

House Bill 1068

By: Representative Efstration of the 104th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding parent and child relationship generally, so as to
3 provide for equitable caregivers; to provide for standing and adjudication; to provide for a
4 statutory form; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to
9 general provisions regarding parent and child relationship generally, is amended by revising
10 Code Section 19-7-3.1, relating to equitable caregivers, form, required findings,
11 establishment of parental rights, and not a disestablishment of parentage, as follows:

12 "19-7-3.1.

13 (a) The court may adjudicate an individual to be an equitable caregiver.

14 (b) An individual seeking to be adjudicated an equitable caregiver of a child under this
15 Code section may establish standing to maintain the action in accordance with the
16 following:

17 (1) File with the initial pleading an affidavit alleging under oath specific facts to support
18 the existence of an equitable caregiver relationship with the child as set forth in
19 subsection (d) of this Code section. The pleadings and affidavit shall be served upon all
20 parents and legal guardians of the child and any other party to the proceeding;

21 (2) An adverse party, parent, or legal guardian who files a pleading in response to the
22 pleadings in paragraph (1) of this subsection shall also file an affidavit in response,
23 serving all parties to the proceeding with a copy;

24 (3) The court shall determine on the basis of the pleadings and affidavits pursuant to
25 paragraphs (1) and (2) of this subsection whether such individual has presented prima
26 facie evidence of the requirements set forth in subsection (d) of this Code section. The

27 court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to
28 determine undisputed facts that are necessary and material to the issue of standing; and

29 (4) If the court's determination under paragraph (3) of this subsection is in the
30 affirmative, the party claiming to be an equitable caregiver has standing to proceed to
31 adjudication under subsection (d) of this Code section.

32 (c) A document substantially in the following form may be used to create a pleading and
33 affidavit for purposes of paragraph (1) of subsection (d) of this Code section:

34 IN THE _____ COURT OF _____ COUNTY
35 STATE OF GEORGIA

36 A.B.,

37 _____)

38 Plaintiff)

39)

40 v.) Civil Action

41) File no. _____

42 C.D.,

43 _____)

44 Defendant)

45 COMPLAINT

46 The defendant C.D., herein named, is a resident of _____ (street),
47 _____, (city) _____ County, Georgia, and is subject to the
48 jurisdiction of this court.

49 As of _____ (date), Plaintiff can fully demonstrate to the court that he or she:

50 (1) ~~Plaintiff has~~ Has fully and completely undertaken a permanent, unequivocal,
51 committed, and responsible parental role in the child's life;

52 (2) Engaged in consistent caretaking of the child;

53 (3) Established a bonded and dependent relationship with the child, the relationship
54 was fostered or supported by a parent of the child, and such individual and the
55 parent have understood, acknowledged, or accepted or behaved as though such
56 individual is a parent of the child; ~~and~~

57 (4) Accepted full and permanent responsibilities as a parent of the child without
58 expectation of financial compensation; and

59 (5) Demonstrated that the child will suffer physical harm or long-term emotional harm
 60 and that continuing the relationship between such individual and the child is in the best
 61 interest of the child.

62 The facts of the case are:

- 63 1. _____
- 64 2. _____
- 65 3. _____
- 66 4. _____
- 67 5. _____

68 _____	_____
69 Dated	Pro Se Applicant
70	_____
71	Address
72	_____
73	Address

74 (CERTIFICATE OF SERVICE)

75 'AFFIDAVIT OF PETITIONER

76 STATE OF GEORGIA
 77 COUNTY OF _____

78 Personally appeared before me, the undersigned officer duly authorized to administer oaths,
 79 _____, who, after having been sworn, deposes, and says as follows:

80 That my name is: _____

81 That my address is: _____

82 These are the facts to support the existence of an equitable caregiver relationship with a
 83 child as set forth in subsection (c) of O.C.G.A. 19-7-3.1:

84 _____	_____
85 Dated	Pro Se Applicant

86

87

Address

88

89

Address

90 Sworn to and subscribed

91 Before me this _____

92 Day of _____, _____.

93 _____

94 Notary public (SEAL)

95 My commission expires: _____'

96 (d) In order to establish standing, the court shall first find, by clear and convincing
 97 evidence, that within the five years immediately preceding the filing of the initial pleading
 98 as provided for in subsection (b) of this Code section the individual has:

99 (1) Fully and completely undertaken a permanent, unequivocal, committed, and
 100 responsible parental role in the child's life;

101 (2) Engaged in consistent caretaking of the child;

102 (3) Established a bonded and dependent relationship with the child, the relationship was
 103 fostered or supported by a parent of the child, and such individual and the parent have
 104 understood, acknowledged, or accepted or behaved as though such individual is a parent
 105 of the child;

106 (4) Accepted full and permanent responsibilities as a parent of the child without
 107 expectation of financial compensation; and

108 (5) Demonstrated that the child will suffer physical harm or long-term emotional harm
 109 and that continuing the relationship between such individual and the child is in the best
 110 interest of the child.

111 (e) In determining the existence of harm, the court shall consider factors related to the
 112 child's needs, including, but not limited to:

113 (1) Who are the past and present caretakers of the child;

114 (2) With whom has the child formed psychological bonds and the strength of those
 115 bonds;

116 (3) Whether competing parties evidenced an interest in, and contact with, the child over
 117 time; and

118 (4) Whether the child has unique medical or psychological needs that one party is better
 119 able to meet.

120 (f) A court may grant standing on an individual seeking to be adjudicated as an equitable
121 caregiver on the basis of the consent of the child's parent for such individual to have a
122 parental relationship with the child, or on the basis of a written agreement between the
123 individual seeking to be adjudicated as an equitable caregiver and the child's parent,
124 indicating an intention to share or divide caregiving responsibilities for the child.

125 (g) The court may enter an order as appropriate to establish parental rights and
126 responsibilities for such individual, including, but not limited to, custody or visitation.

127 (h) This Code section shall not be used by a party who has been previously convicted of
128 domestic violence or a party against whom relief has been granted pursuant to Chapter 13
129 of Title 19.

130 ~~(h)~~(i) This Code section shall not authorize an original action when both parents of the
131 minor child are not separated and the child is living with both parents.

132 ~~(i)~~(j) This Code section shall not authorize an original action by an individual whose
133 relationship with the child was established as a result of a proceeding under Article 3 of
134 Chapter 11 of Title 15 and shall not authorize an original action so long as the Division of
135 Family and Children Services of the Department of Human Services has an open child
136 welfare and youth services case involving such child or his or her parent.

137 ~~(j)~~(k) The adjudication of a person under this Code section as an equitable caregiver does
138 not disestablish the parentage of any other parent.

139 (l) Any party granted custody pursuant to this Code section shall be subject to having his
140 or her custodial rights to a child removed upon the finding by a court that one or both
141 parents are no longer a risk of causing physical harm or long-term emotional harm to the
142 child."

143 **SECTION 2.**

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