

The House Committee on Judiciary offers the following substitute to HB 359:

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, rescission, 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 425 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 in good standing with the Internal Revenue Service for a period not to exceed one year,
39 except as provided in Code Section 19-9-130, by executing a power of attorney that
40 substantially complies with this article. A parent of a child may delegate to an agent in
41 such power of attorney any power and authority regarding the care and custody of such
42 child, except the power to consent to the marriage or adoption of such child, the
43 performance or inducement of an abortion on or for such child, or the termination of
44 parental rights to such child. Such power and authority may be delegated without the
45 approval of a court, provided that such delegation of power and authority shall not operate
46 to change or modify any parental or legal rights, obligations, or authority established by an
47 existing court order, including a standing order, or deprive a parent of a child of any
48 parental or legal rights, obligations, or authority regarding the custody, visitation, or
49 support of such child. Such delegation of power and authority shall not deprive or limit
50 any support for a child that should be received by such child pursuant to a court order or
51 for any other reason. When support is being collected for the child by the Child Support
52 Enforcement Agency of the Department of Human Services, such agency shall be
53 authorized to redirect support payments to the agent for the duration of the power of
54 attorney or until the power of attorney is revoked or superseded by a court order. A power
55 of attorney executed under this article during the pendency of a divorce or custody action
56 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 in good
64 standing with the Internal Revenue Service if applicable. An agent shall certify that he or
65 she is not currently on the state sexual offender registry or child abuse registry of this state
66 or the sexual offender registry or child abuse registry for any other state, a United States
67 territory, the District of Columbia, or any Indian Tribe nor has he or she ever been required
68 to register for any such registry. The parent executing a power of attorney may require an
69 agent to provide him or her with a criminal background check.

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

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

79 19-9-123.

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

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

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

96 19-9-124.

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

101 19-9-125.

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

108 19-9-126.

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

114 19-9-127.

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

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

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

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

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

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

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

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

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

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

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

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

146 19-9-128.

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

152 19-9-129.

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

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

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

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

167 19-9-130.

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

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

180 19-9-131.

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

184 19-9-132.

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

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

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

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

196 NOTICE:

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

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

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

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

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

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

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

230 STATE OF GEORGIA
 231 COUNTY OF _____

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

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

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

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

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

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

244 as the agent of the child named above.

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

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

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

259 **OR**

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

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

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

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

271 **OR**

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

274 **OR**

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

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

283 By: _____
 284 (Parent signature)

285 _____
 286 (Printed name)

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

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

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

294 _____

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

297 STATE OF GEORGIA
 298 COUNTY OF _____

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

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

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

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

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

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

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

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

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

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

326 _____
327 (Agent signature)

328 _____
329 (Printed name)

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

333 _____
334 Notary public (SEAL)

335 My commission expires:_____.

336 _____

337 (Organization signature, if applicable)

338 _____

339 (Printed name and title)''

340 **SECTION 3.**

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