

The Senate Committee on Health and Human Services offered the following substitute to HB 229:

A BILL TO BE ENTITLED
AN ACT

To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, so as to change provisions relating to a grandparent's right to intervention in certain domestic relation cases; to allow for intervention by great-grandparents and siblings of parents; to provide for definitions; to provide for an evidentiary standard; to conform cross-references relating to adoption; to provide for the creation, authorization, procedure, revocation, recision, and termination of a power of attorney from a parent, guardian, or legal custodian of a child to a kinship caregiver for the temporary delegation of certain power and authority for the care and custody of a child; to provide a short title; to provide for and correct a definition; to provide for procedure; to provide for legislative findings; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by revising Code Section 19-7-3, relating to grandparent visitation rights and intervention, as follows:

"19-7-3.

(a) As used in this Code section, the term '~~grandparent~~':

(1) 'Family member' means a grandparent, great-grandparent, or sibling.

(2) 'Grandparent' means the parent of a parent of a minor child, the parent of a minor child's parent who has died, and the parent of a minor child's parent whose parental rights have been terminated.

(3) 'Great-grandparent' means the parent of the parent of a parent of a minor child, the parent of the parent of a minor child's parent who has died, and the parent of the parent of a minor child's parent whose parental rights have been terminated.

(4) 'Sibling' means the brother or sister of a parent of a minor child, the brother or sister of a minor child's parent who has died, and the brother or sister of a minor child's parent whose parental rights have been terminated.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, ~~any~~:

(A) ~~Any~~ Any grandparent shall have the right to file an original action for visitation rights to a minor child ~~or~~; and

(B) Any family member shall have the right to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child, a divorce of the parents or a parent of such minor child, a termination of the parental rights of either parent of such minor child, or visitation rights concerning such minor child or whenever there has been an adoption in which the adopted child has been adopted by the child's blood relative or by a stepparent, notwithstanding the provisions of Code Section 19-8-19.

(2) This subsection shall not authorize an original action ~~where~~ when the parents of the minor child are not separated and the child is living with both parents.

(c)(1) Upon the filing of an original action or upon intervention in an existing proceeding under subsection (b) of this Code section, the court may grant any ~~grandparent~~ family member of the child reasonable visitation rights if the court finds by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation. The mere absence of an opportunity for a child to develop a relationship with a family member shall not be considered as harming the health or welfare of the child when there is no substantial preexisting relationship between the child and such family member. In considering whether the health or welfare of the child would be harmed without such visitation, the court shall consider and may find that harm to the child is reasonably likely to result ~~where~~ when, prior to the original action or intervention:

(A) The minor child resided with the ~~grandparent~~ family member for six months or more;

(B) The ~~grandparent~~ family member provided financial support for the basic needs of the child for at least one year;

(C) There was an established pattern of regular visitation or child care by the ~~grandparent~~ family member with the child; or

(D) Any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.

The court shall make specific written findings of fact in support of its rulings.

(2) An original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in

which another custody action has been filed concerning the child. After visitation rights have been granted to any grandparent, the legal custodian, guardian of the person, or parent of the child may petition the court for revocation or amendment of such visitation rights, for good cause shown, which the court, in its discretion, may grant or deny; but such a petition shall not be filed more than once in any two-year period.

(3) While a parent's decision regarding ~~grandparent~~ family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide ~~grandparent~~ family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her ~~grandparent~~ family member or who is not provided some minimal opportunity for contact with his or her ~~grandparent~~ family member when there is a preexisting relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption.

(4) In no case shall the granting of visitation rights to a ~~grandparent~~ family member interfere with a child's school or regularly scheduled extracurricular activities.

(5) Visitation time awarded to a ~~grandparent~~ family member shall not be less than 24 hours in any one-month period; provided, however, that when more than one individual seeks visitation under this Code section, the court shall determine the amount of time to award to each petitioner which shall not be less than 24 hours in any one-month period in the aggregate.

(d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award the parent of the deceased, incapacitated, or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the court in its discretion finds that such visitation would be in the best interests of the child. The custodial parent's judgment as to the best interests of the child regarding visitation shall be given deference by the court but shall not be conclusive.

(e) If the court finds that the ~~grandparent or grandparents~~ family member can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning ~~grandparent or grandparents~~ family member, may:

(1) Appoint a guardian ad litem for the minor child; and

(2) Assign the issue of visitation rights of a ~~grandparent~~ family member for mediation.

(f) In the event that the court does not order mediation or upon failure of the parties to reach an agreement through mediation, the court shall fix a time for the hearing of the issue of visitation rights of the ~~grandparent or grandparents~~ family member.

(g) Whether or not visitation is awarded to a ~~grandparent~~ family member, the court may direct a custodial parent, by court order, to notify such ~~grandparent~~ family member of every

performance of the minor child to which the public is admitted, including, but not limited to, musical concerts, graduations, recitals, and sporting events or games.

(h) When more than one family member files an action pursuant to this Code section, the court shall determine the priority of such actions."

SECTION 1-2.

Said title is further amended by revising subsection (f) of Code Section 19-8-13, relating to the petition for adoption, filing, and contents, as follows:

"(f)(1) As used in this subsection, the term 'family member' shall have the same meaning as set forth in Code Section 19-7-3.

(2) Whenever a petitioner is a blood relative of the child to be adopted and a ~~grandparent~~ family member other than the petitioner has visitation rights to the child granted pursuant to Code Section 19-7-3, the petitioner shall cause a copy of the petition for adoption to be served upon the ~~grandparent~~ family member with the visitation rights or upon such person's counsel of record."

SECTION 1-3.

Said title is further amended by revising Code Section 19-8-15, relating to when objections may be filed by relatives to petition for adoption, as follows:

"19-8-15.

(1) As used in this Code section, the term 'family member' shall have the same meaning as set forth in Code Section 19-7-3.

(2) If the child sought to be adopted has no legal father or legal mother living, it shall be the privilege of any person related by blood to the child to file objections to the petition for adoption. A ~~grandparent~~ family member with visitation rights to a child granted pursuant to Code Section 19-7-3 shall have the privilege to file objections to the petition of adoption if neither parent has any further rights to the child and if the petition for adoption has been filed by a blood relative of the child. The court, after hearing such objections, shall determine, in its discretion, whether or not the same constitute a good reason for denying the petition and the court shall have the authority to grant or continue such visitation rights of the ~~grandparent to~~ family member of the child in the adoption order in the event the adoption by the blood relative is approved by the court."

PART II
SECTION 2-1.

The General Assembly finds that:

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

SECTION 2-2.

Said title is further amended by adding a new article to Chapter 9, relating to child custody proceedings, to read as follows:

"ARTICLE 5

19-9-140.

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

19-9-141.

As used in this article, the term:

- (1) 'Child' means an unemancipated individual who is under 18 years of age.
- (2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.
- (3) 'Guardian' means an individual appointed pursuant to a court order establishing a permanent guardianship for a child.
- (4) 'Kinship caregiver' means a grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling of a child or a fictive kin who resides in this state.
- (5) 'Legal custodian' shall have the same meaning as provided in Code Section 15-11-2.
- (6) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

19-9-142.

(a) A parent, guardian, or legal custodian of a child may delegate caregiving authority regarding his or her child to a kinship caregiver for a period not to exceed one year, except as provided in Code Section 19-9-150, by executing a power of attorney that substantially complies with this article. A parent, guardian, or legal custodian of a child may delegate to an agent in such power of attorney any power and authority regarding the care and custody of such child, except the power to consent to the marriage or adoption of such child, the performance or inducement of an abortion on or for such child, or the termination of parental rights to such child. Such power and authority may be delegated without the approval of a court, provided that such delegation of power and authority shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order, including a standing order, or deprive a parent, guardian, or legal custodian of a child of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of such child. Furthermore, such delegation of power and authority shall not deprive or limit any support for a child that should be received by such child pursuant to a court order or for any other reason. No such power of attorney shall be executed during the pendency of a divorce or custody action.

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

(c) An agent shall acknowledge in writing his or her acceptance of the responsibility for caring for a child for the duration of the power of attorney. An agent shall certify that he or she is not currently on the state sexual offender registry of this state or the sexual offender registry for any other state, a United States territory, the District of Columbia, or any Indian Tribe nor has he or she ever been required to register for any such registry. Such certification shall include a criminal background check if requested by the party executing the power of attorney.

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

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

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

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

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

19-9-143.

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

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

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

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

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

(d) In the event of an emergency, the written requirement provisions of this Code section may be waived, but in no event shall this provision be interpreted as a means to violate a court order entered pursuant to subsection (f) of Code Section 19-9-3.

19-9-144.

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

19-9-145.

(a) Except as may be permitted by the federal No Child Left Behind Act (P.L. 107-110), an individual executing a power of attorney under this article shall swear or affirm under penalty of law that such action is not being taken for the purpose of enrolling the child in a school to participate in the academic or interscholastic athletic programs provided by that school or for any other unlawful purpose. Violation of this subsection shall be punishable in accordance with state law and may require, in addition to any other remedies, repayment by such parent, guardian, or legal custodian of all costs incurred by the school as a result of the violation.

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

19-9-146.

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

19-9-147.

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

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

(3) The individual revoking the power of attorney shall send a copy of the revocation of the power of attorney to the agent within five days of the execution of the revocation by certified mail or statutory overnight delivery, return receipt requested. If an individual

revokes the power of attorney, the child shall be returned to the custody of the individual who granted the power of attorney as soon as reasonably possible.

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

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

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

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

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

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

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

19-9-148.

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

19-9-149.

(a) A child subject to a power of attorney executed under this article shall not be considered placed in foster care as defined in any other provision of law, and the parties to the power of attorney shall not be subject to any of the requirements or licensing regulations for foster care or other regulations relating to community care for children.

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

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

298 19-9-150.
299 Except as limited by or in conflict with federal law regarding the armed forces of the
300 United States, a parent who is a member of the armed forces of the United States, including
301 any reserve component thereof, or the commissioned corps of the National Oceanic and
302 Atmospheric Administration or the Public Health Service of the United States Department
303 of Health and Human Services detailed by proper authority for duty with the armed forces
304 of the United States, or who is required to enter or serve in the active military service of
305 the United States under a call or order of the President of the United States or to serve on
306 state active duty, may delegate caregiving authority for a period longer than one year if
307 such parent is deployed as defined in Code Section 19-9-6. Such term of delegation,
308 however, shall not exceed the term of deployment plus 30 days.

309 19-9-151.
310 (a) The power of attorney contained in this Code section may be used for the temporary
311 delegation of caregiving authority to an agent. The form contained in this Code section
312 shall be sufficient for the purpose of creating a power of attorney under this article,
313 provided that nothing in this Code section shall be construed to require the use of this
314 particular form.
315 (b) A power of attorney shall be legally sufficient if the form is properly completed and
316 the signatures of the parties are notarized.
317 (c) The power of attorney delegating caregiving authority of a child shall be in
318 substantially the following form:

319 'STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL,
320 GUARDIAN, OR LEGAL CUSTODIAN POWER AND AUTHORITY

- 321 1. I certify that I am the parent, guardian, or legal custodian of:
322 _____
323 (Full name of child) (Date of birth)
- 324 2. I designate _____ (full name of agent),
325 _____
326 (street address, city, state, and ZIP Code of agent)
327 _____,
328 (home and work phone numbers of agent)
329 as the agent of the child named above.
- 330 3. I delegate to the agent all my power and authority regarding the care and custody of
331 the child named above, including but not limited to the right to enroll the child in school,

inspect and obtain copies of education records and other records concerning the child, attend school activities and other functions concerning the child, and give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

OR

4. I delegate to the agent the following specific powers and responsibilities (write in):

In the event section 4 is completed, section 3 does not apply.

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

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

OR

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

7. Except as may be permitted by the federal No Child Left Behind Act (P.L. 107-110), I hereby swear or affirm under penalty of law that this power of attorney is not being executed for the purpose of enrolling a child in a school so that the child may participate in the academic or interscholastic athletic programs provided by that school or for any other unlawful purpose.

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

362 By: _____
363 (Parent, guardian, or legal custodian signature)

364 Relationship to child: _____

365 _____
366 (Printed name)

367 9. I hereby accept my designation as agent for the child specified in this power of
368 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
369 such child for the duration of this power of attorney. Furthermore, I hereby certify that:
370 (A) I am not currently on the state sexual offender registry of this state or the sexual
371 offender registry for any other state, a United States territory, the District of Columbia,
372 or any Indian Tribe nor have I ever been required to register for any such registry;
373 (B) I have provided a criminal background check to the individual designating me as
374 an agent, if it was requested;
375 (C) I understand that I have the authority to act on behalf of the minor child for the
376 period set forth in this form or until the power of attorney is revoked in writing and
377 notice is provided to me as provided in O.C.G.A. § 19-9-147;
378 (D) I understand that if I am made aware of the death of the individual who executed
379 the power of attorney, I must notify the parent of the child, if known, as soon as
380 practicable; and
381 (E) I may resign as agent by notifying the individual who executed the power of
382 attorney in writing by certified mail or statutory overnight delivery, return receipt
383 requested.

384 _____
385 (Agent signature)

386 _____
387 (Printed name)

388 State of Georgia
389 County of _____

390

391 Before me, the undersigned, a Notary Public, in and for said County and State on this
392 _____ day of _____, 20____, personally appeared _____
393 (name of parent, guardian, or legal custodian) and _____ (name of
394 agent), to me known to be the identical persons who executed this instrument and
395 acknowledged to me that each executed the same as his or her free and voluntary act and
396 deed for the uses and purposes set forth in the instrument.
397 Witness my hand and official seal the day and year above written.

398 _____
399 (Notary public signature)

400 (Seal)

401 My commission expires: _____

402 **PART III**
403 **SECTION 3-1.**

404 Said title is further amended by revising subparagraph (a)(2)(B) of Code Section 19-3-37,
405 relating to parental consent to marriage of underage applicants, as follows:

406 "(B) The ~~parent~~ individual who has legal sole custody if the parents are divorced,
407 separated, or widowed; or"

408 **PART IV**
409 **SECTION 4-1.**

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