House Bill 499 (AS PASSED HOUSE AND SENATE)

By: Representatives Hitchens of the 161<sup>st</sup>, Dempsey of the 13<sup>th</sup>, Smith of the 70<sup>th</sup>, Stephens of the 164<sup>th</sup>, and Ballinger of the 23<sup>rd</sup>

## A BILL TO BE ENTITLED AN ACT

1 To amend Article 1 of Chapter 6 of Title 19 of the Official Code of Georgia Annotated, relating to general provisions regarding alimony and child support, so as to authorize support 2 3 and insurance policies for dependent adult children; to provide for a definition; to provide 4 that legal proceedings may be brought to establish support for a dependent adult child; to 5 provide for who may bring such proceedings and to specify a time frame during which such 6 proceedings may be brought; to require support to be paid to the dependent adult child or 7 other specified persons; to require the court to consider certain guidelines when determining 8 the amount of support for a dependent adult child; to require the court to consider certain 9 state and federal programs and benefits in making its decisions; to provide that dependent 10 adult child support shall be modified in certain circumstances; to authorize the court to 11 irrevocably assign such support to certain trusts established for the benefit of the dependent 12 adult child for a specified purpose; to prohibit the court from ordering support that will cause 13 ineligibility for certain programs; to provide for who may enforce such support; to provide 14 for an effective date and applicability; to provide for related matters; to repeal conflicting 15 laws; and for other purposes.

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

- 18 Article 1 of Chapter 6 of Title 19 of the Official Code of Georgia Annotated, relating to
- 19 general provisions regarding alimony and child support, is amended by revising Code
- 20 Section 19-6-9, relating to voluntary separation, abandonment, or driving off of spouse as it
- 21 relates to equity compelling support, as follows:
- 22 "19-6-9.
- 23 Absent the making of a voluntary contract or other agreement, as provided in Code
- Section 19-6-8, and on the application of a party, the court, exercising its equitable powers,
- 25 may compel the spouse of the party to make provision for the support of the party and such
- 26 minor children and any dependent adult child as defined in Code Section 19-6-15.1 and as
- 27 may be in the custody of the party."

SECTION 2.

- 29 Said article is further amended by revising Code Section 19-6-10, relating to voluntary
- 30 separation, abandonment, or driving off of spouse as it relates to a petition for alimony or
- 31 child support when no divorce pending, order and enforcement, equitable remedies, and
- 32 effect of filing for divorce, as follows:
- *"*19-6-10.
- When spouses are living separately or in a bona fide state of separation and there is no
- action for divorce pending, either party, on the party's own behalf or on the behalf of the
- minor children and any dependent adult child as defined in Code Section 19-6-15.1 in the
- party's custody, if any, may institute a proceeding by petition, setting forth fully the party's
- 38 case. Upon three days' notice to the other party, the judge may hear the same and may
- grant such order as he <u>or she</u> might grant were it based on a pending petition for divorce,
- 40 to be enforced in the same manner, together with any other remedy applicable in equity,
- such as appointing a receiver and the like. Should the petition proceed to a hearing before
- 42 a jury, the jury may render a verdict which shall provide the factual basis for equitable

relief as in Code Section 19-6-9. However, such proceeding shall be held in abeyance when a petition for divorce is filed bona fide by either party and the judge presiding has made his <u>or her</u> order on the motion for alimony. When so made, the order shall be a substitute for the aforesaid decree in equity as long as the petition is pending and is not

48 SECTION 3.

- 49 Said article is further amended by adding a new subsection to Code Section 19-6-15, relating
- 50 to child support guidelines for determining amount of award, continuation of duty of support,
- and duration of support, to read as follows:

finally disposed of on the merits."

- 52 "(p) The child support guidelines provided in this Code section shall not apply to support
- for a dependent adult child as defined in Code Section 19-6-15.1."
- SECTION 4.
- 55 Said article is further amended by adding new Code sections, to read as follows:
- *"*19-6-15.1.

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- 57 (a) As used in this article, the term 'dependent adult child' means an unmarried individual
- who has reached the age of majority and is incapable of self-support as a result of a
- 59 physical or mental incapacity that began before the individual reached the age of majority.
- 60 (b) A legal proceeding may be brought to establish support for a dependent adult child.
- Such proceeding shall be brought in accordance with Code Section 19-6-26 and may be
- brought by the following:
- 63 (1) Either parent;
- 64 (2) A nonparent custodian;
- 65 (3) A guardian appointed to receive support for the dependent adult child whose benefit
- the support is ordered; or

(4) The dependent adult child for whose benefit the support is ordered or his or her agent
 under a durable power of attorney.

- 69 (c) A legal proceeding initiated pursuant to this Code section may be filed at any time after
- 70 <u>a dependent adult child reaches 17 years and six months of age, unless an order for support</u>
- 71 <u>was established during the dependent adult child's minority.</u>
- 72 (d) The amount of support to be paid by one or both parents shall be established in a
- 73 separate support proceeding pursuant to subsection (b) of this Code section; provided,
- however, that if a court has jurisdiction over the parties for an issue of support, the parents
- of an adult dependent child may agree in writing to provide for dependent adult child
- support in an existing case provided that such agreement is submitted to the court for
- approval before such child reaches 18 years of age.
- (e) Support ordered after a dependent adult child reaches 18 years of age shall be paid only
- 79 to the dependent adult child or his or her court appointed guardian advocate, guardian, or
- agent under a durable power of attorney; provided, however, that the court, in the exercise
- of its sound discretion, may irrevocably assign the support to a special needs trust
- established pursuant to 42 U.S.C. Section 1396p(d)(4)(A) or 1396p(d)(4)(C) for the benefit
- of the dependent adult child by the dependent adult child, his or her agent under a durable
- 84 power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate
- 85 who has been delegated those rights in order to maintain the dependent adult child's
- 86 means-based government benefits. The court shall not order support for a dependent adult
- 87 <u>child to be paid to the family support registry established pursuant to Code</u>
- 88 <u>Section 19-6-33.1.</u>
- 89 <u>19-6-15.2.</u>
- 90 (a) Pursuant to a support proceeding initiated pursuant to Code Section 19-6-15.1, the
- 91 court, in the exercise of its sound discretion, may direct either or both parents to provide
- 92 <u>financial assistance in the form of support to a dependent adult child. In determining the</u>

amount of support to be paid to a dependent adult child, the specific terms and conditions

- of such support, and the rights and duties of both parents with respect to such support, the
- 95 court shall determine and consider the following:
- 96 (1) The dependent adult child's income and assets;
- 97 (2) Any existing and future needs of the dependent adult child which are directly related
- 98 to his or her mental or physical incapacity and the substantial care and personal
- 99 supervision directly required by or related to that incapacity;
- 100 (3) Whether a parent or other person pays for, or will pay for, the care or supervision of
- the dependent adult child or provides, or will provide, substantial care or personal
- supervision to the dependent adult child himself or herself;
- 103 (4) The financial resources available to each parent for the support, care, and supervision
- of the dependent adult child;
- 105 (5) Any other resources, financial or otherwise, or programs available for the support,
- care, and supervision of the dependent adult child;
- 107 (6) Any state or federal programs and benefits that the dependent adult child is receiving
- or may receive due to reaching the age of majority; and
- (7) The effect that the court-ordered support would have on the dependent adult child's
- eligibility for such programs and benefits.
- (b) The obligation for support of a dependent adult child pursuant to subsection (a) of this
- 112 Code section shall be modified for either party if the trier of fact determines, in the exercise
- of its sound discretion, that there has been a substantial change in such parent's or child's
- ability to provide support as provided by this Code section.
- (c) The court, in the exercise of its sound discretion, may irrevocably assign support for
- a dependent adult child to a special needs trust established pursuant to 42 U.S.C. Section
- 117 1396p(d)(4)(A) or 1396p(d)(4)(C) for the benefit of the dependent adult child by the
- dependent adult child, his or her agent under a durable power of attorney, the court, a

119 parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. 120 121 (d) The support provided pursuant to this Code section shall be in addition to and not in 122 lieu of the benefits or assistance a dependent adult child may receive from a source other than his or her parents. No duty created pursuant to Code Section 19-6-15.1 nor any other 123 provisions of this Code section shall impact the eligibility of a dependent adult child to 124 receive the maximum benefits provided by any federal, state, local, and other governmental 125 126 and public agencies. 127 (e) The provisions for support provided in this Code section may be enforced by either parent, by any nonparent custodian, by a guardian appointed to receive support for the 128 dependent adult child for whose benefit the support is ordered, or by the dependent adult 129 child for whose benefit the support is ordered." 130

SECTION 5.

Said article is further amended by revising subsection (d) of Code Section 19-6-34, relating to inclusion of life insurance in order of support, as follows:

"(d)(1) The trier of fact, in the exercise of sound discretion, may direct either or both parents to maintain life insurance for the benefit of a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that maintenance of such life insurance for the benefit of the child shall not be required after a child attains 20 years of age.

(2) The trier of fact, in the exercise of its sound discretion, may direct either or both parents to maintain life insurance for the benefit of a dependent adult child as defined in

Code Section 19-6-15.1."

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**SECTION 6.** 

144 This Act shall become effective July 1, 2024, and shall apply to all causes of action accruing

on or after such date.

146 **SECTION 7.** 

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