

Senate Bill 88

By: Senators Unterman of the 45th, Seay of the 34th, Williams of the 19th, Schaefer of the 50th and Johnson of the 1st

AS PASSED

AN ACT

To amend Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody proceedings, so as to provide for the creation, authorization, procedure, revocation, and termination of a power of attorney from a parent to a grandparent for the care of a grandchild; to provide for short titles; to provide definitions; to amend Titles 15 and 19 of the Official Code of Georgia Annotated, relating to courts and domestic relations, respectively, so as to clarify methods of legitimation of a child and to correct cross-references; to provide for other related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Care of a Grandchild Act."

SECTION 2.

The General Assembly finds that:

- (1) An increasing number of relatives in Georgia, including grandparents and great-grandparents, are providing care to children who cannot reside with their parents due to the parent's incapacity or inability to perform the regular and expected functions to provide such care and support;
- (2) Parents need a means to confer to grandparents or great-grandparents the authority to act on behalf of grandchildren without the time and expense of a court proceeding; and
- (3) Providing a statutory mechanism for granting such authority enhances family preservation and stability.

SECTION 3.

Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody proceedings, is amended by adding a new article to read as follows:

"ARTICLE 4

19-9-120.

This article shall be known and may be cited as the 'Power of Attorney for the Care of a Minor Child Act.'

19-9-121.

As used in this article, the term:

- (1) 'Grandchild' means the minor child of a grandparent.
- (2) 'Grandparent' shall have the same meaning as provided in subsection (a) of Code Section 19-7-3 and shall include the biological great-grandparent or stepgreat-grandparent who is the parent or stepparent of a grandparent of a minor child.
- (3) 'Parent' shall have the same meaning as provided in Code Section 19-3-37. Such term used in the singular shall mean both parents if both parents share joint legal custody of the child, unless otherwise clearly indicated.
- (4) 'Reasonable evidence' means evidence that a reasonable person would find sufficient to determine whether one conclusion is more likely than another.
- (5) 'School' means:
 - (A) Any county or independent school system as defined in Code Section 20-1-9;
 - (B) Any private school as such term is defined in Code Section 20-2-690;
 - (C) A home study program meeting the requirements set forth in subsection (c) of Code Section 20-2-690;
 - (D) Pre-kindergarten programs; or
 - (E) Early care and education programs as such term is defined in paragraph (6) of Code Section 20-1A-2.
- (6) 'School term' means the part of the year in which school is in session.
- (7) 'Serious illness' means a physical or mental illness as determined by a licensed health care professional, including a psychiatrist or psychologist, that causes the parent to be unable to care for the minor child due to the physical or mental condition or health of the parent, including a condition created by medical treatment.
- (8) 'Terminal illness' has the same meaning as the term 'terminal condition' as provided in paragraph (14) of Code Section 31-32-2.

19-9-122.

(a) A parent of a minor child may delegate to any grandparent residing in this state caregiving authority regarding the minor child when hardship prevents the parent from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for the care of a minor child in a form substantially complying with the provisions of this article.

(b) Hardships may include, but are not limited to:

- (1) A parent being unable to provide care due to the death of the other parent;
- (2) A serious illness or terminal illness of a parent;
- (3) The physical or mental condition of the parent or the child such that proper care and supervision of the child cannot be provided by the parent;
- (4) The incarceration of a parent;
- (5) The loss or uninhabitability of the child's home as the result of a natural disaster; or
- (6) A period of active military duty of a parent exceeding 24 months.

(c) Hardship shall not include the granting of a power of attorney for the care of a minor child for the purpose of subverting an investigation of the child's welfare initiated by the Department of Human Resources or other agency responsible for such investigations.

19-9-123.

Through the power of attorney for the care of a minor child, the parent may authorize the agent grandparent to perform the following functions:

- (1) Enroll the child in school and in extracurricular activities;
- (2) Enroll the child in any health insurance program offered to the grandparent;
- (3) Provide access to school records and may disclose the contents to others;
- (4) Arrange for and consent to medical, dental, and mental health treatment for the child;
- (5) Provide access to medical, dental, and mental health records and may disclose the contents thereof to others;
- (6) Provide for the child's food, lodging, housing, recreation, and travel; and
- (7) Any additional powers as specified by the parent.

19-9-124.

(a) An agent grandparent under a power of attorney for the care of a minor child shall act in the best interests of the minor child. Such agent grandparent shall not be liable for consenting or refusing to consent to medical, dental, or mental health care for a minor child

when such decision is made in good faith and is exercised in the best interests of the minor child.

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

(2) The public school shall allow such agent grandparent with a properly executed power of attorney for the care of a minor child to enroll the minor child.

(3) At the time of enrollment the grandparent shall provide to the school such residency documentation as is customary in that school district.

(4) The school may request reasonable evidence of the stated hardship.

(5) If a public school denies enrollment of a minor child under this Code section, such denial may be appealed and shall be treated as any other denial of enrollment of a child in that school district, including all of the remedies otherwise available when enrollment is denied to a child.

(6) Except where limited by federal law, the agent grandparent shall have the same rights, duties, and responsibilities that would otherwise be exercised by the parent pursuant to the laws of this state.

(7) An agent grandparent shall be obligated to comply with any existing court order relative to the child, including, but not limited to, any visitation order.

19-9-125.

No person, school official, or health care provider who acts in good faith reliance on a power of attorney for the care of a minor child shall be subject to criminal or civil liability or professional disciplinary action for such reliance.

19-9-126.

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

19-9-127.

(a) Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C.A. Section 6301, et seq. and Section 7801, et seq., a parent executing the power of attorney for the care of a minor child shall certify that such action is not for the primary purpose of

enrolling the child in a school for the sole purpose of participating 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 Georgia law and may require, in addition to any other remedies, repayment by such parent or grandparent of all costs incurred by the school as a result of the violation.

(b)(1) The instrument providing for the power of attorney for the care of a minor child shall be executed by both parents, if both parents are living and have joint legal custody of the minor child, and shall specify which hardship prevents the parent or parents from caring for the child. If the parents do not have joint legal custody, the parent having sole permanent legal custody shall have authority to grant the power of attorney.

(2) The power of attorney for the care of a minor child shall be signed and acknowledged before a notary public by the parent executing the power of attorney. Any noncustodial parent shall be notified in writing of the name and address of the grandparent who has been appointed the agent grandparent under the power of attorney. The executing parent shall send the notification by certified mail or statutory overnight delivery, return receipt requested, to the noncustodial parent at the noncustodial parent's last known address within five days of the execution of the power of attorney. A noncustodial parent who has joint legal custody shall have the same authority to execute a revocation of the power of attorney as granted to the custodial parent.

(c) If only one parent has sole permanent legal custody of the minor child, then that parent shall have authority to execute the power of attorney for the care of a minor child and to revoke the power of attorney.

19-9-128.

(a)(1) The agent grandparent shall have the authority to act on behalf of the minor child until each parent who executed the power of attorney for the care of a minor child revokes the power of attorney in writing and provides notice of the revocation to the agent grandparent as provided in this Code section.

(2) The agent grandparent 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 grandparent shall cease to act as agent.

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

- (4) The revoking parent shall notify the school, health care providers, and others known to the parent to have relied upon such power of attorney.
- (b) The power of attorney for the care of a minor child may also be terminated by any order of a court of competent jurisdiction.
- (c)(1) The agent grandparent shall notify the school in which the agent grandparent had enrolled the child whenever a change in circumstances results in a change in residence for such child that is expected to last more than six weeks during a school term and such change in residence is not due to hospitalization, vacation, study abroad, or some reason otherwise acceptable to the school.
- (2) The agent grandparent may resign by notifying the parent in writing by certified mail or statutory overnight delivery, return receipt requested, and, if the agent grandparent is aware that the parent's hardship still exists, such agent grandparent shall also notify child protective services or such government authority that is charged with assuring proper care of such minor child.
- (3) Upon the death of the authorizing parent, the agent grandparent shall notify the surviving parent as soon as practicable. With consent of the surviving parent or if the whereabouts of the surviving parent are unknown, the power of attorney for the care of a minor child may continue for up to six months so that the child may receive consistent care until more permanent custody arrangements are made.
- (d) The authority to designate an agent to act on behalf of a minor child is in addition to any other lawful action a parent may take for the benefit of such minor child, and the parent shall continue to have the right to medical, dental, mental health, and school records pertaining to the minor child.

19-9-129.

- (a) The statutory power of attorney for the care of a minor child form contained in this Code section may be used to grant an agent grandparent powers over the minor child's enrollment in school, medical, dental, and mental health care, food, lodging, recreation, travel, and any additional powers as specified by the parent. This power of attorney is not intended to be exclusive. No provision of this article shall be construed to bar use by the parent of any other or different form of power of attorney for the care of a minor child which complies with this article. A power of attorney for the care of a minor child in substantially the form set forth in this Code section shall have the same meaning and effect as prescribed in this article. Substantially similar forms may include forms from other states.

(b) The power of attorney for the care of a minor child shall be in substantially the following form:

'GEORGIA POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

NOTICE:

(1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE GRANDPARENT THAT YOU DESIGNATE (THE AGENT GRANDPARENT) POWERS TO CARE FOR YOUR MINOR CHILD, INCLUDING THE POWER TO: ENROLL THE CHILD IN SCHOOL AND IN EXTRACURRICULAR SCHOOL ACTIVITIES; HAVE ACCESS TO SCHOOL RECORDS AND DISCLOSE THE CONTENTS TO OTHERS; ARRANGE FOR AND CONSENT TO MEDICAL, DENTAL, AND MENTAL HEALTH TREATMENT FOR THE CHILD; HAVE ACCESS TO SUCH RECORDS RELATED TO TREATMENT OF THE CHILD AND DISCLOSE THE CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR THE CHILD'S FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY ADDITIONAL POWERS AS SPECIFIED BY THE PARENT.

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

(3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF THE AGENT GRANDPARENT IF IT FINDS THAT THE AGENT GRANDPARENT IS NOT ACTING PROPERLY.

(4) THE AGENT GRANDPARENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD THROUGHOUT THE CHILD'S MINORITY UNLESS THE PARENT REVOKES THIS POWER OF ATTORNEY AND PROVIDES NOTICE OF THE REVOCATION TO THE AGENT GRANDPARENT OR UNTIL A COURT OF COMPETENT JURISDICTION TERMINATES THIS POWER.

(5) THE AGENT GRANDPARENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY COMMUNICATE SUCH RESIGNATION TO THE PARENT, AND IF COMMUNICATION WITH SUCH PARENT IS NOT POSSIBLE, THE AGENT GRANDPARENT SHALL NOTIFY CHILD PROTECTIVE SERVICES OR SUCH GOVERNMENT AUTHORITY THAT IS CHARGED WITH ASSURING PROPER CARE OF SUCH MINOR CHILD.

(6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING BY ANY AUTHORIZING PARENT. IF THE POWER OF ATTORNEY IS REVOKED, THE REVOKING PARENT SHALL NOTIFY THE AGENT GRANDPARENT, SCHOOL, HEALTH CARE PROVIDERS, AND OTHERS KNOWN TO THE PARENT TO HAVE RELIED UPON SUCH POWER OF ATTORNEY.

(7) IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

made this ____ day of _____, ____.

(1)(A) I, _____ (insert name and address of parent or parents), hereby appoint _____ (insert name and address of grandparent to be named as agent) as attorney in fact (the agent grandparent) for my child _____ (insert name of child) to act for me and in my name in any way that I could act in person.

(B) I hereby certify that the agent grandparent named herein is the (place a check mark beside the appropriate description):

- ____ Biological grandparent;
- ____ Stepgrandparent;
- ____ Biological great-grandparent; or
- ____ Stepgreat-grandparent.

(2) The agent grandparent may:

- (A) Enroll the child in school and in extracurricular activities, have access to school records, and may disclose the contents to others;
- (B) Arrange for and consent to medical, dental, and mental health treatment of the child, have access to such records related to treatment of the child, and disclose the contents of such records to others;
- (C) Provide for the child’s food, lodging, recreation, and travel; and
- (D) Carry out any additional powers specified by the parent as follows:

(3) The powers granted above shall not include the following powers or shall be subject to the following rules or limitations (here you may include any specific limitations that you deem appropriate):

(4) This power of attorney for the care of a minor child is being executed because of the following hardship (initial all that apply):

- ____ (A) The death, serious illness, or terminal illness of a parent;
- ____ (B) The physical or mental condition of the parent or the child such that proper care and supervision of the child cannot be provided by the parent;
- ____ (C) The loss or uninhabitability of the child’s home as the result of a natural disaster;
- ____ (D) The incarceration of a parent; or
- ____ (E) A period of active military duty of a parent.

(5) (Optional) If a guardian of my minor child is to be appointed, I nominate the following person to serve as such guardian: _____
(insert name and address of person nominated to be guardian of the minor child).

(6) I am fully informed as to all of the contents of this form and I understand the full import of this grant of powers to the agent grandparent.

(7) I certify that the minor child is not emancipated, and, if the minor child becomes emancipated, this power of attorney shall no longer be valid.

(8) Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C.A. Section 6301, et seq. and Section 7801, et seq., I hereby certify that this power of attorney is not executed for the primary purpose of unlawfully enrolling the child in a school so that the child may participate in the academic or interscholastic athletic programs provided by that school.

(9) I certify that, to my knowledge, the minor child’s welfare is not the subject of an investigation by the Department of Human Resources.

(10) I declare under penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct.

Parent Signature: _____
Printed name: _____

Parent Signature: _____

Printed name: _____

Signed and sealed in the presence of: _____

Notary public

My commission expires _____'

(c) The following notice shall be attached to the power of attorney:

'ADDITIONAL INFORMATION:

To the grandparent designated as attorney in fact:

(1) If a change in circumstances results in the child not living with you for more than six weeks during a school term and such change is not due to hospitalization, vacation, study abroad, or some reason otherwise acceptable to the school, you should notify in writing the school in which you have enrolled the child and to which you have given this power of attorney form.

(2) You have the authority to act on behalf of the minor child until each parent who executed the power of attorney for the care of the minor child revokes the power of attorney in writing and provides notice of revocation to you as provided in O.C.G.A. Section 19-9-128.

(3) If you are made aware of the death of the parent who executed the power of attorney, you must notify the surviving parent as soon as practicable. With the consent of the surviving parent, or if the whereabouts of the surviving parent are unknown, the power of attorney may continue for up to six months so that the child may receive consistent care until more permanent custody arrangements are made.

(4) You may resign as agent by notifying each parent in writing by certified mail or statutory overnight delivery, return receipt requested, and if you become unable to care for the child, you shall cause such resignation to be communicated to the parent. If communication with such parent is not possible, you must notify child protective services or such government authority that is charged with assuring proper care of such minor child.

To school officials:

(1) Except as provided in the policies and regulations of the county school board and the federal No Child Left Behind Act, 20 U.S.C.A. Section 6301, et seq. and Section 7801, et seq., this power of attorney, properly completed and notarized, authorizes the agent grandparent named herein to enroll the child named herein in school in the district in

which the agent grandparent resides. That agent grandparent is authorized to provide consent in all school related matters and to obtain from the school district educational and behavioral information about the child. Furthermore, this power of attorney shall not prohibit the parent of the child from having access to all school records pertinent to the child.

(2) The school district may require such residency documentation as is customary in that school district.

(3) No school official who acts in good faith reliance on a power of attorney for the care of a minor child shall be subject to criminal or civil liability or professional disciplinary action for such reliance.

To health care providers:

(1) No health care provider who acts in good faith reliance on a power of attorney for the care of a minor child shall be subject to criminal or civil liability or professional disciplinary action for such reliance.

(2) The parent continues to have the right to all medical, dental, and mental health records pertaining to the minor child."

SECTION 4.

Title 19 the Official Code of Georgia Annotated, relating to domestic relations, is amended by adding a new Code section to read as follows:

"19-7-21.1.

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

(1) 'Acknowledgment of legitimation' means a written statement contained in a voluntary acknowledgment of paternity form indicating that a mother and father of a child born out of wedlock have freely agreed and consented that the child may be legitimated.

(2) 'Legal father' means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of this chapter;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of this chapter;

- (D) Has been determined to be the father by a final paternity order pursuant to Article 3 of this chapter;
 - (E) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or
 - (F) Has legitimated a child pursuant to this Code section
- and who has not surrendered or had terminated his rights to the child.
- (b) Prior to the child's first birthday, a father of a child born out of wedlock may render his relationship with the child legitimate when both the mother and father have freely agreed, consented, and signed a voluntary acknowledgment of paternity and an acknowledgment of legitimation which have been made and have not been rescinded pursuant to Code Section 19-7-46.1. The State Office of Vital Records shall provide notice, in writing, of the alternatives to, legal consequences of, and the rights and responsibilities of signing a voluntary acknowledgment of legitimation.
- (c) Voluntary acknowledgment of legitimation shall not be recognized if:
- (1) The mother was married to another man when the child was born;
 - (2) The mother was married to another man at any time within the usual period of gestation;
 - (3) There is another legal father;
 - (4) The mother has voluntarily and in writing surrendered all of her parental rights pursuant to the provisions of subsection (a) of any of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 and has not withdrawn her surrender as permitted by the provisions of subsection (b) of Code Section 19-8-9 or the mother's parental rights have been judicially terminated by a court of competent jurisdiction or an action to terminate such rights has been initiated and is pending;
 - (5) The mother has signed a voluntary acknowledgment of legitimation with another man; or
 - (6) The child is one year of age or older.
- (d) If any of the circumstances described in subsection (c) of this Code section exists, the provisions of Code Section 19-7-22 shall be the only method of legitimation.
- (e) Voluntary acknowledgment of legitimation shall not authorize the father to receive custody or visitation until there is a judicial determination of custody or visitation.
- (f) It shall be unlawful to make a false statement on a voluntary acknowledgment of legitimation, and the making of a false statement shall be punishable as an act of false statements and writings under Code Section 16-10-20.

(g) Where a voluntary acknowledgment of paternity is timely rescinded and includes a voluntary acknowledgment of legitimation, the legitimation shall also be deemed rescinded."

SECTION 5.

Said title is further amended by revising Code Section 19-7-25, relating to in whom parental power over child born out of wedlock lies, as follows:

"19-7-25.

Only the mother of a child born out of wedlock is entitled to custody of the child, unless the father legitimates the child as provided in Code Section 19-7-21.1 or 19-7-22. Otherwise, the mother may exercise all parental power over the child."

SECTION 6.

Said title is further amended in Code Section 19-7-46.1, relating to voluntary acknowledgments of paternity and other evidence of paternity, by revising subsection (b) as follows:

"(b) When both the mother and father have signed a voluntary acknowledgment of paternity and the acknowledgment is recorded in the putative father registry established by subsection (d) of Code Section 19-11-9, the acknowledgment shall constitute a legal determination of paternity, subject to the right of any signatory to rescind the acknowledgment prior to the date of the support order, any other order adjudicating paternity, or 60 days from the signing of the agreement, whichever is earlier. Recording such information in the putative father registry shall constitute a legal determination of paternity for purposes of establishing a future order for support, visitation privileges, and other matters under Code Section 19-7-51. Acknowledgment of paternity shall not constitute a legal determination of legitimation pursuant to Code Section 19-7-21.1 or 19-7-22."

SECTION 7.

Said title is further amended in Code Section 19-8-1, relating to definitions, by revising in their entirety subparagraphs (D) and (E) of paragraph (6) as follows:

- "(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or
- (E) Has legitimated the child pursuant to Code Section 19-7-21.1"

SECTION 8.

Said title is further amended in Code Section 19-8-12, relating to notice of adoption proceedings to the biological father and procedure related thereto, by revising paragraphs (1) and (2) of subsection (e) as follows:

- "(1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and
- (2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation with the court in which the action under this Code section, if any, is pending and to the person who provided such notice to such biological father."

SECTION 9.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code Section 15-11-2, relating to definitions, by revising in their entirety subparagraphs (D) and (E) of paragraph (10.1) as follows:

- "(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or
- (E) Has legitimated the child pursuant to Code Section 19-7-21.1"

SECTION 10.

Said title is further amended in Code Section 15-11-96, relating to the summons for a petition to terminate parental rights and the rights of biological fathers, by revising paragraphs (1) and (2) of subsection (h) as follows:

- "(1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and
- (2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation with the court in which the action under this Code section is pending."

SECTION 11.

This Act shall become effective July 1, 2008.

SECTION 12.

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