

House Bill 359 (AS PASSED HOUSE AND SENATE)

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 the temporary authority to act on behalf
16 of a child without the time and expense of a court proceeding or the involvement of the
17 Division of Family and Children Services of the Department of Human Services; and
- 18 (3) Providing a statutory mechanism for granting such authority enhances family
19 preservation and stability.

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

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

24 "ARTICLE 4

25 19-9-120.

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

28 19-9-121.

29 As used in this article, the term:

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

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

32 19-9-122.

33 (a) A parent of a child may delegate caregiving authority regarding such child to an
 34 individual who is an adult, who resides in this state, and who is the grandparent,
 35 great-grandparent, stepparent, former stepparent, step-grandparent, aunt, uncle, great aunt,
 36 great uncle, cousin, or sibling of such child or is approved as an agent by an organization
 37 licensed as a child-placing agency pursuant to Chapter 5 of Title 49 or a nonprofit entity
 38 that is focused on child or family services and that is in good standing with the Internal
 39 Revenue Service for a period not to exceed one year, except as provided in Code Section
 40 19-9-130, by executing a power of attorney that substantially complies with this article.
 41 A parent of a child may delegate to an agent in such power of attorney any power and
 42 authority regarding the care and custody of such child, except the power to consent to the
 43 marriage or adoption of such child, the performance or inducement of an abortion on or for
 44 such child, or the termination of parental rights to such child. Such power and authority
 45 may be delegated without the approval of a court, provided that such delegation of power
 46 and authority shall not operate to change or modify any parental or legal rights, obligations,
 47 or authority established by an existing court order, including a standing order, or deprive
 48 a parent of a child of any parental or legal rights, obligations, or authority regarding the
 49 custody, visitation, or support of such child. Such delegation of power and authority shall
 50 not deprive or limit any support for a child that should be received by such child pursuant
 51 to a court order or for any other reason. When support is being collected for the child by
 52 the Child Support Enforcement Agency of the Department of Human Services, such agency
 53 shall be authorized to redirect support payments to the agent for the duration of the power
 54 of attorney or until the power of attorney is revoked or superseded by a court order. A
 55 power of attorney executed under this article during the pendency of a divorce or custody
 56 action shall be void ab initio.

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

61 (c) An agent shall acknowledge in writing his or her acceptance of the responsibility for
62 caring for a child for the duration of the power of attorney and shall identify any associated
63 child-placing agency licensed pursuant to Chapter 5 of Title 49 or nonprofit entity that is
64 focused on child or family services and that is in good standing with the Internal Revenue
65 Service if applicable. An agent shall certify that he or she is not currently on the state
66 sexual offender registry or child abuse registry of this state or the sexual offender registry
67 or child abuse registry for any other state, a United States territory, the District of
68 Columbia, or any Indian Tribe nor has he or she ever been required to register for any such
69 registry. The parent executing a power of attorney shall require an agent to provide him
70 or her with a criminal background check.

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

75 (e) The child-placing agencies licensed pursuant to Chapter 5 of Title 49 or nonprofit
76 entities that are focused on child or family services and that are in good standing with the
77 Internal Revenue Service as provided for in this Code section shall maintain a record of all
78 powers of attorney executed by individuals approved as their agents under this article for
79 at least five years after the expiration of such powers of attorney.

80 19-9-123.

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

87 (b) The noncustodial parent receiving the notice as set forth in subsection (a) of this Code
88 section may object to the execution of such power of attorney within 21 days of the
89 delivery of such notice and shall serve his or her objection on the parent intending to
90 execute such power of attorney by certified mail, return receipt requested, or statutory
91 overnight delivery. An objection shall prohibit the execution of a power of attorney under
92 this article.

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

97 19-9-124.

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

102 19-9-125.

103 A parent shall not execute a power of attorney under this article for the purpose of
 104 subverting an investigation of the child's welfare initiated by the Division of Family and
 105 Children Services of the Department of Human Services and shall not execute such power
 106 of attorney so long as the Division of Family and Children Services of the Department of
 107 Human Services has an open child welfare and youth services case with regard to the child,
 108 his or her parent, or another child of the parent.

109 19-9-126.

110 A power of attorney executed under this article shall be signed under oath and
 111 acknowledged before a notary public by the parent executing such power of attorney and
 112 by the agent accepting such delegation. Furthermore, a copy of such power of attorney
 113 shall be filed by either the parent or agent with the probate court of the county in which the
 114 parent resides.

115 19-9-127.

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

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

120 (B) Until the parent who executed the power of attorney revokes the power of attorney
 121 in writing and provides notice of the revocation to the agent by certified mail, return
 122 receipt requested, or statutory overnight delivery. Upon receipt of such revocation, the
 123 agent shall cease to act as agent.

124 (2) The parent revoking the power of attorney shall send a copy of the revocation of the
 125 power of attorney to the agent within five days of executing such revocation. If a parent

126 revokes a power of attorney, the child shall be returned to the custody of such parent who
127 executed the power of attorney as soon as reasonably possible.

128 (3) The revoking parent shall notify schools, health care providers, and others known to
129 the revoking parent to have relied upon such power of attorney as soon as reasonably
130 possible.

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

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

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

140 (e) Upon the death of the parent who executed a power of attorney, the agent shall notify
141 the surviving parent of the child, if known, as soon as practicable.

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

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

147 19-9-128.

148 The execution of a power of attorney under this article shall not constitute abandonment
149 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
150 19-7-5 unless the parent who executed such power of attorney fails to take custody of the
151 child or execute a new power of attorney under this article after the expiration or revocation
152 of the power of attorney.

153 19-9-129.

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

158 (b) Caregiving authority delegated under this article shall not constitute an out-of-home
159 child placement.

160 (c) An individual who is approved as an agent by an organization licensed as a
161 child-placing agency or a nonprofit entity that is focused on child or family services and
162 that is in good standing with the Internal Revenue Service as provided for in subsection (a)
163 of Code Section 19-9-122 shall not be exempt from the requirements of Chapter 5 of Title
164 49 regarding the licensing and inspection of child welfare agencies.

165 (d) The execution of a power of attorney under this article shall not delegate caregiving
166 authority for more than one child unless such power of attorney delegates caregiving
167 authority for children who are siblings or stepsiblings.

168 19-9-130.

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

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

181 19-9-131.

182 The provisions of this article shall not affect a power of attorney given to a grandparent
183 prior to July 1, 2017, to which the provisions of former Code Sections 19-9-120 through
184 19-9-129, as such existed on June 30, 2017, shall continue to apply.

185 19-9-132.

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

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

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

195 FORM FOR POWER OF ATTORNEY TO DELEGATE
196 THE POWER AND AUTHORITY FOR THE CARE OF A CHILD

197 NOTICE:

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

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

211 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
212 THE AGENT.

213 (4) THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF
214 ATTORNEY FOR THE CARE OF A CHILD FOR THE PERIOD SET FORTH IN
215 THIS FORM UNLESS THE PARENT EXECUTING THIS POWER OF ATTORNEY
216 REVOKES THIS POWER OF ATTORNEY AND PROVIDES NOTICE OF THE
217 REVOCATION TO THE AGENT OR A COURT OF COMPETENT JURISDICTION
218 TERMINATES THIS POWER OF ATTORNEY.

219 (5) THE AGENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY
220 COMMUNICATE SUCH RESIGNATION TO THE PARENT EXECUTING THIS
221 POWER OF ATTORNEY AND TO SCHOOLS, HEALTH CARE PROVIDERS, AND
222 OTHERS KNOWN TO THE AGENT TO HAVE RELIED UPON SUCH POWER OF
223 ATTORNEY.

224 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING. IF THIS
 225 POWER OF ATTORNEY IS REVOKED, THE REVOKING PARENT SHALL
 226 NOTIFY THE AGENT, SCHOOLS, HEALTH CARE PROVIDERS, AND OTHERS
 227 KNOWN TO THE PARENT EXECUTING THIS POWER OF ATTORNEY TO HAVE
 228 RELIED UPON SUCH POWER OF ATTORNEY.

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

231 STATE OF GEORGIA
 232 COUNTY OF _____

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

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

237 _____
 238 (Full name of child) (Date of birth)

239 2. I designate: _____,
 240 (Full name of agent)

241 _____
 242 (Street address, city, state, and ZIP Code of agent)

243 _____
 244 (Personal and work telephone numbers of agent)

245 as the agent of the child named above.

246 3. The agent named above is related or known to me as follows (write in your
 247 relationship to the agent; for example, aunt of the child, maternal grandparent of the
 248 child, sibling of the child, godparent of the child, associated with an
 249 organization): _____

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

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

260 **OR**

261 (B) _____ (Signature) I delegate to the agent the following
 262 specific powers and responsibilities (write in):
 263 _____

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

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

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

272 **OR**

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

275 **OR**

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

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

284 By: _____
 285 (Parent signature)

286 _____
 287 (Printed name)

288 _____
 289 (Street address, city, state, and ZIP Code of parent)

290 _____
 291 (Personal and work telephone numbers of parent)

292 Sworn to and subscribed
 293 before me this _____
 294 day of _____, _____.

295 _____
 296 Notary public (SEAL)
 297 My commission expires: _____.

298 STATE OF GEORGIA
 299 COUNTY OF _____

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

303 7. I hereby accept my designation as agent for the child specified in this power of
304 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
305 such child for the duration of this power of attorney and shall identify any associated
306 child-placing agency licensed pursuant to Chapter 5 of Title 49 or nonprofit entity that
307 is focused on child or family services and that is in good standing with the Internal
308 Revenue Service if applicable. Furthermore, I hereby certify that:

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

313 (B) I have provided a criminal background check to the parent designating me as an
314 agent, if it was requested;

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

316 •For the period of time set forth in this form;

317 •Until the power of attorney is revoked in writing and notice is provided to me as
318 required by O.C.G.A. § 19-9-127; or

319 •Until the power of attorney is terminated by order of a court;

320 (D) I understand that if I am made aware of the death of the parent who executed the
321 power of attorney, I must notify the surviving parent of the child, if known, as soon as
322 practicable; and

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

327 _____
328 (Agent signature)

329 _____
330 (Printed name)

331 Sworn to and subscribed
332 before me this _____
333 day of _____, _____.

334 _____
335 Notary public (SEAL)

336 My commission expires:_____.

337 _____

338 (Organization signature, if applicable)

339 _____

340 (Printed name and title)''

341 **SECTION 3.**

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