

House Bill 216

By: Representative Efstration of the 104<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding parent and child relationship generally, so as to  
3 provide for equitable caregivers; to provide for standing and adjudication; to provide for a  
4 statutory form; to provide for related matters; to repeal conflicting laws; and for other  
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to  
9 general provisions regarding parent and child relationship generally, is amended by revising  
10 Code Section 19-7-3.1, relating to equitable caregivers, form, required findings,  
11 establishment of parental rights, and not a disestablishment of parentage, as follows:

12 "19-7-3.1.

13 (a) The court may adjudicate an individual to be an equitable caregiver.

14 (b) An individual seeking to be adjudicated an equitable caregiver of a child under this  
15 Code section may establish standing to maintain the action in accordance with the  
16 following:

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- 17 (1) File with the initial pleading an affidavit alleging under oath specific facts to support  
18 the existence of an equitable caregiver relationship with the child as set forth in  
19 subsection (d) of this Code section. The pleadings and affidavit shall be served upon all  
20 parents and legal guardians of the child and any other party to the proceeding;
- 21 (2) An adverse party, parent, or legal guardian who files a pleading in response to the  
22 pleadings in paragraph (1) of this subsection shall also file an affidavit in response,  
23 serving all parties to the proceeding with a copy;
- 24 (3) The court shall determine on the basis of the pleadings and affidavits pursuant to  
25 paragraphs (1) and (2) of this subsection whether such individual has presented prima  
26 facie evidence of the requirements set forth in subsection (d) of this Code section. The  
27 court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to  
28 determine undisputed facts that are necessary and material to the issue of standing; and
- 29 (4) If the court's determination under paragraph (3) of this subsection is in the  
30 affirmative, the party claiming to be an equitable caregiver has standing to proceed to  
31 adjudication under subsection (d) of this Code section.
- 32 (c) A document substantially in the following form may be used to create a pleading and  
33 affidavit for purposes of paragraph (1) of subsection (d) of this Code section:



57 (4) Accepted full and permanent responsibilities as a parent of the child without  
58 expectation of financial compensation; and

59 (5) Demonstrated that the child will suffer physical harm or long-term emotional harm  
60 and that continuing the relationship between such individual and the child is in the best  
61 interest of the child.

62 The facts of the case are:

- 63 1. \_\_\_\_\_
- 64 2. \_\_\_\_\_
- 65 3. \_\_\_\_\_
- 66 4. \_\_\_\_\_
- 67 5. \_\_\_\_\_

68 \_\_\_\_\_

69 Dated

\_\_\_\_\_

Pro Se Applicant

70

\_\_\_\_\_

71

Address

72

\_\_\_\_\_

73

Address

74 (CERTIFICATE OF SERVICE)'

75 'AFFIDAVIT OF PETITIONER

76 STATE OF GEORGIA

77 COUNTY OF \_\_\_\_\_

78 Personally appeared before me, the undersigned officer duly authorized to administer oaths,  
79 \_\_\_\_\_, who, after having been sworn, deposes, and says as follows:

80 That my name is: \_\_\_\_\_

81 That my address is: \_\_\_\_\_

82 These are the facts to support the existence of an equitable caregiver relationship with a  
83 child as set forth in subsection (c) of O.C.G.A. 19-7-3.1:

84 \_\_\_\_\_

85 Dated Pro Se Applicant

86 \_\_\_\_\_

87 Address

88 \_\_\_\_\_

89 Address

90 Sworn to and subscribed

91 ~~Before~~ before me this \_\_\_\_\_

92 ~~Day~~ day of \_\_\_\_\_, \_\_\_\_\_.

93 \_\_\_\_\_

94 Notary public (SEAL)

95 My commission expires: \_\_\_\_\_'

96 (d) In order to establish standing, the court shall first find, by clear and convincing  
97 evidence, that within the five years immediately preceding the filing of the initial pleading  
98 as provided for in subsection (b) of this Code section the individual has:

- 99 (1) Fully and completely undertaken a permanent, unequivocal, committed, and  
100 responsible parental role in the child's life;
- 101 (2) Engaged in consistent caretaking of the child;
- 102 (3) Established a bonded and dependent relationship with the child, ~~the~~ which  
103 relationship was fostered or supported by a parent of the child, and such individual and  
104 the parent have understood, acknowledged, or ~~accepted~~ or accepted that or behaved as  
105 though such individual is a parent of the child;
- 106 (4) Accepted full and permanent responsibilities as a parent of the child without  
107 expectation of financial compensation; and
- 108 (5) Demonstrated that the child will suffer physical harm or long-term emotional harm  
109 and that continuing the relationship between such individual and the child is in the best  
110 interest of the child.
- 111 (e) In determining the existence of harm, the court shall consider factors related to the  
112 child's needs, including, but not limited to:
- 113 (1) Who are the past and present caretakers of the child;
- 114 (2) With whom has the child formed psychological bonds and the strength of those  
115 bonds;
- 116 (3) Whether competing parties evidenced an interest in, and contact with, the child over  
117 time; and
- 118 (4) Whether the child has unique medical or psychological needs that one party is better  
119 able to meet.
- 120 (f) A court may grant standing on an individual seeking to be adjudicated as an equitable  
121 caregiver on the basis of the consent of the child's parent for such individual to have a  
122 parental relationship with the child, or on the basis of a written agreement between the  
123 individual seeking to be adjudicated as an equitable caregiver and the child's parent,  
124 indicating an intention to share or divide caregiving responsibilities for the child.

125 (g) The court may enter an order as appropriate to establish parental rights and  
126 responsibilities for such individual, including, but not limited to, custody or visitation.

127 (h) This Code section shall not authorize an original action when both parents of the minor  
128 child are not separated and the child is living with both parents.

129 (i) This Code section shall not authorize an original action by an individual whose  
130 relationship with the child was established as a result of a proceeding under Article 3 of  
131 Chapter 11 of Title 15 and shall not authorize an original action so long as the Division of  
132 Family and Children Services of the Department of Human Services has an open child  
133 welfare and youth services case involving such child or his or her parent.

134 (j) The adjudication of a person under this Code section as an equitable caregiver does not  
135 disestablish the parentage of any other parent.

136 (k) Any party granted custody pursuant to this Code section shall be subject to having his  
137 or her custodial rights to a child removed upon the finding by a court that one or both  
138 parents are no longer a risk of causing physical harm or long-term emotional harm to the  
139 child."

140 **SECTION 2.**

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