and complete the information in the paragraph:

276 (A) _____ (Initials) This power of attorney is effective for a period not to exceed
 277 one year, beginning _____, 2_____, and ending _____, 2_____. I
 278 reserve the right to revoke this power and authority at any time.

279 **OR**

280 (B) _____ (Initials) This power of attorney is being given to a grandparent of my
281 child and is effective until I revoke this power of attorney.

282 **OR**

283 (C) _____ (Initials) I am a parent as described in O.C.G.A. § 19-9-130(b). My
284 deployment is scheduled to begin on _____, 20____, and is estimated to end
285 on _____, 20____. I acknowledge that in no event shall this delegation of
286 power and authority last more than one year or the term of my deployment plus 30
287 days, whichever is longer. I reserve the right to revoke this power and authority at any
288 time.

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

294 7. I hereby swear or affirm under penalty of law that I provided the notice required by
295 O.C.G.A. § 19-9-123 and received no objection in the required time period.

296 By: _____
297 (Parent signature)

298 _____
299 (Printed name)

300 _____
301 (Street address, city, state,
302 and ZIP Code of parent)

303 _____
304 (Personal and work telephone
305 numbers of parent)

306 Sworn to and subscribed
307 before me this _____
308 day of _____, _____.

309 _____
 310 Notary public (SEAL)
 311 My commission expires: _____.

312 STATE OF GEORGIA
 313 COUNTY OF _____

314 Personally appeared before me, the undersigned officer duly authorized to administer
 315 oaths, _____ (name of agent) who, after having been
 316 sworn, deposes and says as follows:

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

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

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

325 (C) I understand that I have the authority to act on behalf of the child:

- 326 •For the period of time set forth in this form;
- 327 •Until the power of attorney is revoked in writing and notice is provided to me as
 328 required by O.C.G.A. § 19-9-127; or
- 329 •Until the power of attorney is terminated by order of a court;

330 (D) I understand that if I am made aware of the death of the individual who executed
 331 the power of attorney, I must notify the parents of the child, if known, as soon as
 332 practicable; and

333 (E) I understand that I may resign as agent by notifying the individual who executed
 334 the power of attorney in writing by certified mail, return receipt requested, or statutory
 335 overnight delivery and I must also notify any schools, health care providers, and others
 336 to whom I give a copy of this power of attorney.

337 _____
 338 (Agent signature)

339 _____
 340 (Printed name)

341 Sworn to and subscribed
 342 before me this _____
 343 day of _____, _____.
 344 _____
 345 Notary public (SEAL)
 346 My commission expires: _____."

347 **SECTION 3.**
 348 All laws and parts of laws in conflict with this Act are repealed.