

COMMITTEES OF CONFERENCE SUBSTITUTE TO SB 64

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 15-11-2, Title 19, and Chapter 10 of Title 31 of the Official Code
 2 of Georgia Annotated, relating to definitions for the Juvenile Code, domestic relations, and
 3 vital records, respectively, so as to repeal voluntary acknowledgments of legitimation; to
 4 provide for conforming cross-references relating to the elimination of administrative
 5 legitimation; to provide for and revise definitions; to clarify provisions relating to judicial
 6 petitions for legitimation; to provide for witnesses to the signing of acknowledgments of
 7 paternity; to provide for access to signed acknowledgments of paternity and voluntary
 8 acknowledgments of legitimation; to change provisions relating to hospital programs for
 9 establishing paternity; to provide for the repeal of a certain power of attorney; to change
 10 provisions relating to vital records; to provide for a savings clause; to provide for an effective
 11 date and contingent effective date; to provide for related matters; to repeal conflicting laws;
 12 and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions for
 15 the Juvenile Code, is amended by revising paragraph (43) as follows:

16 "(43) 'Legal father' means a male who has not surrendered or had terminated his rights
 17 to a child and who:

18 (A) Has legally adopted a such child;

19 (B) Was married to the biological mother of a such child at the time such child was
 20 ~~conceived or was born~~ or within the usual period of gestation, unless paternity was
 21 disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

22 (C) Married the legal mother of a such child after such child was born and recognized
 23 such child as his own, unless paternity was disproved by a final order pursuant to
 24 Article 3 of Chapter 7 of Title 19; or
 25

- 26 ~~(D) Has been determined to be the father of a child by a final paternity order pursuant~~
 27 ~~to Article 3 of Chapter 7 of Title 19;~~
 28 ~~(E)(D) Has legitimated a such child by a final order pursuant to Code Section 19-7-22;~~
 29 ~~or~~
 30 ~~(F) Has legitimated a child pursuant to Code Section 19-7-21.1."~~

31 **SECTION 2.**

32 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 33 amended by repealing in its entirety Code Section 19-7-21.1, relating to acknowledgment of
 34 legitimation.

35 **SECTION 3.**

36 Said title is further amended by revising Code Section 19-7-22, relating to the petition for
 37 legitimation of a child, requirements therefor, the effect of such, claims for custody or
 38 visitation, and third-party actions for legitimation, as follows:

39 "19-7-22.

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

41 (1) 'Biological father' means the male who impregnated the biological mother resulting
 42 in the birth of a child.

43 (2) 'Legal father' means a male who has not surrendered or had terminated his rights to
 44 a child and who:

45 (A) Has legally adopted such child;

46 (B) Was married to the biological mother of such child at the time such child was born
 47 or within the usual period of gestation, unless paternity was disproved by a final order
 48 pursuant to Article 3 of this chapter;

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

52 (D) Has legitimated such child pursuant to this Code section.

53 ~~(a)(b)~~ The biological A father of a child born out of wedlock may render his relationship
 54 with the child legitimate by petitioning the superior court of the county of the residence of
 55 the child's mother or other party having legal custody or guardianship of the child;
 56 provided, however, that if the mother or other party having legal custody or guardianship
 57 of the child resides outside ~~the~~ this state or cannot, after due diligence, be found within ~~the~~
 58 this state, the petition may be filed in the county of the biological father's residence or the
 59 county of the child's residence. If a petition for the adoption of the child is pending, the

60 biological father shall file the petition for legitimation in the county in which the adoption
61 petition is filed.

62 ~~(b)~~(c) A legitimation The petition shall set forth the name, age, and sex of the child, the
63 name of the mother, and, if the biological father desires the name of the child to be
64 changed, the new name. If the mother is alive, she shall be named as a party and shall be
65 served and provided an opportunity to be heard as in other civil actions under Chapter 11
66 of Title 9, the 'Georgia Civil Practice Act.' If there is a legal father who is not the
67 biological father, he shall be named as a party by the petitioner and shall be served and
68 provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9,
69 the 'Georgia Civil Practice Act.'

70 ~~(c)~~(d) Upon the presentation and filing of ~~the~~ a legitimation petition, and after a hearing
71 for which notice was provided to all interested parties, the court may pass issue an order
72 declaring the biological father's relationship with the child to be legitimate, ~~and that the~~
73 provided that such order is in the best interests of the child. If such order is issued, the
74 biological father and child shall be capable of inheriting from each other in the same
75 manner as if born in lawful wedlock ~~and specifying.~~ Such order shall specify the name by
76 which the child shall be known.

77 ~~(d)~~(e) A legitimation petition may be filed, pursuant to Code Section 15-11-11, in the
78 juvenile court of the county in which a dependency proceeding regarding the child is
79 pending; provided, however, that if either parent has demanded a jury trial as to child
80 support, that issue of the case shall be transferred to superior court for a jury trial. Such
81 petition shall contain the same information and require the same service and opportunity
82 to be heard as set forth in subsection (c) of this Code section. After a hearing, the juvenile
83 court may issue the same orders as set forth in subsection (d) of this Code section.

84 ~~(e)~~(f) A superior court shall, after notice and hearing, enter an order establishing the
85 obligation to support a ~~Except as provided by subsection (f) of this Code section, the court~~
86 ~~shall upon notice to the mother further establish such duty as the father may have to~~
87 ~~support the child, considering the facts and circumstances of the mother's obligation of~~
88 ~~support and the needs of the child as provided under Code Section 19-6-15.~~

89 ~~(f)~~ After a petition for legitimation is granted, if a demand for a jury trial as to support has
90 been properly filed by either parent, then the case shall be transferred from juvenile court
91 to superior court for such jury trial.

92 ~~(f.1)~~(g) A ~~The petition for~~ legitimation petition may also include claims for visitation,
93 parenting time, or custody. If such claims are raised in the legitimation action, the court
94 may order, in addition to legitimation, visitation, parenting time, or custody based on the
95 best interests of the child standard. In a case involving allegations of family violence, the
96 provisions of paragraph (4) of subsection (a) of Code Section 19-9-3 shall also apply.

97 ~~(g)(1)(h)~~ In any petition to establish paternity pursuant to paragraph (4) of subsection (a)
 98 of Code Section 19-7-43, the alleged biological father's response may assert a third-party
 99 action for the legitimation of the child born out of wedlock if the alleged biological father
 100 is, in fact, the biological father. Upon the determination of paternity or if a voluntary
 101 acknowledgment of paternity has been made and has not been rescinded pursuant to Code
 102 Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions
 103 of Code Section 19-7-51 may enter an order or decree legitimating a child born out of
 104 wedlock, provided that such is in the best ~~interest~~ interests of the child. In determining the
 105 best interests of the child, the court should ensure that the petitioning alleged biological
 106 father is, in fact, the biological father and may order the mother, the alleged biological
 107 father, and the child to submit to genetic testing in accordance with Code Section 19-7-45.
 108 Whenever a petition to establish the paternity of a child is brought by the Department of
 109 Human Services, issues of name change, visitation, and custody shall not be determined
 110 by the court until such time as a separate petition is filed by one of the parents or by the
 111 legal guardian of the child, in accordance with Code Section 19-11-8; if the petition to
 112 establish paternity is brought by a party other than the Department of Human Services or
 113 if the alleged biological father seeks legitimation, the court may determine issues of name
 114 change, visitation, and custody in accordance with subsections ~~(b) and (f.1)~~ (c) and (g) of
 115 this Code section. Custody of the child shall remain in the mother unless or until a court
 116 order is entered addressing the issue of custody.

117 ~~(2) In any voluntary acknowledgment of paternity which has been made and has not been~~
 118 ~~rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely~~
 119 ~~agree and consent, the child may be legitimated by the inclusion of a statement indicating~~
 120 ~~a voluntary acknowledgment of legitimation."~~

121 SECTION 4.

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

124 "19-7-25.

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

128 SECTION 5.

129 Said title is further amended by revising Code Section 19-7-27, relating to hospital program
 130 for establishing paternity, as follows:

131 "19-7-27.

132 (a) Except in the event of a medical emergency, prior to Upon the birth of a child to an
 133 unmarried woman in a public or private hospital, the hospital that provides perinatal labor
 134 and delivery services shall:

135 ~~(1) Provide the child's mother and alleged father if he is present at the hospital the~~
 136 ~~opportunity to acknowledge paternity consistent with the requirements of Code Section~~
 137 ~~19-7-46.1; and~~

138 ~~(2) Provide~~ provide to the mother and alleged father:

139 ~~(A)(1)~~ Written materials about administratively establishing paternity ~~establishment~~;

140 ~~(B)(2)~~ The forms necessary to voluntarily acknowledge paternity;

141 ~~(C)(3)~~ A written description of the rights and responsibilities of voluntarily
 142 acknowledging paternity, the differences between paternity and legitimation, and the duty
 143 to support a child upon acknowledgment of paternity; and

144 ~~(D)(4)~~ The opportunity, prior to discharge from the hospital, to speak with staff, either
 145 by telephone or in person, who are trained to clarify information and answer questions
 146 about administratively establishing paternity ~~establishment~~ and the availability of judicial
 147 determinations of paternity.

148 (b) Providing the written materials describing rights and responsibilities shall not
 149 constitute the unlawful practice of law.

150 (c) After the birth of a child to an unmarried woman in a public or private hospital, the
 151 hospital that provides labor and delivery services shall:

152 (1) Provide the child's mother and alleged father if he is present at the hospital the
 153 opportunity to execute a voluntary acknowledgment of paternity if a notary public is
 154 available at such hospital;

155 (2) File the signed voluntary acknowledgment of paternity with the State Office of Vital
 156 Records within 30 days of its execution, provided that such acknowledgment is signed
 157 at the hospital on or before the mother is discharged; and

158 (3) Provide to the child's mother and alleged father copies of the signed voluntary
 159 acknowledgment of paternity."

160 SECTION 6.

161 Said title is further amended by revising subsection (d) of Code Section 19-7-43, relating to
 162 petition to establish paternity and genetic testing, as follows:

163 "(d) In any case in which the paternity of a child or children has not been established, ~~any~~
 164 ~~party may make a motion for the court to~~ the court, either on its own motion or on the
 165 motion of any party, may order the mother, the alleged father, and the child or children to
 166 submit to genetic tests as specified in Code Section 19-7-45. Such motion, if made by a

167 party, shall be supported by a sworn statement ~~(1)~~ alleging paternity and setting forth facts
 168 establishing a reasonable possibility of the requisite sexual contact between the parties; or
 169 ~~(2)~~ denying paternity and setting forth facts establishing a reasonable possibility of the
 170 nonexistence of sexual contact between the parties. Appropriate orders shall be issued ~~in~~
 171 ~~accordance with the provisions of this article~~ by the court. The court shall grant ~~the a~~
 172 party's motion unless it finds ~~good cause as defined by the federal Social Security Act or~~
 173 ~~if other~~ a good excuse for noncooperation ~~is established.~~"

174 **SECTION 7.**

175 Said title is further amended by revising Code Section 19-7-46.1, relating to name or social
 176 security number on birth certificate or other record as evidence of paternity and signed
 177 voluntary acknowledgment of paternity, as follows:

178 "19-7-46.1.

179 (a) The appearance of the name or social security account number of the father, entered
 180 with his written consent, on the certificate of birth or a certified copy of such certificate or
 181 records on which the name of the alleged father was entered with his written consent from
 182 the vital records department of another state or the registration of the father, entered with
 183 his written consent, in the putative father registry of this state, pursuant to subsection (d)
 184 of Code Section 19-11-9, shall constitute a prima-facie case of establishment of paternity
 185 and the burden of proof shall shift to the putative father to rebut such in a proceeding for
 186 the determination of paternity.

187 (b) When both the mother and father have signed a voluntary acknowledgment of paternity
 188 in the presence of a notary public swearing or affirming the statements contained in the
 189 acknowledgment are true and such acknowledgment is filed with the State Office of Vital
 190 Records within 30 days of its execution and the acknowledgment is recorded in the putative
 191 father registry established by subsection (d) of Code Section 19-11-9, the acknowledgment
 192 shall constitute a legal determination of paternity, subject to the right of any signatory to
 193 rescind the acknowledgment prior to the date of the support order, any other order
 194 adjudicating paternity, or 60 days from the signing of the agreement, whichever is earlier.
 195 Recording such information in the putative father registry shall constitute a legal
 196 determination of paternity for purposes of establishing a future order for support, ~~visitation~~
 197 ~~privileges~~, and other matters under Code Section 19-7-51. Acknowledgment of paternity
 198 shall establish the biological father, as such term is defined in Code Section 19-7-22, but
 199 shall not constitute a legal determination of legitimation pursuant to Code Section
 200 ~~19-7-21.1 or 19-7-22.~~

201 (c) After the 60 day rescission period specified in subsection (b) of this Code section, the
 202 signed voluntary acknowledgment of paternity may be challenged in court only on the basis

203 of fraud, duress, or material mistake of fact, with the burden of proof on the person
 204 challenging the acknowledgment. The legal responsibilities of any signatory, including
 205 child support obligations, arising from the acknowledgment may not be suspended during
 206 the challenge, except for good cause shown.

207 (d) A copy of a signed voluntary acknowledgment of paternity shall be provided to any
 208 signatory upon request.

209 (e)(1) As used in this subsection, the term:

210 (A) 'Child-placing agency' means an agency licensed as such pursuant to Chapter 5 of
 211 Title 49.

212 (B) 'Legal custodian' shall have the same meaning as set forth in Code Section 15-11-2.

213 (C) 'Local custodian' shall have the same meaning as set forth in Code Section 31-10-1.

214 (D) 'State registrar' shall have the same meaning as set forth in Code Section 31-10-1.

215 (2) The state registrar or local custodian, upon receipt of a written application, shall issue
 216 a certified copy of voluntary acknowledgment of paternity in the state registrar's or local
 217 custodian's custody to:

218 (A) The person who signed such acknowledgment and his or her guardian or temporary
 219 guardian;

220 (B) The person whose paternity was acknowledged, if he or she is at least 18 years of
 221 age;

222 (C) The guardian, temporary guardian, or legal custodian of the person whose paternity
 223 was acknowledged;

224 (D) The living legal spouse or next of kin, the legal representative, or the person who
 225 in good faith has applied and produced a record of such application to become the legal
 226 representative of the person whose paternity is registered;

227 (E) A court of competent jurisdiction upon its order or subpoena;

228 (F) Any governmental agency, state or federal, provided that such certificate shall be
 229 needed for official purposes;

230 (G) A member in good standing of the State Bar of Georgia, provided that such
 231 certificate shall be needed for purposes of legal investigation on behalf of a client; and

232 (H) A child-placing agency, provided that such certificate shall be needed for official
 233 purposes."

234 **SECTION 8.**

235 Said title is further amended by revising Code Section 19-7-51, relating to order of support,
 236 visitation privileges, and other provisions, as follows:

237 "19-7-51.

238 The decree or order establishing paternity may contain any other provisions concerning the
 239 duty to support the child by periodic or lump sum payments, ~~visitation privileges with the~~
 240 ~~child as provided in Code Section 19-6-15~~, or any other matter in the best ~~interest~~ interests
 241 of the child."

242 **SECTION 9.**

243 Said title is further amended by revising paragraph (6) of Code Section 19-8-1, relating to
 244 definitions relating to adoption, as follows:

245 "(6) 'Legal father' means a male who has not surrendered or had terminated his rights to
 246 a child and who:

247 (A) Has legally adopted a such child;

248 (B) Was married to the biological mother of ~~that~~ such child at the time ~~the~~ such child
 249 ~~was conceived or was born~~ or within the usual period of gestation, unless ~~such~~ paternity
 250 was disproved by a final order pursuant to Article 3 of Chapter 7 of this title;

251 (C) Married the legal mother of ~~the~~ such child after ~~the~~ such child was born and
 252 recognized ~~the~~ such child as his own, unless ~~such~~ paternity was disproved by a final
 253 order pursuant to Article 3 of Chapter 7 of this title; or

254 (D) Has legitimated ~~the~~ such child by a final order pursuant to Code Section 19-7-22;
 255 or

256 ~~(E) Has legitimated the child pursuant to Code Section 19-7-21.1~~

257 ~~and who has not surrendered or had terminated his rights to the child."~~

258 **SECTION 10.**

259 Said title is further amended by revising subparagraph (e)(3)(D) of Code Section 19-8-4,
 260 relating to when surrender or termination of parental or guardian's rights is required, as
 261 follows:

262 "(D) The pre-birth surrender shall not be valid for use by a legal father as defined under
 263 paragraph (6) of Code Section 19-8-1 or for any man who has executed ~~either a~~
 264 ~~voluntary acknowledgment of legitimation pursuant to the provisions of paragraph (2)~~
 265 ~~of subsection (g) of Code Section 19-7-22~~ or a voluntary acknowledgment of paternity
 266 pursuant to the provisions of Code Section 19-7-46.1."

267 **SECTION 11.**

268 Said title is further amended by revising subparagraph (e)(3)(D) of Code Section 19-8-5,
 269 relating to surrender or termination of parental or guardian's rights when child to be adopted
 270 by a third party, as follows:

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

309 **SECTION 15.**

310 Said title is further amended by repealing Article 5 of Chapter 9, relating to a power of
 311 attorney relating to children.

312 **SECTION 16.**

313 Chapter 10 of Title 31 of the Official Code of Georgia Annotated, relating to vital records,
 314 is amended by revising subsections (a) and (d) of Code Section 31-10-25, relating to
 315 disclosure of information contained in vital records, as follows:

316 "(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the
 317 efficient and proper administration of the system of vital records, it shall be unlawful for
 318 any person to permit inspection of, or to disclose information contained in, vital records or
 319 to copy or issue a copy of all or part of any such record except as authorized by this
 320 chapter, Code Section 19-7-46.1, and by regulation or by order of a court of competent
 321 jurisdiction. Regulations adopted under this Code section shall provide for adequate
 322 standards of security and confidentiality of vital records. The provisions of this subsection
 323 shall not apply to court records or indexes of marriage licenses, divorces, and annulments
 324 of marriages filed as provided by law."

325 "(d) Information in vital records indicating that a birth occurred out of wedlock shall not
 326 be disclosed except as ~~provided by regulation or upon the~~ authorized by this chapter, Code
 327 Section 19-7-46.1, and regulation or by order of a court of competent jurisdiction."

328 **SECTION 17.**

329 Said chapter is further amended by revising subsection (a) of Code Section 31-10-26, relating
 330 to certified copies of vital records, issuance, and use for statistical purposes, as follows:

331 "(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant
 332 thereto:

- 333 (1) The state registrar or local custodian, ~~of vital records appointed by the state registrar~~
 334 ~~to issue certified copies~~ upon receipt of a written application, shall issue:
 335 (A) A a certified copy of a vital record in that registrar's or custodian's custody or
 336 abstract thereof to any applicant having a direct and tangible interest in the vital record;
 337 ~~except that certified;~~

338 (B) Certified copies of voluntary acknowledgments of paternity as provided in
 339 subsection (e) of Code Section 19-7-46.1;
 340 (C) Certified copies of voluntary acknowledgments of legitimation executed on or
 341 before June 30, 2015, to the same individuals and entities specified in subsection (e) of
 342 Code Section 19-7-46.1; and
 343 (D) Certified copies of certificates shall only be issued to:
 344 (A)(i) The person whose record of birth is registered;
 345 (B)(ii) Either parent, guardian, or temporary guardian of the person whose record of
 346 birth or death is registered;
 347 (C)(iii) The living legal spouse or next of kin, or the legal representative, or the
 348 person who in good faith has applied and produced a record of such application to
 349 become the legal representative of the person whose record of birth or death is
 350 registered;
 351 (D)(iv) A court of competent jurisdiction upon its order or subpoena; or
 352 (E)(v) Any governmental agency, state or federal, provided that such certificate shall
 353 be needed for official purposes; and
 354 (2) Each certified copy issued shall show the date of registration and duplicates issued
 355 from records marked 'delayed' or 'amended' shall be similarly marked and show the
 356 effective date. The documentary evidence used to establish a delayed certificate of birth
 357 shall be shown on all duplicates issued. All forms and procedures used in the issuance
 358 of certified copies of vital records in this state shall be provided or approved by the state
 359 registrar."

360

SECTION 18.

361 This Act shall not be construed to affect a voluntary acknowledgment of legitimation that
 362 was valid under the former provisions of Code Section 19-7-21.1, nor any of the rights or
 363 responsibilities flowing therefrom, if it was executed on or before June 30, 2016.

364

SECTION 19.

365 This Act shall become effective on July 1, 2016, provided that Section 15 of this Act shall
 366 become effective only if Article 5 of Chapter 9 of Title 19 of the Official Code of Georgia
 367 Annotated, relating to a power of attorney relating to children, as would be enacted by HB
 368 887, as passed by the General Assembly during the 2016 legislative session, becomes law
 369 prior to this Act; otherwise, Section 15 of this Act shall not become effective.

370

SECTION 20.

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