

The House Committee on Judiciary offers the following substitute to SB 3:

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, guardian, or legal custodian of a child to
4 a kinship caregiver for the temporary delegation of certain power and authority for the care
5 and custody of a child; to provide a short title; to provide for and correct a definition; to
6 provide for procedure; to provide for legislative findings; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **PART I**
10 **SECTION 1-1.**

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 or fictive kin the temporary authority to
16 act on behalf of a child without the time and expense of a court proceeding or the
17 involvement of the Division of Family and Children Services of the Department of
18 Human Services; and

19 (3) Providing a statutory mechanism for granting such authority enhances family
20 preservation and stability.

21 **SECTION 1-2.**

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

S. B. 3 (SUB)

25 "ARTICLE 5

26 19-9-140.

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

29 19-9-141.

30 As used in this article, the term:

31 (1) 'Child' means an unemancipated individual who is under 18 years of age.

32 (2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.

33 (3) 'Guardian' means an individual appointed pursuant to a court order establishing a
34 permanent guardianship for a child.

35 (4) 'Kinship caregiver' means a grandparent, step-grandparent, aunt, uncle, great aunt,
36 great uncle, cousin, or sibling of a child or a fictive kin who resides in this state.

37 (5) 'Legal custodian' shall have the same meaning as provided in Code Section 15-11-2.

38 (6) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

39 19-9-142.

40 (a) A parent, guardian, or legal custodian of a child may delegate caregiving authority
41 regarding such child to a kinship caregiver for a period not to exceed one year, except as
42 provided in Code Section 19-9-150, by executing a power of attorney that substantially
43 complies with this article. A parent, guardian, or legal custodian of a child may delegate
44 to an agent in such power of attorney any power and authority regarding the care and
45 custody of such child, except the power to consent to the marriage or adoption of such
46 child, the performance or inducement of an abortion on or for such child, or the termination
47 of parental rights to such child. Such power and authority may be delegated without the
48 approval of a court, provided that such delegation of power and authority shall not operate
49 to change or modify any parental or legal rights, obligations, or authority established by an
50 existing court order, including a standing order, or deprive a parent, guardian, or legal
51 custodian of a child of any parental or legal rights, obligations, or authority regarding the
52 custody, visitation, or support of such child. Such delegation of power and authority shall
53 not deprive or limit any support for a child that should be received by such child pursuant
54 to a court order or for any other reason. When support is being collected for the child by
55 the Child Support Enforcement Agency of the Department of Human Services, such agency
56 shall be authorized to redirect support payments to the agent until such time as the child
57 returns to the individual executing a power of attorney under this article. No power of
58 attorney shall be executed during the pendency of a divorce or custody action.

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

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

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 individual executing the power of attorney for consenting
72 or refusing to consent to medical, dental, or mental health care for a child when such
73 decision is made in good faith and is exercised in the best interests of the child.

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

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

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

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

85 19-9-143.

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

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

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

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

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

104 19-9-144.

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

110 19-9-145.

111 (a) Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
112 an individual executing a power of attorney under this article shall swear or affirm under
113 penalty of law that such action is not being taken for the purpose of enrolling the child in
114 a school to participate in the academic or interscholastic athletic programs provided by that
115 school or for any other unlawful purpose. Violation of this subsection shall be punishable
116 in accordance with state law and may require, in addition to any other remedies, repayment
117 by such parent, guardian, or legal custodian of all costs incurred by the school as a result
118 of the violation.

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

125 19-9-146.

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

129 19-9-147.

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

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

141 (3) The individual revoking the power of attorney shall send a copy of the revocation of
142 the power of attorney to the agent within five days of the execution of the revocation by
143 certified mail or statutory overnight delivery, return receipt requested. If an individual
144 revokes the power of attorney, the child shall be returned to the custody of the individual
145 who granted the power of attorney as soon as reasonably possible.

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

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

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

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

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

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

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

161 19-9-148.

162 The execution of a power of attorney under this article shall not constitute abandonment
163 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
164 19-7-5 unless the individual who executed such power of attorney fails to take custody of

165 the child or execute a new power of attorney under this article after the expiration or
166 revocation of the power of attorney.

167 19-9-149.

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

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

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

178 19-9-150.

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

189 19-9-151.

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

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

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

199 FORM FOR POWER OF ATTORNEY TO DELEGATE
200 PARENTAL, GUARDIAN, OR LEGAL CUSTODIAN
201 POWER AND AUTHORITY FOR THE CARE OF A MINOR CHILD

202 NOTICE:

203 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
204 INDIVIDUAL WHO YOU DESIGNATE (THE AGENT) POWERS TO CARE FOR
205 YOUR MINOR CHILD, INCLUDING THE POWER TO: ENROLL THE CHILD IN
206 SCHOOL AND IN EXTRACURRICULAR SCHOOL ACTIVITIES; HAVE ACCESS
207 TO SCHOOL RECORDS AND DISCLOSE THE CONTENTS TO OTHERS;
208 ARRANGE FOR AND CONSENT TO MEDICAL, DENTAL, AND MENTAL
209 HEALTH TREATMENT FOR THE CHILD; HAVE ACCESS TO RECORDS
210 RELATED TO SUCH TREATMENT OF THE CHILD AND DISCLOSE THE
211 CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR THE CHILD'S
212 FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
213 ADDITIONAL POWERS AS SPECIFIED BY THE INDIVIDUAL EXECUTING THIS
214 POWER OF ATTORNEY.

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

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

220 (4) THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF
221 ATTORNEY FOR THE CARE OF A MINOR CHILD FOR THE PERIOD SET FORTH
222 IN THIS FORM UNLESS THE PARENT REVOKES THIS POWER OF ATTORNEY
223 AND PROVIDES NOTICE OF THE REVOCATION TO THE AGENT OR UNTIL A
224 COURT OF COMPETENT JURISDICTION TERMINATES THIS POWER OF
225 ATTORNEY.

226 (5) THE AGENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY
227 COMMUNICATE SUCH RESIGNATION TO THE INDIVIDUAL EXECUTING THIS
228 POWER OF ATTORNEY.

229 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING. IF THIS
230 POWER OF ATTORNEY IS REVOKED, THE REVOKING INDIVIDUAL SHALL
231 NOTIFY THE AGENT, SCHOOL, HEALTH CARE PROVIDERS, AND OTHERS
232 KNOWN TO THE INDIVIDUAL EXECUTING THIS POWER OF ATTORNEY TO
233 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

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

236 POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

237 made this _____ day of _____, 20____.

238 1. I certify that I am the parent, guardian, or legal custodian of:

239 _____
240 (Full name of child) (Date of birth)

241 2. I designate _____,

242 (Full name of agent)

243 _____
244 (Street address, city, state, and ZIP Code of agent)

245 _____
246 (Home and work phone numbers of agent)

247 as the agent of the child named above.

248 3. Sign by the statement you wish to choose (you may only choose one):

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

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

271 OR

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

278 5. Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
279 I hereby swear or affirm under penalty of law that this power of attorney is not being
280 executed for the purpose of enrolling a child in a school so that the child may participate
281 in the academic or interscholastic athletic programs provided by that school or for any
282 other unlawful purpose.

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

285 By: _____
286 (Parent, guardian, or legal custodian signature)
287 _____
288 (Relationship to child)
289 _____
290 (Printed name)

291 7. I hereby accept my designation as agent for the child specified in this power of
 292 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
 293 such child for the duration of this power of attorney. Furthermore, I hereby certify that:
 294 (A) I am not currently on the state sexual offender registry of this state or the sexual
 295 offender registry for any other state, a United States territory, the District of Columbia,
 296 or any Indian Tribe nor have I ever been required to register for any such registry;
 297 (B) I have provided a criminal background check to the individual designating me as
 298 an agent, if it was requested;
 299 (C) I understand that I have the authority to act on behalf of the minor child for the
 300 period set forth in this form or until the power of attorney is revoked in writing and
 301 notice is provided to me as provided in O.C.G.A. § 19-9-147;
 302 (D) I understand that if I am made aware of the death of the individual who executed
 303 the power of attorney, I must notify the parent of the child, if known, as soon as
 304 practicable; and
 305 (E) I may resign as agent by notifying the individual who executed the power of
 306 attorney in writing by certified mail or statutory overnight delivery, return receipt
 307 requested.

308 _____
 309 (Agent signature)

310 _____
 311 (Printed name)

312 State of Georgia
 313 County of _____

314 ACKNOWLEDGMENT

315 Before me, the undersigned, a Notary Public, in and for said County and State on this
 316 _____ day of _____, 20____, personally appeared _____
 317 (name of parent, guardian, or legal custodian) and _____ (name of
 318 agent), to me known to be the identical persons who executed this instrument and
 319 acknowledged to me that each executed the same as his or her free and voluntary act and
 320 deed for the uses and purposes set forth in the instrument.

321 Witness my hand and official seal the day and year above written.

322 _____
 323 (Notary Public signature)
 324 (Seal)
 325 My commission expires: _____”

326 **PART II**
 327 **SECTION 2-1.**

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

330 “(B) The ~~parent~~ individual who has ~~legal~~ sole custody if the parents are divorced,
 331 separated, or widowed; or”

332 **PART III**
 333 **SECTION 3-1.**

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